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INTERNATIONAL LAW AND INTERNATIONAL RELATIONS

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LEGAL FRAMEWORK OF THE EUROPEAN SPACE POLICY

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Abstract

The authors analyze the peculiarities of the legal framework's formation of the European space policy in the primary and secondary law of the EU. It is established that since the signing of the Treaties of Rome and up to the entry into force of the Lisbon Treaty, none of the founding treaties granted the EU powers in the space sector. The authors identify the main space innovations introduced by the Lisbon Treaty, namely, that a clear legal basis for EU decision-making in this field is provided at the level of primary law. The authors establish that the founding treaties, while referring European space policy to the joint competence of the EU, contain reservations in this area of activity, which is reflected in Articles 4 and 189 of the TFEU. Thus, the EU's exercise of joint competence should be subject to certain reservations, which are, firstly, that the EU should take measures in the space sector in such a way that the exercise of such competence does not prevent Member States from exercising their own competence; secondly, that the EU should take limited measures to harmonize national space legislation of Member States. The authors analyze the legal framework for cooperation between the EU and the European Space Agency in the implementation of the European space policy. The authors establish that the peculiarity of the legal mechanism for the implementation of the European space policy is a combination of the international legal level of its legal regulation, which is represented by the founding treaties of the EU and ESA and it is developed based on their interaction, namely, the Framework Agreement on Cooperation between them of 2004 and decisions of the joint specialized bodies of the EU and ESA (Space Council, Joint Secretariat, High Level Space Policy Group), with elements of the supranational level of legal regulation represented by the system of EU institutions and its legal acts. The analysis of EU secondary legislation in the field of European space policy made it clear that the legal regulation of European space policy is carried out by both recommendatory and

mandatory EU acts, mainly in the form of regulations. In most cases, the regulations adopted by the EU institutions relate to the implementation of specific European space programs. These programs serve as the main legal form for the implementation of European space policy. As for directives, they are used to a limited extent, since their functional purpose is to harmonize the legislative and regulatory provisions of the Member States, which is not provided for in the space sector.

Keywords: international law, European Union law, space policy, space law, international treaty, human rights.

Introduction

It is well known that the starting point of the European Communities' history was 1951, when six member states – France, Italy, Belgium, the Netherlands, Luxembourg and Germany – formed the European Coal and Steel Community. The next stage of European integration, which culminated in the signing of the Treaties of Rome establishing the European Economic Community (EEC) and the European Atomic Energy Community in 1957, coincided with the launch of the first artificial Earth satellite on 4 October 1957. This date is considered in the scientific literature to be the beginning of space exploration.

However, the joint exploration and use of outer space did not immediately find its proper place in EU policy. At the time of the EEC's creation, space activities were interpreted and carried out by the Member States separately from the European integration process. One of the good reasons for separating this area from the establishment of a common market for EU member states was sovereignty considerations (Hobe et al, 2010).

For quite a long period of time, the cooperation of EU Member States in this area was initiated and carried out not within the framework of the European Union, but within the framework of other regional international intergovernmental organisations, in particular, the European Space Agency (hereinafter – ESA). It is this feature that influenced the definition of the term European space policy, which should be understood as a special legal form of cooperation between the European Union, the European Space Agency and their Member States aimed at achieving scientific and technological progress, strengthening industrial competitiveness and implementing various EU policies (Utko-Maslianyk, 2018).

Analysing the legal framework of the European space policy, we should, first of all, start with the specifics of the EU primary law in this area (Lysyk et al., 2023). It is worth noting here that since the signing of the Treaties of Rome and until the entry into force of the Lisbon Treaty, none of the founding treaties granted the EU powers in the space sector (Utko-Maslianyk, 2012). However, this does not mean that before the formal approval of the EU's competence in the space sector, the European Community was not involved in the development of European space policy. This process took place and was accompanied by the adoption of EU acts of a recommendatory nature, such as resolutions of the European Parliament and the Council of the EU, communications, working papers, Green and White Papers of the European Commission. In the doctrine, such acts are called sui generis acts (Craig, de Burca, 2020), as they do not belong to the system of EU legal acts defined in Article 288 TFEU and are adopted by the EU institutions in a form not provided for in the founding treaty. Such acts are not legally binding and establish only political obligations, the non-compliance with which leads to political liability only. Although these acts are mainly programmatic, they define the common position of the EU member states on the formation of the concept of European space policy, which is why they still remain the most conceptually meaningful EU documents on the formation of the theoretical basis of European space policy.

The purpose of the study is to highlight the peculiarities of forming the legal basis for the European space policy in the primary and secondary law of the EU. In this article, authors consider the European Space Policy as a special legal form of cooperation between the European Union, the European Space Agency and their member states aimed at achieving scientific and technological progress, strengthening industrial competitiveness and implementing various EU policies.

The object of this study is relations in the field of European space policy.

The tasks of this study are:

– to research the space novels of the Lisbon Treaty;

– to analyze the legal basis for cooperation between the EU and the European Space Agency in the development and implementation of European space policy;

– to identify the legal forms of the European space policy implementation.

Literature Review

Scientific studies of European space policy were conducted by a number of scientists.

General doctrinal approaches to the relationship between international law and EU law were formulated by Lysyk et al., but they did not consider the peculiarities of European space policy (Lysyk et al, 2023). Important in this research was using the principle of the rule of law in international and EU Law that was investigated by Buromenskiy et al (2024).

Mazurelle, Wouters, Thiebaut studied the genesis of the European space governance (Mazurelle et al, 2009). Fischer investigated the development of the European Space Policy after the Lisbon Treaty (Fischer, 2012). Aranzamendi researched economic and policy aspects of EU space regulations (Aranzamendi, 2009). Al-Ekabi analysed the EU autonomy in Space (Al-Ekabi, 2015).

So, in the mentioned studies, certain aspects of the European space policy were outlined. This article provides a comprehensive study of peculiarities of forming the legal basis for the European space policy in the primary and secondary law of the EU.

Methodology

In the study general methods of science and specific methods of legal research were used.

In this article, dialectical, comparative legal, formal-logical methods, analysis and synthesis are applied. The dialectical method makes it possible to highlight the place of the space policy in the EU legal order. The comparative legal method is used for comparing the historical, current, and future legal regulation of the EU space policy. The content of the legal basis for cooperation between the EU and the European Space Agency in the development and implementation of European space policy was analyzed using the formal-logical method. The analysis and synthesis method allowed to analyze the content of separate norms of EU law concerning European space policy and to identify the legal forms of the European space policy implementation.

Space Novels of the Lisbon Treaty

The signing of the Lisbon Treaty in 2007 and its entry into force on 1 December 2009 was a landmark event for the entire European community, marking the EU's entry into a qualitatively new level of development. This event is also significant for the history of European space activities, as the treaty created a legal framework for activities in the space sector.

One of the main ‘space novels’ of the Lisbon Treaty (Treaty on the Functioning of the European Union (TFEU)) was the introduction of the European Space Policy as a new EU integration direction. In particular, Article 4 of the TFEU for the first time in 60 years of the EU's activity defines the EU's competence in this area, and Article 189 of the TFEU for the first time regulates the provisions of the European space policy at the level of the EU's founding treaty (EUR-Lex, 2016b).

The Lisbon Treaty defines four categories of competence in various policy areas between the Member States and the EU, namely exclusive, joint and complementary and special. The space sector is mentioned in Article 4(3) of the TFEU which defines the areas of joint competence of the EU. In contrast to the joint competence of the EU in the areas of complementary competence, according to Article 2 of the TFEU, the European Union can only carry out activities aimed at supporting, coordinating and complementing the activities of the Member States.

Another reference to this area is contained in Title XIX ‘Scientific research, technological development and space’, in particular Article 189 TFEU. According to paragraph 1 of this article, the EU should develop a European space policy. This provision indicates, first of all, the formation of a new area of EU policy. Secondly, it assigns a key role in its development to the EU. In addition, this article implies that the EU is not only empowered to develop a European space policy, but also has the competence to encourage joint initiatives, support research and technological development and coordinate the efforts needed for the exploration and exploitation of space. However, attention should be drawn to the provision excluding harmonisation of legislative and regulatory provisions of the EU Member States in this area, envisaged in Article 189(2) TFEU.

Thus, this gives grounds to argue that there is a difference between the EU's common competence in the areas defined in Article 4(2) TFEU and its common competence in the field of scientific research, technological development and space. In the first case, Member States exercise their competence when the EU does not use its. Member states exercise their competence again when the EU decides to stop exercising its competence and, conversely, in the second case, the exercise of EU competence should not

prevent member states from exercising their competence. It is on this basis that some Western scholars refer to the competence of the EU (Aranzamendi, 2009; Mazurelle et al., 2009).

In this context, we rather agree with the opinion of the Western scientist Fisher, '...it is unclear why the space sphere was not immediately included in the list of areas of complementary competence of the EU, as defined in Article 6 of the Lisbon Treaty' (Fischer, 2012).

It is important to note that the provisions of the Lisbon Treaty, in particular, Article 4(1), which clearly states that the sphere of common competence includes everything that does not fall within the areas of exclusive competence or support, coordination or complementary measures. Thus, this gives grounds to assert that the space sphere, not being listed among the areas of exclusive competence or among the areas of complementary competence, still belongs to the common competence, but with certain reservations, which are, firstly, the implementation by the EU of measures in the space sphere in such a way that the exercise of such competence does not prevent the Member States from exercising their own competence, and secondly, the limited use of measures for the EU to harmonise national space legislation of the Member States.

Another provision of the Lisbon Treaty that is relevant to the implementation of this policy is that, according to Article 189(1) TFEU, the main objectives of this policy are to promote scientific and technological progress, industrial competitiveness and the implementation of various EU policies. This means that the development of a European space policy is not a goal in itself, but a tool to support other policies and the overall objectives of the EU to achieve economic competitiveness. That is why we support the opinion of Western scholars that the regulation of relations in this area can also be influenced through other EU policies (Aranzamendi, 2010). But on the other hand, this approach may lead to a confusing and decentralised legal regime in the space sector (Al-Ekabi, 2015).

In order to recognise the identity of these terms today, it is necessary that the Lisbon Treaty define the formula of the EU's relations with ESA in a similar way, for example, as the EU's relations with the Western European Union (WEU) in the field of security and defence policy were defined in the past. Namely, if the wording of the development of the EU's relations with ESA were enshrined in law, in such a way that the Union would establish closer relations with ESA, provided that the European Council adopts a decision on ESA's integration into the EU.

Legal Basis for Cooperation between the EU and the European Space Agency in the Development and Implementation of European Space Policy

Today, the EU's relations with the European Space Agency in the field of developing and implementing European space policy are regulated by an international treaty, namely the 2004 Framework Agreement on Cooperation between the EU and ESA (EUR-Lex, 2004b). This treaty is an important source of European space policy, which regulates the areas of responsibility between the EU, ESA and their member states, and defines the forms of their cooperation, which in turn allows for the coordination of a common position on the implementation of this policy. Analysing the specifics of the development and implementation of the European space policy defined by this treaty, the following points should be noted. Firstly, this policy, according to the agreement, should be aimed at implementing the EU's general political objectives, supporting Community policies through the use of space technologies and space infrastructure and promoting the use of space systems for sustainable development, economic growth and employment, as well as forming a common basis for effective mutually beneficial cooperation between the EU and ESA. Secondly, each party may make decisions necessary to implement the objectives of cooperation set out in the agreement, as well as provide expert assistance and support to the other party in resolving issues within its competence. Thus, the article preserves the institutional and functional boundaries of international organisations. Thirdly, 'all external aspects of space activities, from the date of entry into force of this agreement, shall be carried out on a joint basis'. This means that from the moment the agreement enters into force, neither the EU nor ESA can enter into international relations with a third party in the relevant field without notifying the other party and obtaining its approval. Fourthly, the establishment of special joint bodies aimed at coordinating the development of a coherent European space policy and adopting recommendations for the implementation of certain goals and areas of cooperation.

The activities of the special bodies resulted in the adoption of a number of important documents in the form of resolutions on the formation of European space policy. The first meeting of the Space Council held on 25 November 2004, adopted a resolution on the importance and benefits of space exploration and use for a number of European policies. Determining the priorities of the European space programme

for the development of Europe's autonomous system of global Earth monitoring was discussed at the third meeting of the Space Council on 28 November 2005. The first common position of 30 European states on the development of this policy was presented at the fourth meeting of the Space Council, which adopted the resolution 'On European Space Policy' on 22 May 2007 (Council of European Union, 2007).

Legal forms of the European space policy implementation

European space programmes are the main legal forms of implementation of this policy. Such a conclusion can also be made on the basis of Article 189 of the TFEU, which gives the EU institutions in the space sector the authority to 'establish the necessary measures to promote the objectives of the European space policy as set out in paragraph 1 of Article 189'. According to this provision, the EU may take any measures in the space sector that it deems necessary to promote scientific and technological progress, industrial competitiveness and the implementation of EU policies. In particular, such measures, according to the TFEU, may take the form of a European space programme. Further, paragraph 2 of the same article states that 'the European Parliament and the Council shall, acting in accordance with the normal legislative procedure, establish the necessary measures which may take the form of a European space programme...'. Thus, the EU institutions have the right to adopt legislation in the space sector, but the functional purpose of such legislation, in accordance with Article 189(2) TFEU, which regulates the provisions on European space policy, should exclude any harmonisation of the legislative and regulatory provisions of the Member States in the space sector (EUR-Lex (2016b). This implies that legislative acts in the space sector will be adopted mainly in the form of regulations and decisions, since the main purpose of the Directive is to harmonise the national legislation of the Member States.

It is important to note that this policy has been implemented by the European Union from the very beginning at the level of specific European space programmes, in particular, by the Regulation of the European Parliament and of the Council adopted on the basis of Article 189, subparagraph 2 TFEU, which introduces the European space programme 'European Global Earth Observation System' (EUR-Lex, 2010c). The programme covers the creation of satellite systems and related ground infrastructure in Europe designed to observe the Earth's surface and provide geoinformation services that give access to accurate information in the areas of environment and security, and focuses on global change, environmental degradation, natural and man-made disasters. Another programme is for the creation of the European global satellite navigation system Galileo, which is provided for by Council Regulation (EU) No. 1285/2013 on the implementation and use of European satellite navigation systems of 11 December 2013 (EUR-Lex, 2013b). In particular, it is envisaged that the European space programme to create a global navigation satellite system (GNSS) will be implemented in two stages: GNSS-1 and GNSS-2. The first stage envisages the creation of the European Geostationary Navigation Augmentation System (EGNOS). The European Commission, the European Space Agency and the European Organisation for the Safety of Air Navigation (Eurocontrol) have joined forces to accomplish this task. The second phase of the programme (GNSS-2) includes the creation of a new independent and autonomous satellite system called Galileo. This is an infrastructure consisting of 30 satellites and a network of ground stations related to their operation. The Galileo system is designed to provide five key groups of services, namely: basic positioning of moving objects; safety services for the maritime, aviation and railway transport; commercial services; navigation information for public sector users (government agencies, police, civil navigation, emergency services); and search and rescue services.

Given that the main legal form of implementation of the European space policy is the European space programme, it is important to define in the framework agreement on cooperation between the EU and the European Space Agency, namely in Article 5 of this agreement, the mutual obligations of the EU and ESA, which can also be used as forms of cooperation in the case of their participation in the joint European space programme. They are: 1) the management by the ESA of European Community space-related activities in accordance with the rules of the European Community. Within the framework of this obligation, ESA may act as the EU's executive agency for the implementation of the European space programme, i.e. provide support on scientific and technical issues; 2) the EU may participate in ESA activities, in particular, in its optional space programmes, in accordance with Article V.I.b of the ESA Convention (EUR-Lex, 2004b). This article is the main legal basis for ESA's participation in the implementation of the EU's European space programmes. As we can see, it provides for the possibility of entrusting ESA with the functions of the EU executive agency in the implementation of the European space programmes of the European Union. In fact, this form of cooperation has been successfully used in two European space programmes. Article 15 of Council Regulation (EU) No. 1285 of 11 December 2013 on the implementation and use of the European Global

Navigation Satellite System defines the tasks and role of ESA in the development of this system, in particular, in the deployment of the Galileo system and the technical upgrade of the Egnos system (EUR-Lex, 2013b). A sign that confirms the legal status of ESA as an executive agency of the EU within the framework of this programme is that the distribution of contracts for production works related to the creation of the European Global Satellite Navigation System of ESA should be carried out in accordance with the EU procurement rules, excluding the application of the rules for the distribution of contracts provided for in the Convention establishing ESA. Today, the performance by the European Space Agency of the functions of the EU executive agency in the implementation of the European space programmes of the European Union is confirmed not at the level of individual EU space programmes, but at the level of the general European space programme adopted in the form of Regulation 2021/696 by the European Parliament and the Council, adopted on the basis of Article 189(2) TFEU, which introduces the European Space Programme of the EU for the period 2021-2027, namely in Articles 29 and 30 of this Regulation (EUR-Lex, 2021).

Thus, ESA, as an international intergovernmental organisation, in addition to other functions provided for by the Convention establishing the Agency (conducting scientific and applied research, practical activities for the exploration and use of outer space, cooperation with other states and international organisations in the development and implementation of specific space programmes), also performs the functions of the EU executive body for the development and implementation of the EU's space programmes, in accordance with EU law (European Space Agency, 1975).

When analysing the legal framework of the European space policy, it is important to note that it is closely linked to the element of international cooperation. Thus, the aforementioned regulations on the implementation of the EU's European space programmes clearly provide for the legal basis for concluding international agreements with third countries. As of today, the EU has used this right repeatedly. Examples include the Agreement between the EU, its Member States and the United States of America on the Promotion, Provision and Use of the Galileo, GPS and Related Applications (EUR-Lex, 2011); the Agreement between the EU and the Kingdom of Norway on Cooperation in the Field of Satellite Navigation (EUR-Lex, 2010a); Agreement between the EU and its Member States and the Republic of Korea on cooperation in the field of civil global navigation satellite system (EUR-Lex, 2006); The Agreement between the EU, its Member States and the Swiss Confederation on Cooperation in the Civil Global Navigation Satellite Programme (EUR-Lex, 2013a).

Ukraine also cooperates with the EU in the framework of the European space programme to build the European Galileo global navigation satellite system. The basis for cooperation is laid down in the Cooperation Agreement on a Civil Global Navigation Satellite System (GNSS) between the European Community and its Member States and Ukraine of 7 June 2005. Ukraine officially joined the European Galileo system by ratifying the agreement by the Verkhovna Rada of Ukraine on 10 January 2007, which entered into force on 1 December 2013 (EUR-Lex, 2014b). Before the EU adopted the basic regulation defining the rules for the implementation of the EU European Space Programme for the period 2021-2027, the parties to such international agreements were guided by the relevant provisions of EU regulations on the implementation of individual EU space programmes, namely Article 4 of Council Regulation (EC) No 683/2008 of 9 July 2008 on the implementation of the European Space Navigation Satellite Programme Galileo and Article 23 of Council Regulation (EC) No 912/2010 of 22 September 2010 on the establishment of the European Agency for Global Navigation Satellite Services (EUR-Lex, 2008). Today, the legal basis for entering into such international agreements is provided by Regulation 2021/696 of the European Parliament and of the Council establishing the European Space Programme for the period 2021-2027, which also provides for the establishment of the European Space Agency, which is currently responsible for concluding such international agreements.

It is worth noting that today the adoption of the above-mentioned regulation is a huge step forward in the formation and implementation of the European space policy, as it provides an understanding of the essence of this policy and defines the general framework for its implementation for the period 2021-2027.

It should be noted that the implementation of the three aforementioned components of the European space programme 2021-2027 Galileo, EGNOS and Copernicus has been effectively implemented for some time. Thus, the main tasks of the programme for the creation of the European global satellite navigation system Galileo are regulated in a number of documents approved by the EU institutions in the form of both advisory and legally binding legal acts, for example, the EU Council Resolution on Europe's participation in the creation of a new generation of navigation satellite service – Galileo of 19 July 1999 (EUR-Lex, 1999). Council Resolution on the Galileo project of 5 April 2001 (Council Resolution on Galileo, 2001); Information

from the Commission to the European Parliament and the Council "Communication on the status of the Galileo programme" of 2002 (EUR-Lex, 2002); and 18 February 2004 (EUR-Lex, 2004a), Regulation (EC) of 9 July 2008 on the implementation of the European Galileo satellite navigation programme (EUR-Lex, 2008), Regulation (EU) of 22 September 2010 establishing the European Agency for the Global Navigation Satellite System (EUR-Lex, 2010b), Council Regulation (EU) on the implementation and use of European satellite navigation systems of 11 December 2013, Regulation (EU) of the European Parliament and of the Council establishing the European Space Programme Copernicus (EUR-Lex, 2014c), etc.

Today, the European Space Strategy, adopted on 10 March 2023, undoubtedly emphasises the importance of using outer space for security and defence purposes (European Parliament, 2023). The Strategy emphasises the need to develop and improve the services provided by these EU space programmes to increase the strategic autonomy of the European Union and its Member States. This is confirmed by the adoption in 2022 by the European Union of a number of directives on critical infrastructure resilience, strengthening cybersecurity requirements (EUR-Lex, 2022), Regulation of the European Parliament and of the Council of 15 March 2023 establishing the Union Secure Connectivity Programme for the period 2023-2027 (European Parliament, 2023), according to which the space sector is classified as a critical sector for the provision of a number of important services, especially for security purposes.

Analysing the current challenges of regulating the European space policy, attention should be paid to the need to develop a harmonised legal framework for the activities of non-governmental legal entities engaged in space activities within the EU (Von der Dunk, 2008), since they will provide services under space programmes. The growing role of the private sector in the development of European space policy was noted in the European Commission's Communication of 26 October 2016 on the European Space Strategy (EUR-Lex, 2016a). In view of this, it is important to take measures within the EU to harmonise national space legislation, especially in terms of licensing and control over the activities of non-governmental legal entities engaged in space activities.

However, there are two main "obstacles" to the implementation of these measures within the EU: first, the EU has not adopted or declared its intention to adopt the rights and obligations arising from the main international treaties on space activities adopted under the auspices of the UN; second, the EU, according to Article 189(3) TFEU, does not have the authority to harmonise national space legislation. This provision does not give the EU the right to introduce uniform rules for the activities of the relevant entities for its member states.

The special status of the EU's common competence in the space sector, enshrined in Article 189 TFEU, leads to a paradoxical situation: on the one hand, the EU's authority to develop European space policy indicates the need to develop common legal frameworks for its implementation; on the other hand, the exclusion of any harmonisation of Member States' laws in the space sector indicates that the EU Member States retain control in this area. Thus, scholar P. Hanappel is right in stating that the provisions of the legal act on the implementation of the EU's European space programme, in particular, in terms of granting licensing functions to the European Agency for the Global Navigation Satellite System, cannot be implemented until the EU has real powers to harmonise the national legislation of the Member States in this area (Haanappel, 2006).

At the same time, Article 189(4) of the TFEU, which regulates European space policy, states that this article does not contradict other provisions of this section. This may mean that the EU may use other methods to implement measures to harmonise national space legislation.

In particular, according to Article 26 TFEU, the EU may harmonise national legislation to achieve the objectives of establishing and operating an internal market. According to Art. 26 TFEU, the internal market is a territory without internal borders, on which the free movement of persons, capital, goods and services is based.

Given the strategic importance of the space sector, in particular its contribution to economic growth, it can be considered as one of the components of economic activity in the provision of space services and technologies (Von der Dunk, 2009). This means that the EU, in order to achieve the objectives of establishing and operating the internal market set out in Article 26 TFEU, may take measures to approximate the legislative, regulatory and administrative acts of its Member States. Such measures include the legislative initiative of the European Commission in the form of the 2014 Directive on the dissemination of satellite ground observation data for commercial purposes, the legal basis for which was Article 114 TFEU (EUR-Lex, 2014a). The Directive is aimed at ensuring the proper functioning and development of the internal market for high-resolution satellite data, derivative products and services by introducing harmonised rules,

verification and licensing procedures. In particular, the preamble states that "the functioning of the internal market for high-resolution satellite data, derivative products and services will contribute to the development of the EU's competitiveness in the space sector, increase the development opportunities for Union enterprises, and provide innovative systems for ground-based Earth observation". Previous attempts have been made to liberalise the EU's internal market, of which the telecommunications market is a separate sector (Haanappel, 2006) Satellite communications is only a separate segment of this market.

Conclusions

Firstly, the peculiarity of the legal mechanism for the implementation of the European space policy is a combination of the international legal level of its legal regulation, represented by the founding treaties of both the EU and ESA, which is developing on the basis of cooperation, namely the 2004 Framework Agreement on Cooperation between them and decisions of joint specialised bodies between the EU and ESA (Space Council, Joint Secretariat, High Level Group on Space Policy), with elements of the supranational level of legal regulation represented by the system of EU institutions and their respective legal acts regulating integration in this area.

Secondly, the entry into force of the Lisbon Treaty was a milestone in the development of European space policy. For the first time, the European space policy was enshrined in the provisions of primary law and classified as a common competence of the EU, which should be implemented with certain reservations, which are, firstly, that the EU should take measures in the space sector in such a way that the implementation of such competence does not prevent the Member States from exercising their own competence; secondly, limited use by the EU of measures to harmonize national space legislation of its member states.

Thirdly, the analysis of secondary EU legislation showed that the legal regulation of European space policy is carried out by both recommendatory and mandatory EU acts, mainly in the form of regulations. In most cases, the regulations adopted by the EU institutions relate to the implementation of specific European space programmes. These programmes serve as the main legal form of implementation of the European space policy. As for directives, they are used to a limited extent, since their functional purpose is to harmonise the legislative and regulatory provisions of the Member States, which is not provided for in the space sector, according to Article 189(2) TFEU. Thus, the EU's powers to harmonise national space legislation are currently limited, which may have a negative impact on the effectiveness of the implementation of the European space policy in general. On the other hand, it is possible to expand these powers, in particular, through the use of alternative methods such as the internal market.

Fourthly, the changes introduced by the Lisbon Treaty still secure the leading role in the decision-making process in the field of European space policy for the EU institutions. The powers delegated to the EU supranational institutions have made it possible to start adopting a comprehensive document in the form of a regulation that reflects a collective vision of the future development of European space policy and defines its main components for the period 2021-2027.

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POLITICAL INSTITUTIONS AND PUBLIC ADMINISTRATION

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THE INFLUENCE OF EUROPEAN INTEGRATION PROCESSES ON SAFEGUARDING HUMAN RIGHTS AND BASIC RIGHTS IN UKRAINE

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Abstract

The purpose of the study is to analyze the impact of European integration processes on the protection of human rights and fundamental freedoms in Ukraine. To accomplish the proposed aim, a number of systematic methods were used: thematic analysis, comparative analysis, and content analysis. The main judicial documents related to changes in legislation and practice of implementing European legal standards were collected: The Constitution of Ukraine, Human rights legislation, Legislation on personal data protection, and The Maastricht Agreement. The study findings show that Ukraine's European integration involves the approximation of Ukrainian law to European standards. This process also encompassed the safeguarding of human rights and basic liberties that included reducing discrimination, ensuring security, guaranteeing protection and social support, etc. It is important that Ukraine implements these legal changes in cooperation with leading European institutions, such as the Council of Europe and the European Court of Human Rights. This makes it possible to take into account current trends in the practical implementation of the protection of citizens. Simultaneously, efforts to implement the European integration goals of judicial system transformation, media freedom and rights, and civil society institution development should be acknowledged as promising areas for additional Ukrainian legislative reform. Hence, the conclusions emphasize the importance of further cooperation with European institutions and adherence to the democratic path of development. Also, promising areas for further changes in Ukrainian legislation are the work on the implementation of the goals of European integration and the change of the judicial structure, and ensuring the rights and freedoms of the media.

Keywords: harmonization of legislation, establishment of institutions, strengthening of democracy, fundamental freedoms, European integration, cooperation.

Introduction

The European integration process in Ukraine has led to changes in many areas of legal relations. This strategic vector of Ukraine's diplomatic development is integration into the European structure and accession to the European Union. The process of organizing and implementing reforms will help to improve the growth rate of living standards, including through the implementation of social justice principles.

At the same time, modern Ukraine continues to face difficulties with the social, political, and economic aspects of the functioning of state mechanisms, which generally determine the continuation of a successful course towards European integration and the improvement of public life in general (Semenets et al., 2020). The reform process is increasingly taking into account social aspects and needs of the population, focusing on the implementation of European standards, which will eventually lead to better living and working conditions for people, protection of their rights and interests, overcoming the devastating consequences of the Russian invasion, etc. First and foremost, the social sphere includes elements of the state's social policy, which develops the foundations of social protection and social rights. Therefore, drawing attention to the effectiveness of the social sector is one of the most significant and vital tasks that are taken into account in the context of the current stages of the state's socio-economic development in line with European integration.

Speaking about the development of the social sector, it is necessary to emphasize the legal aspects as important elements of social unity and ways to implement social justice (Kroitor et al., 2019). The Constitution of Ukraine, in particular, guarantees inviolability of life and health, respect for dignity and honour, and complete safety of movement, which are proclaimed the highest social values in the country.

However, since 1996, when the Constitution was adopted, there have been a number of changes in the interpretation of social protection and its features. Obviously, further progress towards the protection of human rights is also being made through cooperation with European legislative structures. Institutions of human rights and freedoms, including the instruments for their implementation, are taking on leading roles in the harmonization (or adaptation) of Ukrainian legislation to the requirements of EU legislation in the proposed contexts. In fact, we are talking about borrowing and using many matrices of understanding regarding the protection of human rights, recognition of the means of legal reality aimed at achieving the goals of legal regulation, and preserving all legal interests.

Therefore, the purpose of the study is to analyze the impact of European integration processes on the protection of human rights in Ukraine. Thus, the research objectives include the analysis of the current literature on the selected topic, identification of the mechanisms of influence of EU integration on the legislative field of Ukraine, analysis of the development of the understanding of human rights and their protection as a result of the implementation of European norms in Ukraine.

Hence, the research questions are the following:

1. What are the main themes identified in the current literature on the influence of EU integration on Ukraine's legislative field?

2. How has the implementation of European norms in Ukraine contributed to the development of human rights understanding and protection?

3. What mechanisms of influence has EU integration employed to shape the legislative landscape in Ukraine?

Literature review

The issue of human rights development and protection in Ukrainian realities has repeatedly been the subject of scientific analysis. Researchers have focused on various aspects of this phenomenon, determining both the overall impact of European integration on social and legal processes and specifying the search for the main results of the application of European legal norms on a Ukrainian basis. In particular, the study by Dermine (2023), which identified the prospects for Ukraine's further EU integration into their legal area, is highlighted. Drobotov (2020) characterized the norms that have been integrated into the national security sphere of Ukraine and identified the specifics of their application in the Ukrainian context.

Some modern scholars have drawn attention to the impact of European integration in the field of economic relations, considering the movement towards European legal norms to be one of the keys to creating a successful business environment (Dluhopolskyi et al., 2023; BOBRO, 2024). The researchers also focused on the specificities of the development of EU law in Ukraine, trends in its evolution against the background of the educational system, and the formation of civil society institutions (Danilyan et al., 2021; Kalmykova, 2022; Kuzheliev et al., 2023).

It is worth noting the study by Redko (2017), which identified trends in the evolution of cooperation between the EU and the Ukrainian authorities, including in terms of human rights analysis. Timofeyeva (2020) also described the changes undergone in Ukrainian criminal law as a consequence of the approximation of its legislative structure to European requirements. Some studies point to the importance of European integration as an important process that has distinct legal consequences, i.e., it leads to the liberalization of public life and legislation (Yakoviyk et al., 2018; Storozhyk, 2024). The provision of timely and guaranteed medical care has become an important area of human rights, which is also a consequence of the use of European experience in legal activities (Petrechenko et al., 2021; Wulandari et al., 2023).

Among the little-studied issues, researchers also identify the possibility of taking into account the decisions of international legal institutions in Ukraine and analyzing their role in lawmaking (Ovechkina et al., 2022). Separately, researchers have drawn attention to the obstacles to European integration, including in the area of human rights (Kyryliuk, 2022). The proposed review demonstrates an extraordinary interest in the important issue of the impact of EU integration on the development of legal thought in Ukraine, in particular in the interpretation of human rights.

Obviously, important elements of this study are not only the information obtained from the scientific literature but also reflections on the further development of law in Ukraine against the background of the unfolding Russian aggression (Derviş, 2023; Zemskova, 2023). At the same time, it is important to take into account not only generalizing studies but also to compare the opinions of scholars on important challenges of harmonizing Ukrainian legislation with EU norms. This will help to formulate research problems for further study, which in practice will lead to further improvement of the scientific development of this issue.

Methodology

In pursuit of its main objective, the study uses qualitative data analysis, including scholarly works and legislative documents.

Data collection

Data collection was carried out in stages (see Figure 1).

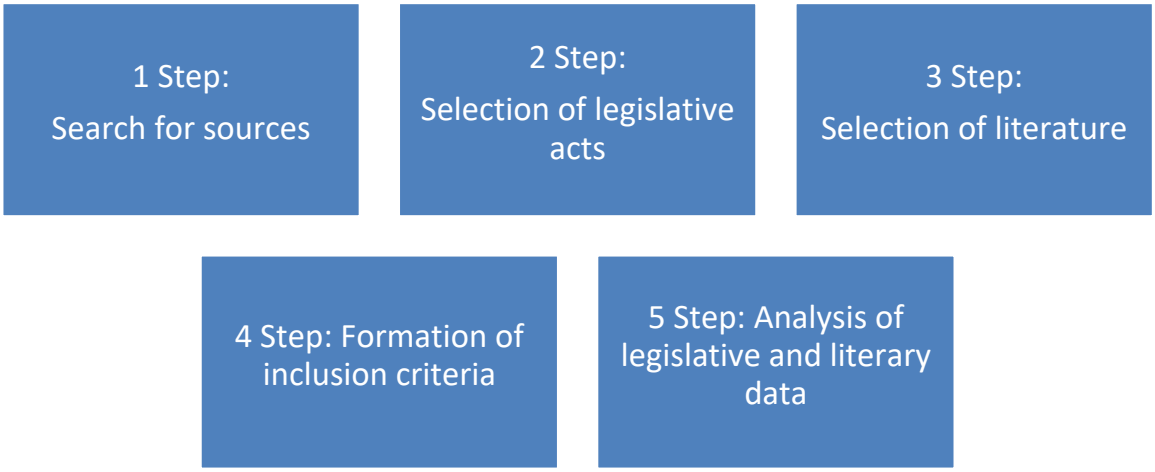

Fig. 1. Main stages of data collection

Source: Authors' development

First, the main legislative documents related to changes in legislation and practice of implementing European legal standards were found.

1. The Constitution of Ukraine.
2. Human rights legislation.
3. Legislation on personal data protection.
4. International treaties (The Maastricht Agreement).

After that, the literature was selected based on the keywords ‘European integration’, ‘law’, ‘sustainable development’, ‘human rights’, ‘European norms ’entered into databases. Some of these words were replaced by synonymous phrases. The criteria for including sources were based on the following principles:

1. The work deals with the general principles of observance of freedoms and human rights
2. The study describes various aspects of Ukraine's European integration process
3. The article describes the legislative aspects of human rights in Ukraine
4. The evolution of legislation in Ukraine is described
5. The paper outlines the research methodology
6. The study has a significant scientific novelty

Based on these criteria, 36 scientific materials were selected for the study.

Data analysis

The analysis of qualitative data included conceptual analysis and thematic analysis. In particular, these methods were used to identify the main trends in the observance of rights and freedoms in Ukraine within the framework of European integration aspirations. The study also utilised the method of comparison, which allowed comparing the findings with the works of other authoritative scholars. Thus, the study uses qualitative analysis of the selected issues.

Results

One of Ukraine's most important strategic tasks is to implement the European integration process. This is manifested in the focus on the further evolution of democratic institutions, the introduction of European standards of observance and guarantee of human rights, transformations in the economic sphere, and active adaptation of the EU's legislative norms. Researchers emphasize that potential accession to the EU can lead to significant political, economic, and social stability in Ukraine (Kregul et al., 2020). Legal harmonization with EU norms provides opportunities to improve further legislative standards, in particular in the areas of attracting investment, developing economic potential, and strengthening cooperation with many other member states.

Continued European integration will definitely lead to political consolidation of the state body and increase its international importance. Active accession to European structures (membership in the Council of Europe and Ukraine’s EU candidacy status) has enabled Ukraine to successfully influence decision-making at the international level, create a Ukrainian vision of current events and demonstrate it to pan-European political forces, and facilitate the establishment of friendly contacts with other states. In particular, European integration can contribute to the growth of democratic values and the strengthening of human rights in the future (Blikhar et al., 2022). As a result of further work to implement ambitious transformations, in particular in the field of law, combating corruption, ensuring fundamental freedoms and freedom of speech, a solid foundation for a strong and sustainable democratic system is being built, which forms further vectors for the country's sustainable development (Danilyan et al., 2021; Drobotov, 2020).

Current researchers have determined that human rights today are conditions determined by the level of development of society and certain historical contexts that are objectively necessary to guarantee the life of an individual, take into account his or her needs, and build communication with other participants in public life, public institutions, etc. (Drobotov, 2020). These conditions determine the formation of general and equal opportunities, which are identical to international standards and are guaranteed by public authorities. For example, the principle of human freedom means providing a person with legal opportunities related to the individualization of behavioral patterns within the limits of the rights defined by law, as well as the right to be free from surveillance, restriction, or any other interference by public authorities in various aspects of a person's life and activities (Buriak et al., 2023; Petrov et al., 2015).

Human rights and freedoms are enshrined in legislation, recognized by public authorities, and spelled out in declarations and international human rights instruments. Ukraine's European integration has made it possible to take into account the position of leading democratic institutions that create conditions for the implementation of basic human rights, protect against violations, and defend them in case of unlawful actions.

As for taking into account the experience of certain specialized human rights documents within the European Union, this process began in 1989, when the Declaration of Human Rights was adopted and the Community Charter on fundamental social rights of workers was adopted. Another historic decision was the creation and implementation of the European Union Charter of Fundamental Rights, which has become a unique document for global practice, enshrining all types of human rights without any objections or exceptions. This document expands its actions both at the interstate and constitutional levels. Importantly,

the EU Court of Justice was established, which significantly complemented the mechanisms of the European Court of Human Rights (Kryshtanovych et al., 2022).

As of today, the Court is primarily a defender of ‘functional ’rights, which are formed in accordance with the content of the founding treaties and the specifics of the implementation of their protection mechanisms (Yakoviyk et al., 2018). Another aspect of its activities is to certify and defend the primary rights and liberties of EU citizens, as provided for in the Maastricht Treaty.

In addition, human rights and freedoms are protected within the framework of the Council of Europe, which Ukraine joined in 1995. Gradually, two independent types of human rights protection have been formed within Europe, which are implemented in parallel. Given the identification of priority areas for the realisation of rights and fundamental freedoms, Ukraine's European integration course in this area should primarily take place in certain areas (See Figure 2).

Fig. 2. Certain areas of Ukraine's European integration in the background of the realisation of rights and fundamental freedoms

Source: Authors’development

Therefore, as shown in Figure 2 the implementation of international and regional standards to guarantee human rights; ensuring freedom of expression; protection of national minorities, indigenous peoples, refugees, and other vulnerable groups; combating torture, human trafficking, inhuman and degrading treatment of others, xenophobia; observance of equal opportunities in the workplace; and implementation of European acts into Ukrainian legislation is the process of introducing norms and other provisions of international legal decisions into national legal practice are most important aspects of Ukraine's European integration in the background of the comprehension of rights and fundamental freedoms.

The state performs the main function of establishing and ensuring human rights and freedoms. Constitutional rights and freedoms are not exhaustive, and their system may be expanded and improved in the future. The constitutional proclamation of the protection of individual civil rights and freedoms defines the state's obligation to create special institutions and conclude the foundation of their legal status. In other words, the establishment of human rights and freedoms is a process where the state recognises these rights through various means, such as including them in declarations, laws, and international treaties.

Ensuring these rights means creating appropriate conditions for their realisation. This process includes three main aspects: promotion, protection, and defence of human rights and freedoms (Shcherbaniyk et al., 2020). The rights in the Constitution of Ukraine are not exhaustive and the system of rights and freedoms

may be subject to expansion and improvement in the future. The obligation of the State to establish institutions for the protection of human rights and freedoms, including courts, law enforcement bodies, and others, is determined by the defense of human rights and freedoms.

Discussion

The study shows that Ukraine's European integration contributes to the protection of the human rights and basic liberties of citizens, as it provides for the adaptation of Ukrainian legislation in agreement with EU standards. The study suggests that in terms of the progress of the Ukrainian legal system as a whole, the processes of aligning the national laws of Ukraine with the EU legislation are particularly important. Although modern authors note that the process of adapting the national legislation of Ukraine to the laws of the EU is long and requires systematization and phasing (Petrov et al., 2015).

It is worth confirming the researchers' opinion that while implementing the course towards European integration, transformations in the relevant legal field have become an urgent component of transformations in the legal life of Ukraine. This statement is also relevant for economic, political, social, cultural, and other factors of public life, which have been significantly affected by integration into European standards.

The proposed transformations were manifested in the practical integration of international human rights standards into the national legal system. This confirms the conclusions of scholars about the need for a corresponding modernisation of Ukrainian legal life (Babenko et al., 2020). At the same time, it is difficult to share the optimism of researchers who believe that the process of adaptation of Ukrainian legislation and its harmonisation is proceeding at a satisfactory pace (Fuley, 2022 Kozlovskyi et al., 2022). Even at the level of introduction and interpretation of European terms, there is a problem of integration, which to some extent does not guarantee the full implementation of mechanisms for the implementation of specific tasks on Ukraine's agenda today.

Decision-making problems lead to the formalisation of the process and the spread of political speculation, leading to an increase in unreasonable expectations in all spheres of public life. Such aspects, as rightly noted by Kaplina (2022), are related to the understanding and interpretation of certain terms and definitions that are actively borrowed and rather superficially studied in Ukrainian legal science. It is also worth supporting the conclusions of scholars that the rights and freedoms of citizens enshrined at the constitutional level do not guarantee their simultaneous implementation and protection at the level of social and legal relations (Dykan et al., 2021). The point is that the existing imperfections in the implementation mechanisms for the protection and enforcement of citizens' rights and freedoms may lead to difficulties with the practical implementation of these rights and freedoms, which will primarily negatively affect the creation and further work of civil society and the rule of law, respectively.

At the same time, scientific studies have shown that a country's innovation potential directly depends on legal development (Kubiv et al., 2020; Lysenko et al., 2024). Innovative solutions have an impact on creating new opportunities for the population and improving the quality of life, and thus have a positive impact on the protection of fundamental rights. In general, the role of European integration in the protection of human rights is the subject of various analytical studies, which highlight certain aspects. One of the important areas is the relationship between European integration and economic sustainable development, which can have a direct impact on the protection of citizens' rights and freedoms (Kozlovskyi et al., 2024).

In particular, some studies by modern scholars are important for determining the potential results of European integration processes on the economic situation in Ukraine (Lutsiak et al., 2020). Some fundamental studies of the innovation potential of European countries demonstrate that it is important within the framework of human rights. It should be referred to Lysenko et al. (2024), who describe the role of artificial intelligence in shaping stable cyber security. It is worth noting that the introduction and use of new innovative technologies has a significant impact on the protection of an individual's private data and, consequently, on the observance of their fundamental rights.

Other studies have shown that, in general, various aspects of economic development in European countries can play a significant role in protecting the rights of citizens (Mazur & Kozlovskyi, 2023; Zayukov et al., 2024). In particular, stable economic development creates various favorable conditions for improving the social protection system, access to education and healthcare, which are fundamental aspects of respect for fundamental freedoms and human rights. At the same time, modern scholars emphasize that the process of implementing European standards requires Ukraine to make efforts to reform law enforcement agencies, the judiciary, and other sectors that affect the observance of citizens' rights. This, in turn, includes not only the adoption of new legislative decisions but also the development of the institutional framework.

At the same time, it has been determined that European integration also affects the dissemination of best practices in the field of human rights and contributes to the creation of platforms for cooperation with other EU Member States. This, in turn, improves the direct mechanism of rights protection, including access to public assembly and fair trial. The main limitations of this study include the consideration of only current literature (for the last 8 years), however, other previous studies are ignored. At the same time, this study also opens up new perspectives for studying the impact of European integration on human rights; in particular, it would be worthwhile to dismantle the direct evolution of this process in different countries.

Conclusions

Thus, Ukraine's European integration has played a significant function in determining the legal structure for the protection of basic human rights or freedoms. First of all, this is due to the need for Ukrainian laws to comply with the established EU accession criteria, among which human rights issues, the fight against corruption, etc. are extremely important tools for building a democratic environment.

For this reason, Ukrainian legislators should take further measures to improve the protection of main human rights, in particular in the areas of fair justice, non-discrimination, freedom of speech and opinion, religion, combating xenophobia, protection of employees' rights, etc. Ukraine's further accession to European structures (in particular, further participation in the Council of Europe, obtaining candidate status for accession to the European Union, and new commitments for further changes) provided Ukraine with opportunities for political and economic integration and taking into account the legal experience of other EU Member States in reforming national legal systems.

In particular, European integration has contributed to an appreciation of the importance of citizens' rights for the implementation of democratic values in general. An important vector for further development is to consider the experience of the European Court of Human Rights, whose judgments can supplement the Ukrainian judicial system with modern interpretations of human rights.

At the same time, work on implementing the European integration goals of transforming the judicial system, guaranteeing the freedoms and rights of the media, and supporting the development of civil society institutions should be recognized as promising areas for further transformation of Ukrainian legislation. In general, the process of European integration is significantly improving the safeguarding of human rights and liberties in Ukraine, bringing the national legislative system closer to international standards and promoting a more transparent and democratic development of the state.

Therefore, the authors of this article can offer the following recommendations on the way to improve the system of human rights protection in the conditions of further European integration of Ukraine.

1. Strengthen democratic institutions and human rights in Ukraine. In particular, it is worth strengthening activities aimed at the further development of democratic institutions and ensuring the observance and guarantees of human rights. This can be done through greater integration of European standards. In addition, it is also worth focusing on the promotion of freedom of expression, protection of national minorities and refugees.

2. Carry out extensive legislative and economic reforms. In particular, it is worth prioritizing economic transformations and active adaptation of EU legislative norms. Such steps will help to attract investments in the system of development of economic potential.

3. Improve institutions for the protection of human rights. Therefore, it is necessary to create new and strengthen existing institutions dedicated to the protection of human rights and freedoms. They can have both governmental and public forms. It is also worth protecting and defending human rights and freedoms through adopted constitutional provisions and international treaties.

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NEW PRINCIPLES OF FORMATION OF STATE SUPERVISION OVER THE LEGALITY IN THE SYSTEM OF LOCAL SELF-GOVERNMENT

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Abstract

In 2016, the system of state control over the legality of decisions of local self-government bodies, within which general supervision was entrusted to the prosecutor's office, was abolished, but a new mechanism for such supervision has not yet been created. The lack of a new mechanism of state supervision over the legality of decisions of local self-government bodies increases the risks of the spread of legal nihilism and does not meet the goals of Ukraine's European integration. Hence there is a need to substantiate the new principles of building a system of state supervision over the legality of decision-making by local self-government bodies.

The reasons for the change in the mechanisms of state supervision over the legality in local self-government have been identified. The trends of the transformation of the system of local self-government and state control over the legality of the activities of local self-government bodies are outlined. The conclusions of representatives of local self-government bodies and experts regarding the principles of state supervision are systematized. The components of the general model of state supervision over the legality of decision-making by local self-government bodies are substantiated. Conclusions regarding the architecture of the model of state supervision have been formed. The main principle of the formation of the system of state supervision over the legality of decision-making by local self-government bodies is to maintain a balance between the freedom of decision-making and the pressure of the force of laws in the decentralized sphere of public administration. It is fundamentally important to separate three types of supervision (administrative, financial, and public) and three components of the general supervision model: supervision by state institutions, internal supervision, and public control.

Keywords: state supervision, state control, legality, local self-government, self-government principle, self-government model.

Introduction

Freedom of activity of individuals and state institutions is exercised in a certain social environment, where interconnected social institutions form a complex hierarchical structure (Stoika, 2023, p. 334-337), yet government actors, interacting inside of it, hardly manage to act in accordance with legislative rules, what requires the creation of a system of control or supervision over legality. In 2016, supervision over the legality of local self-government decisions (hereinafter referred to as LSG) by the general prosecutor was abolished,

creating, as a consequence, a legislative gap and making the issues of building a new system of state supervision over the activities of LSG extremely relevant.

The definition of form in which Ukrainian public authorities should ensure legality in the system of local self-government (control or supervision) is now of fundamental importance since it concerns the preservation of conditions for the development of territorial communities while complying with the legislative requirements for the activities of local self-government. Article 20 of the Law on Local Self-Government in Ukraine (Verkhovna Rada of Ukraine, 1997) being in force at the moment of writing this paper, clearly says that state control is exercised over the activities of local self-government bodies and officials. This rule also corresponds to some extent to Article 143 of the Constitution of Ukraine, which states, in particular, that "local self-government bodies are under control of the relevant bodies of executive power regarding implementation of their powers of an executive authority" (Verkhovna Rada of Ukraine, 1996). However, in 2016 The Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine developed a draft law on Amendments to Certain Legislative Acts of Ukraine (on the implementation of state supervision (control) over the compliance of local self-government decisions with the Constitution and laws of Ukraine), which along with the term "control" uses the concept of "supervision", without sufficiently clarifying whether these terms are identical or synonymical (Institute of Linguistics…, 1978), i.e. similar in meaning with a difference in sounding.

Literature Review

Among the works studied during the preparation of this paper, attention was drawn to the research results of Velychko (Velychko, 2016, p. 95-114), Yemelianenko (Yemelianenko, 2016, p. 73-75), Kasianenko (Kasianenko, 2022) on control over the activities of officials of LSG; ideas of Lukeria (Lukeria, 2023), who substantiates the need to create institutions of state control of prefectural type; studies of Minakova (Minakova, 2022, p. 64-72) and Palchuk (Palchuk, 2019, p. 51-59) on the issues of state control over the activities of LSG in the conditions of decentralization.

Consequently, the problem of state formation of a mechanism that ensures compliance with the rule of law in the system of local self-government includes several aspects:

– a clear definition of the form that identifies compliance with the rule of law in local self-government: whether it is exercised in a form of supervision or control;

– substantiation of the principles for building a system of state supervision (or control) over the compliance of local self-government decisions with the laws and the Constitution of Ukraine;

– development of a model of state supervision (or control), that could make it possible to balance the independence of local self-government in local affairs with the supervision over legality of their activity.

Methodology

The research is based on methodological provisions of national and foreign scholars related to the principles of good governance, which are peculiar to the European practice of municipal management. When conducting the research, innovative provisions of draft normative acts, data of expert surveys, methods of analysis and synthesis, as well as a retrospective method, comparative analysis, theoretical modeling, and graphic visualization were used.

Correlation between the Terms "State Control" and "State Supervision"

In most cases, when studying the need to create a mechanism close to the European practice of tracking compliance of LSG decisions, authors use such terms as "control" and "supervision" as synonyms and, in our view, this approach is not in the spirit of the European Charter of Local Government, which provides only administrative oversight over the activities of LSG (Council of Europe, 1985). Using the method of general semantic analysis, we will try to explain the difference between these terms, since the interrelation between a sign and its meaning (base and predicate) is formed by people depending on many conditions.

The concept of "control" according to its initial content (from Middle French "contrerole" – a list kept in duplicate) meant repeated recording in order to verify the original information, as well as observation for the purpose of verification (Rudnyckyj, 1985). In the English-speaking environment "control" means domination, power, coercion and, given the spread of the English context, the perception of the term "control" has received a negative connotation.

As for the term "supervision", its use in the Ukrainian academic environment is quite often associated with a mild form of control that does not provide for excessive interference in the activities of a controlled

object, thereby Denisova notes that "... the legislator emphasizes preemptive, preventive nature of state supervision, its focus on ensuring law and order in a particular area of society" (Denisova, 2016, p. 16-19). Polish researchers believe that supervision involves direct interference in the activities of a certain subject with the aim of correcting those activities according to recommendations of a supervisory authority (Izdebski & Kulesza, 2004; Jagielski, 2018). In this context, it should also be noted that administrative supervision is considered to be a function of executive power (Kiurienė, 2020). For a more detailed analysis of the differences between the concepts of "state control" and "state supervision" in terms of their normative-legal support, it is reasonable to refer to Pavlyk (Pavlyk, 2017).

We cannot but agree with the author that the legislation lacks a clear distinction between the concepts of "state control" and "state supervision", and we also support his view that supervision is a function of control, which has a preventive nature and is usually applied in regard to entities that are not subordinate to a supervisory authority. Consequently, if we consider the mechanisms to ensure compliance with legislation in LSG decision-making, it is more appropriate to do it within the framework of state supervision implementation.

Justification of the Principle of Building a System of State Supervision (Soft Control)

In order to obtain operational information on the opinion of local self-government's representatives on the current condition of state supervision over the legality and principles of its implementation, we conducted a survey based on an examination of a small group of professionals related to local self-government, whose opinion on the problem is insufficiently learned. The frequency of the examination was one-time; the scale of implementation was local. The survey was selective in nature, but representatives of all types of local self-government bodies of the primary level were involved in it, namely rural, township, and city, which was aimed at ensuring the representativeness of the results. The sample was clustered: five representatives were recruited from each group of local self-government bodies, as well as five others from associations of local self-government bodies, in total there were 30 experts. The research was conducted in the form of an e-mail questionnaire; all questions were close-ended.

The survey, in which representatives of local self-government bodies in Poltava, Sumy, and Kyiv regions took part together with experts of associations of local self-government bodies, demonstrated that more than 40% of respondents have witnessed the facts of legislative violations by local self-government bodies during their practical activities (Fig. 1).

It is interesting that the similar structure of distribution of respondents is remarkable for revealing their attitude towards the abolition of the prosecutor's supervision over the legality of the decisions of LSG.

Guided by Article 8 of the European Charter of Local Self-Government (Council of Europe, 1985) it is possible to formulate the fundamental principle of state supervision over the legality of decision-making in the sphere of local self-government:

– the framework of state supervision over the activities of local self-government bodies limits the functionality of supervisory authorities to monitoring the compliance of LSG acts with law and terminating their validity while simultaneously applying to court in case when violations of law are identified.

Thus, legislation should clearly stipulate that bodies of state supervision may only carry out an examination of LSG decisions, and if the latter do not comply with the Constitution or laws of Ukraine, supervisory authorities terminate such decisions with a simultaneous appeal to court, entitled to make a final decision.

The "soft control" approach is incorporated in the draft Law of Ukraine on Amendments to Certain Legislative Acts of Ukraine (on the implementation of state supervision over the compliance of local government decisions with the Constitution and laws of Ukraine) (Association of Cities of Ukraine, 2016), which corresponds to the practice of most European countries. The rationale for the use of new principles of state supervision over the legality in the system of local self-government and reservations about possible negative consequences are shown in Table 1.

It should be noted that at present, in the absence of general supervision over the legality, certain areas of the activities of LSG are controlled by executive authorities: the State Tax Service of Ukraine, the State Customs Service of Ukraine, the State Environmental Inspectorate of Ukraine, the State Treasury Service of Ukraine, the Accounting Chamber of Ukraine, etc. Control over various types of LSG activities has its own characteristics and forms of implementation (for example, budgetary control may be carried out in the form of expertise, inspection, audit, and monitoring), and therefore, there is a need to classify all decisions made by local self-government bodies. There are decisions of local self-government bodies

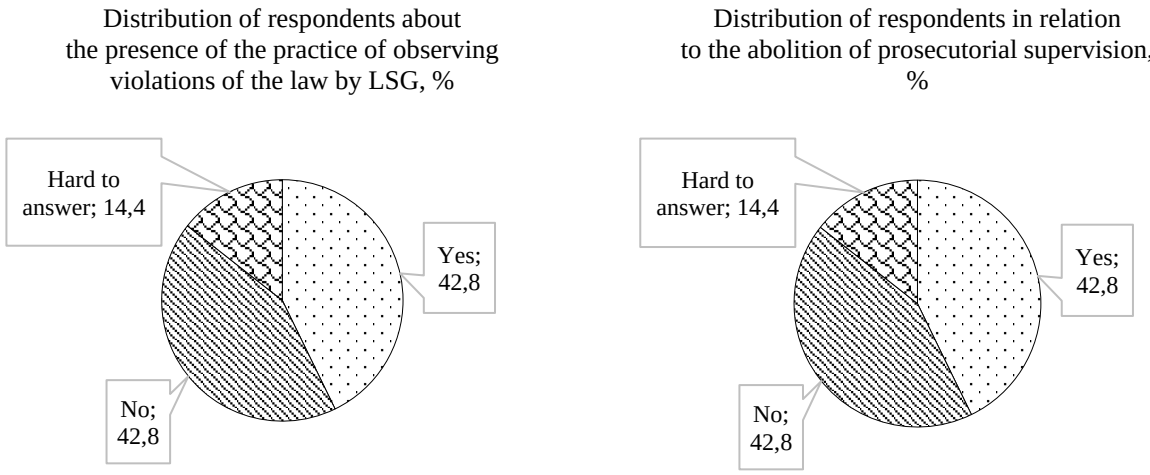

Fig. 1. Distribution of respondents regarding the existence of practice of observing violations of law on the part of LSG and attitudes towards the abolition of prosecutorial supervision, %

Source: authors' study.

subjected to special or to general supervision. The proposal of Lukeria (2023) to distinguish a category of decisions that, in conditions of the Russian military aggression, have to be canceled immediately on the day of their adoption, seems to be reasonable as well. These are decisions, which have signs of separatism, collaborationism, espionage, etc.

It is crucial to ensure the possibility for LSG to receive advice from the supervisory body on the issues that cause doubts, which is especially necessary in conditions of rapid changes in the legislation caused primarily by external circumstances, and establishing a certain time interval to eliminate the comments and avoid court proceedings.

However, the results of the survey showed some uncertainty of the respondents' attitude towards the possibility of introducing the principle of immediacy (78,5% of the respondents have difficulties with the expediency of its introduction), though 71,4% of the surveyed called the legality in the system of local self-government to be satisfactory (Table 2).

Consequently, a new approach to the formation of the institution of general supervision over the legality of decision-making in the system of local government must be based on a fundamental principle: respect for the balance between the freedom of decision-making by local councils and the power of laws in the decentralized sphere of public administration.

As far as this principle, formulated by the authors in the table above, is also one way or another determined in the studies of other researchers without consequently causing any doubts and objections because it is conditioned by the logic of the decentralization process, the search for an acceptable model of implementation of state supervision continues. Analysis of the use of existing instruments of state control over the activities of local self-government bodies allows us to agree with those researchers who note their imperfection and ineffectiveness Velychko (Velychko, 2016), *Yemelianenko* (Yemelianenko, 2016)., Kasianenko (Kasianenko, 2022), Minakova (Minakova, 2022)). All this, as Velychko notes, "... often leads to duplication of functions for supervisory authorities and does not provide the necessary level of coordination and exchange of information, the proper elimination of revealed offenses, the focus of subjects of state control on the prevention of offenses" (Velychko, 2016, p. 103). Recently, we have seen a convergence of academic views on the expediency of distinguishing state and public supervision (control) and setting financial control as a specific state function apart from the integrity of state supervision. However, we are not searching for an answer to the question of what the model of general state supervision should look like and how a state, local self-government, and public organizations have to interact in this model.

Table 1

Principles of State Supervision over the Rule of Law in the System of Local Self-Government

Principles	Rationale for use	Cautions
1. Non-interference with activities	Support for autonomy and empowerment of territorial communities, which is also paramount for their self-preservation (Kalian, et al., 2023, p. 80)	Weak professional training of the deputy corps leads to an increased risk of power abuse
2. Insubordination	Impartiality in the examination of decisions	The risk of corruption is not excluded
3. Priority	Priority of expert evaluation of those decisions that can have the most negative consequences	Additional time spent on preparation, verification, and examination of documents
4. Immediacy	The prioritization of decisions that pose a threat to the country's national security and must be terminated immediately	Contradiction with the principle of separation of powers, whereby such decisions should be made by court
5. Counseling	Exercising the right to receive explanations and interpretation of legislative rules	The risk of increasing the number of supervisory bodies and overspending budget funds to consult managers with a low level of professionalism
6. Competence	Representatives of supervision bodies must be highly qualified to avoid abuse of power	The question arises about the subject of evaluating the competence of employees of supervisory authorities
7. Responsibility	The inadmissibility of errors in the examination of documents	The burden of personal responsibility in the system of subject-to-subject relations may lead to the proliferation of corrupt relations

Source: authors' study.

Table 2

Results of an expert survey on the state of compliance with the rule of law in local self-government and the principles of formation of a new model of state supervision

Assessment of the state of legality in the system of local self-government		Areas with the biggest violations of the rule of law (no more than three options)		Attitude towards the idea of introducing a category of LSG decisions requiring repeal on the day of their adoption ("immediacy")		Attitude toward the idea of including internal supervision in the general law enforcement model	
answers	%	answers	%	answers	%	answers	%
excellent	0	land management	85,7	positive	7,2	yes	42,8
good	21,4	state procurements	50,0	negative	14,3	no	21,4
satisfactory	71,4	road maintenance	42,8	difficult to answer	78,5	difficult to answer	35,8
unsatisfactory	7,2	other	14,3				

Source: authors' study.

Justification of the Model of State Supervision over Legality in Local Self-Government

Most European countries (France, Germany, Denmark, Poland, Lithuania, and others), guided by provisions of the European Charter of Local Self-Government (Council of Europe, 1985) on the need

to respect the rule of law, have created systems of administrative supervision over the legality in local self-government. Of course, those models differ depending on historical traditions, development of civil society, culture of the population, level of corruption in power, competency of municipalities, and other more general factors, like, for example, the form of government. The duration of the tradition of granting financial autonomy to self-governments determines the level of rigidity of state supervision model and the number of institutions that provide it (Table 3).

Thus, in Denmark the transformation of the system of state supervision was carried out in the direction of reducing the number of supervisory authorities and limiting relevant functions to monitoring: in 2017, the powers of state administrations in regions (there are five of them in Denmark) to supervise the activities of local governments were transferred to the National Board of Public Appeals (Ankestyrelsen), subordinated to the Ministry of Social Policy and Internal Affairs (SKL International, 2020). The National Collegium supervises only the legality of decision-making by local decentralized administrations, but not the validity and appropriateness of local authorities' decisions.

Table 3

Peculiarities of models of state supervision over the rule of law in local government in some European countries

Country	Institutional support of state supervision	The main powers of the supervisory authority	Source of information
Denmark	– Before 2017 – state regional administrations; – Since 2017 – National Board of Public Appeals	Monitoring the legality of normative acts adopted by local decentralized administrations	Local Government in the Nordic and Baltic Countries. An Overview. Revised Version, 2020
Estonia	– Department of Justice (DJ); – Chancellor of Justice (CJ); – National Audit Office (NAO).	DJ: supervision over the legality of municipal acts and appeals to the administrative court; CJ: supervision over the conformity of municipal acts with the Constitution and appeals to the Supreme Court; NAO: monitoring the legality of use of municipal funds, but not evaluating the appropriateness of their use	Local Government in the Nordic and Baltic Countries. An Overview. Revised Version, 2020
Latvia	Department of Environment and Regional Development	Checking the legality of local government regulation before its official publication	Local Government in the Nordic and Baltic Countries. An Overview. Revised Version, 2020
Germany	– County Administrative Office (Landratsamt) (CAO); – Municipal agencies (MA); – Constitutional Courts of Berlin, Bremen, and Hamburg (CC); – Line ministries (LM)	CAO: supervision over the municipal level of government; MA: supervision over municipalities and rural districts; CC: legal supervision over city-state authorities (individual districts not controlled by higher authorities); LM: technical supervision, which includes not only monitoring the legality but also determining the appropriateness of taken decisions	Overview of administrative supervision of local authorities' activities in selected countries, 2020.
Poland	– Voivode; – Accounting chambers (ACh); – Administrative court (AC)	Voivode: assesses the compliance of decisions with law after their adoption and cancels unlawful decisions; ACh : exercise financial control; AC: reviews complaints of local authorities	Local Government in the Nordic and Baltic Countries. An Overview. Revised Version, 2020

Source: authors' study.

In Germany, which is a federal country, the system of state supervision is correspondingly more complex. Municipalities (the local level of government in Germany), formed and reformed at different times, have differences in governance under the legislation of different levels (Council of Europe, 2020).

In Poland, the system of state supervision over the legality of local self-government decisions is quite rigid, since voivodes (representatives of the Council of Ministers in the voivodeship) have the right to cancel decisions of local authorities.

In case of disagreement, local authorities may challenge the voivode's decision in the administrative court. Financial aspects of the activities of Polish municipalities are controlled by the regional accounting chambers and the Supreme Court of Auditors. The lack of the possibility for preventive consultations and a non-judicial format of canceling an illegal (from the voivode's point of view) decision of a local authority raises questions of their legal nature.

When it comes to Ukraine, the first attempts to change the model of state supervision over the rule of law in local self-government were made back in 2015, when amendments to the Constitution of Ukraine were proposed to introduce prefectures as new institutions. Since the draft law referred to the possibility of providing special conditions for the exercise of local self-government in certain areas of Luhansk and Donetsk oblasts, it provoked public disapproval, and the proposed changes were not adopted. The military actions that have been taking place in these regions since 2014 and the full-scale war with Russia that began in 2022 made it impossible to make any changes to the Constitution of Ukraine, and the issue of creating prefectures has been postponed. This happened because of legal provisions introduced under martial law, in particular, Article 19 (Guarantees of legality under martial law) of the Law of Ukraine on the Legal Regime of Martial Law (Verkhovna Rada of Ukraine, 2015) prohibits amendments to the Constitution of Ukraine during the relevant legal regime.

Due to the martial law regime caused by Russia's military aggression, regional governance showed a tendency to concentrate powers at the level of regional state administrations, which raises concerns about the state of local self-government, transparency of activities, and compliance with law by local authorities. In settlements that were occupied and later liberated, the state established administrations, which took over functions of local self-government and were granted the right to reduce transparency and increase the centralization of governance by the law (Verkhovna Rada of Ukraine, 2015). A study conducted by a group of Ukrainian scholars at de-occupied territorial communities also confirms this conclusion (Democracy Observatory, 2023). However, the experience of the post-war reconstruction of Bosnia and Herzegovina shows that in the context of reconstruction tasks, the predominant role is played by local governments. Amra Hadzimuhamedovic (Hadzimuhamedovic, 2009) notes that matters of spatial planning, return of refugees, creation of safe living conditions, including demining, restoration of education and health care systems, etc. were entrusted to municipal institutions, whose institutional capacity was strengthened with external support. However, this does not preclude the existence of central government supervision over the activities of local authorities.

The results of administrative reforms in the countries of the European Union also testify to the inexpediency of transferring the supervisory function to public organizations, whose representatives "generally do not have a sufficient amount of information compared to the relevant local authorities, which does not allow them to objectively assess the legality of decisions" (Stoika, Lozynska, 2022, p. 67-70). In the context of the balance between freedom of decision-making and state supervision over their legality, attention should be paid to the Recommendations of the Committee of Ministers of the Council of Europe 2019 on the structure of supervision, which distinguishes:

- administrative (general) supervision, stipulated by the European Charter of Local Self-Government;
- financial supervision, carried out by financial control bodies;
- public supervision, performed by the civil society.

In view of the fact that in Ukraine sectoral executive bodies exercise technical control over certain types of activities (industrial and residential construction, provision of educational and medical services, water and land use, etc.), it should be maintained while introducing control over expediency of decisions of technical nature. As well, it is fundamentally important to separate three components of the general supervision model: supervision by state supervisory bodies; internal supervision, and public supervision (Fig. 2).

T. Lukeria, analyzing the draft law on amendments to the Law of Ukraine "On local state administrations" and some other legislative acts of Ukraine on the reform of territorial organization of the executive power in Ukraine released in 2020 (Verkhovna Rada of Ukraine, 2021), supports the opinion

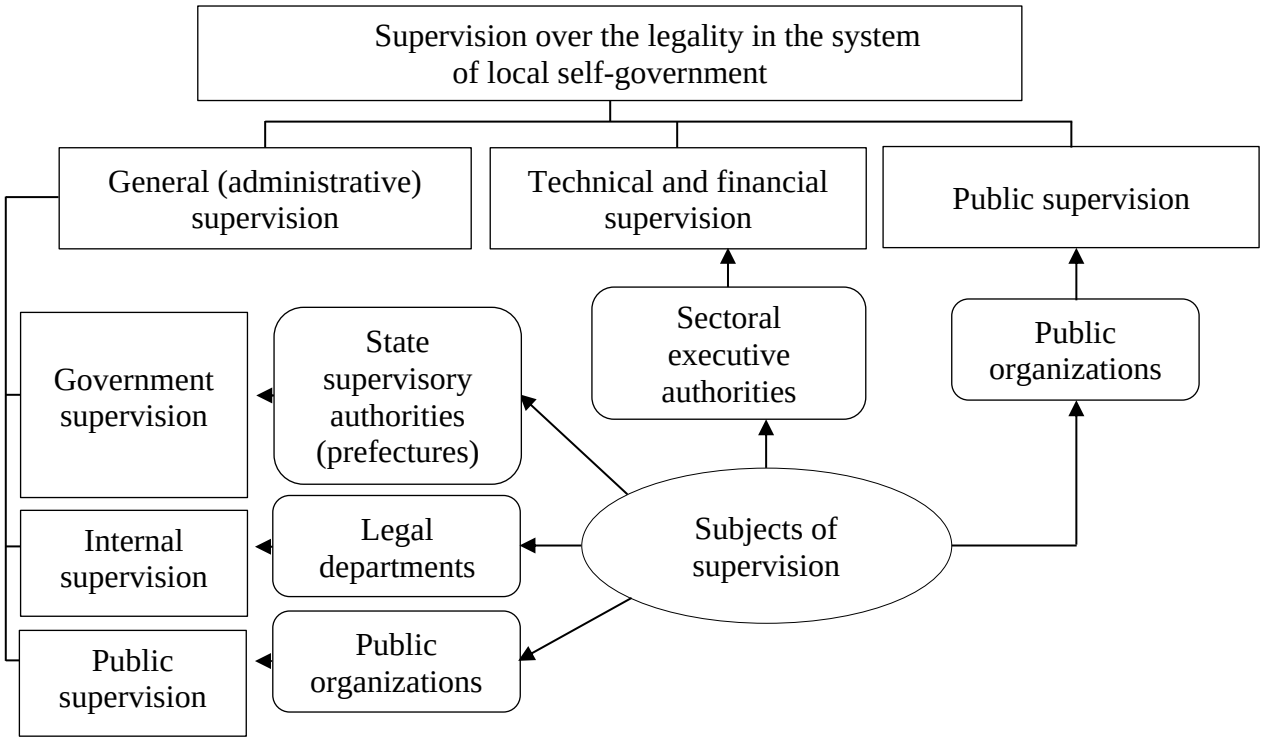

Fig. 2. General model of supervision over the legality in the system of local self-government

Source: authors' development.

on the need to enshrine the prefectural powers on local state administrations, which can use the next two tools to ensure the legality of decisions by local governments:

– demand to eliminate the violation of legality;

– recourse to the court with a lawsuit to recognize the act of a local government body as illegal (Lukeria, 2023).

Supervision over the legality in the sphere of local self-government through the institution of prefectures is supported by 64.3% of the respondents; 66.7% believe that the activities of prefectures should be carried out within the framework of a separate body of state power – a prefecture; 33.3% of respondents who gave a positive answer to the question about the need to introduce prefecture for supervising the legality in the sphere of local self-government believe that tasks of state supervision can be handled by state district administrations. In general, the interviewed experts do not support the idea that a regional state administration should supervise the legality of decisions of district councils, so as a district state administration supervise the legality of decisions of village, settlement, and city councils, which is obviously caused by distrust of the regional bodies of state power.

The proposed model of supervision over the legality of local self-government's decisions, including state administrative supervision, internal and public control, is seen as a mechanism that simultaneously ensures the application of preventive measures on offenses at the local level and the protection of territorial communities from the arbitrariness of control bodies. Certainly, the model requires meaningful and normative filling, because without clearly established rules, the supervision mechanism will not provide positive developments. It is necessary to ensure the apolitical nature of the institution of a prefecture, to determine their responsibility for interfering in the activities of local self-government, and to outline specific supervisory and control functions.

The war posed a serious challenge to local self-government in general and to human rights in this sphere. The formats of decision-making within territorial communities became different: in addition to the deputy corps, according to the provisions of martial law, the right for individual decision-making was given to village, town, and city mayors, as well as the heads of military administrations of settlements (MAS),

created in accordance with the presidential decrees in deoccupied communities and places, where local councils were unable to fulfill their powers. A study by the think tank "Democracy Observatory" shows that changing decision-making algorithms suspends the activities of parliamentary bodies and weakens the requirements of "budget transparency" (Democracy Observatory, 2023). But along with the weakening of the transparency in the budgetary process stipulated by the wartime regulations, many communities faced a significant decrease in the quality of information content at local council's websites, which we have repeatedly encountered in the course of our research. In territorial communities where local self-government is preserved, there are violations of legal requirements for land issues, permits, and reporting. Presently, there is an acute discourse about conditions, grounds, and mechanisms for restoration of local self-government in de-occupied territories, the order of formation of local self-government bodies, powers, etc., but it is important that these processes take place in compliance with the principle of the ubiquity of legality, i.e. the operation of laws throughout the state and their similar interpretation.

Conclusions

The results of the study allow us to make several conclusions:

1. It is advisable to make a distinction between the concepts of "state control" and "state supervision" since control can be considered as a form of tracking compliance, which involves the intervention of a controlling authority in the activities of the object of control and its implementation within the system of subordination. Supervision, on the other hand, is a softer form, which has a preventive nature to ensure the rule of law in local self-government and is usually carried out by state bodies, to which the object of supervision is not subordinate.

2. The results of the survey, which was attended by representatives of local self-government bodies in Poltava, Sumy, and Kyiv regions (Ukraine), experts of associations of local self-government and other public organizations, showed that more than 40% of respondents have encountered violations of law by local self-government bodies in their practical activities and the same number of respondents expressed negative attitude towards the abolition of prosecutorial supervision, which further emphasizes the importance of formation of a general state supervision mechanism over the supervision of the rule of law by local self-government bodies.

3. The fundamental principle of state supervision over the legality of decision-making in the sphere of local self-government is formulated: the framework of state supervision over the activities of local self-government bodies limits the functionality of supervisory authorities to monitoring the compliance of LSG acts with legislation and their termination simultaneously applying to the court in case of detected legislative violations; at the same time, the balance between the freedom of decision-making by local councils and the pressure of the force of law should be observed. Other important principles are outlined, namely: non-interference with the activity; insubordination; priority; immediacy; counseling; competence; responsibility.

4. Most European countries, guided by the provision of the European Charter of Local Self-Government on the need to respect the rule of law, have created systems of administrative supervision over the legality of local self-government, with models that differ depending on the historical traditions, the development of civil society, culture of the population, corruption of power, the soundness of municipalities etc., and the level of rigidity of the model of state supervision and the number of institutions that provide it is determined by the duration of a tradition to grant financial autonomy to self-governments.

5. In the context of observing the balance between the freedom of decision-making and state supervision over the legality, we propose a general scheme for the model of supervision over the legality in the system of local government, which distinguishes: administrative (general) supervision; financial supervision carried out by financial control bodies; public supervision carried out by the civil society. It is also fundamentally important to divide the three components of the model of general supervision: supervision by state institutions; internal supervision, and public supervision.

6. Our research leads us to the conclusion that all European countries have institutions of administrative supervision over the legality of local self-government decisions. At the same time, there is a reason to believe that there is no single model of relevant administrative supervision. Ukraine remains the only country on the European continent that does not have a system of supervision over the legality of local self-government activities, however, Ukraine has an obligation before the European Union to ensure the institutionalization of administrative supervision over the legality of decision-making by local self-governments no later than the first quarter of 2025.

The proposed model of state supervision over the legality in local self-government, including state administrative supervision, internal and public control, is a mechanism that simultaneously provides the application of preventive measures for the prevention of offenses at the local level and protection of territorial communities from the arbitrariness of control bodies. At the same time, the proposed model requires both substantive content and normative support, determining the prospects for further scientific research on organizational and functional basis of the institution of a prefecture and the structure of the mechanism of state supervision over the legality in local self-government, the definition of specific supervisory and control functions, etc.

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PROBLEMS OF NATIONAL PUBLIC AND PRIVATE LAW

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DIMENSIONS OF LITIGATION IN OPEN DAMAGES LAWSUIT

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Abstract

In its simple sense, the center of the dispute is the cause of interest or harm upon which one relies in filing a class action lawsuit. Privacy is achieved in a class action lawsuit because the multiple parties do not rely on the personal right in their class action lawsuit, even if they rely on this (personal) right to join it or accept the request. This joining is after the announcement and the second concept is the transfer of the position of the dispute from one party to another such as filing a lawsuit by a company or a competent authority after agreeing to finance the litigation. The third meaning of the collective lawsuit is the adoption of the lawsuit as a model (the central lawsuit) in that the focus of the claim is on the unit of the defendant, an employer such as factories, laboratories, and companies. This lawsuit is called a class lawsuit or a collective lawsuit, and it prevails between the classes of workers or employees who are bound by an employment contract. Collective or administrative contracts within the scope of an institution or business entities affiliated with the same employer whether it is a natural individual or a legal entity such as a production company. We sought to collect data on collective damages in Iraq and achieve employer unity to enhance the statistical value of collective damages by systematically considering statistical data and the extent to which these damages are realized or worthy of litigation.

The research aims to achieve the following scientific objectives: 1) explain the specificity of the litigation center in a collective tort lawsuit, the importance of financing, and the possibility of litigation turning into a subject for trafficking or speculation; 2) determine the judicial process in the Anglo-Saxon countries and compare it with Iraqi law.

Keywords: class action, model suit, litigation financing, adversarial, interference, request to join, collective tort, relativity of damages, commercial litigation, speculation in litigation.

Introduction

The litigation center combines the reason for the civil claim, whether interest or harm, for example, with the idea of verifying the link between that support and the parties to the civil litigation in the collective injury lawsuit.

The basic idea is that the focus of a person's lawsuit (the model lawsuit) was filed on the personal basis of its owner without being connected in principle to the potential parties who will join it to form what is called 'a class action lawsuit' based on that model lawsuit, which is the center and focus of the dispute in the collective harm lawsuit (Brian, 2014). The center of the dispute is important in the balance of the origin of the lawsuit and why the lawsuit is proven. The model is considered proven for all parties who accepted

the announcement of joining the lawsuit. The model is the announcement directed by its owner or the company that manages the financing for the litigation through legal agencies. Here, the center of the dispute is a new concept that we propose as a new term that is free to research and explain in terms of Conditions, elements, requirements, and procedures (Abram, 2000).

Litigation Center for Financial Claims

Financial claims within the judicial scope may stem from the personal right to withdraw from obligations in contracts, the promise of a reward unilaterally, the right to compensation for damage in an unlawful act, or the achievement of a state of unjust enrichment from paying what is not due or paying off the debt of others. It is a personal status, linked to a personal right by law, such as the right to inheritance (Harper, 2023).

In addition to the financial rights associated with the real rights, such as the property rights and the rights that derive from them.

Within the framework of the Center for the Possibility of Litigation lies the idea that every interested party or everyone who is harmed by a relationship or lawsuit has the right to enter, as a principal, into a lawsuit or an overlapping or organized lawsuit for another party.

A distinction must be made between the basis of the claim in litigation, and the legal basis used for the civil claim as a valid or legal reason that represents a contract as a source of obligation or a reason for gaining ownership. All of this is 'differentiated' from the link and that source or reason is an interest, a personal right, or damage to it that calls for litigation. Requesting a financial element in the civil lawsuit (Harper, 2023).

Within the scope of the dispute in the mass tort lawsuit, a new center for litigation appears, represented by the institutions that adopt the issue of litigation financing by covering the expenses of the lawsuit, and the entry of these institutions as a party to the litigation through the 'litigation financing' contract, which raised allegations and objections to the effect that this adoption by those financial institutions has a character. It seeks, with its economic power, to obtain compensation amounts for the class of individuals affected in the collective damage lawsuit, and thus this behaviour by institutions is considered commercial litigation (Galanter, 1993).

These institutions make financial bargains to buy the damages of the affected group or class, and this makes the litigation characterized by a lack of seriousness due to the lack of seriousness in demanding compensation for the damage to achieve the bargain. However, the presence of a financial position in the litigation through a legitimate contract, which is 'financing' even if it is fictitious and its reality is Purchasing damages then proving the legitimate position in litigation is achieved, and saying that trading in litigation requires, even implicitly, considering the judiciary as part of the deal and this matter is not achieved, and saying that requires challenging the judiciary's complicity with those financial institutions (William, 2017).

Privacy of the Litigation Center in the Class Action Lawsuit

A collective lawsuit is called a class lawsuit, which is a lawsuit that relates to a group or class that suffers damage from the same source, regardless of the amount of damage among the people in that class or the type of actual damages that befall that class.

The specificity of the collective damage lawsuit 'class case' or 'class lawsuit' is that the center of the dispute against any person within the collective damage achieved takes effect in its primary effect which is 'the validity of litigation for others' after accepting the notification or 'announcement' of the filing of the lawsuit by one of the parties within the class, in addition. The effect which is 'the case ruling', applies to the rest of the class members.

The manifestation of the above effect is called 'the model lawsuit', the 'original' lawsuit, the 'center' lawsuit, or the 'exemplary' lawsuit. Despite the multiplicity of names, the name of the claim or lawsuit is 'the model' at the level of civil and judicial jurisprudence, where the lawsuit is directed against the source of the collective damage from a factory or plant. Or an entity or a person to be sued civilly for damages resulting from his economic activity whether this activity had a dependency relationship with those affected, such as employment contracts, a relationship of consumption of the commodity produced, or use of the service provided by the source of the damage (William, 2017), accordingly the status of the dispute established by one of the individuals within the collective damage will have its effects in terms of the success of the judicial claim and the issuance of the ruling for compensation to the parties who have suffered damage of the same type or other damages with a single source of the damage such as radioactive contamination resulting

in damage to neighbouring cities or connection to an administrative relationship that requires a service such as food that cause poisoning, even if their patterns and level of impact on a meal or workers shift differ, regardless of the cause of the poisoning related to the poor quality of the original food or the poisoning resulting from its spoilage due to poor storage. This is called 'the open position for litigation' in a collective tort lawsuit (Pleading, 2018).

The Open Nature of Compensation in Collective Harm

The damages that occur within the case of collective damage are characterized by non-typical damages. For example, damage to a worker within the scope of an employment relationship in a collective contract, such as work injuries with machines within the production unit, is considered typical, usual and expected damage in the line of damages due to the possibility of damages to machines such as scratches and wounds in the process of loading and unloading goods (American Bar Association, 2021).

Advanced damage is called 'typical' because it is common in shipping goods.

As for the damage resulting from radiation leaks inside production units or providing workers with unhealthy meals that cause poisoning to the workers or their exposure to chemicals that cause chemical contamination, this contamination is concentrated and harmful to the skin, such as petrochemicals, or is exacerbated by poor ventilation due to lack of quality construction. All of these damages are called 'atypical damages' or other than 'the usual' and some civil law jurists call it exceptional damage because it, by all names, constitutes a departure from the expected damage in light of the work correlation to the nature of the damages envisaged from every production or laboratory work whether agricultural or industrial (American Bar Association, 2024).

Because collective damages go in scope and nature from the usual situation to unusual damages, the first sign of that departure is that the scope of the damage is on the horizontal level collectively affecting a number and class of people workers or employees in a labor or administrative relationship and association and compensation for it will be characterized by an open character through the following (Barkai, 2014).

1. The compensation will be detailed by identifying all types of damages, whether their amount varies between members of the group in collective damage, whether the type of damage is the same, such as poisoning damage or whether the types differ with the unity of the source such as the multiple activities of the economic unit producing factories and factories.

2. Compensation within the scope of contractual liability is not limited to the direct material damage expected because the damages go beyond the scope of breach of contractual liability to the scope of exceeding the obligations of the contract, so the contract is a link to the group in the work of that economic establishment, such as a factory or factory, without having to do with the obligations of the worker and the employer (in the sense Technical contract) is related to these damages because they depart from the contractual scope, represented by the phrase 'the damages are a result of the breach of contractual obligations'.

In conclusion, they are damages outside the typical meaning of breach of contract due to other damages that are perceived but outside the contractual nature of the employer's or employee's breach thereof.

3. Compensation in contractual and tort liability is available on a wide range of types and descriptions of damage including moral and material damage and the expected and unexpected features of direct and indirect damage, current, immediate, probabilistic, and future, with its introduction achieved and its effects lax in the future.

All of this establishes the open concept of harm.

Table 1

Statistics of mass damages at oil sites in Iraq / southern Iraq / Basra Governorate / South Rumaila oil site, for five years

Year	Respiratory system diseases	No. of compensation
2018	240	0
2019	222	0
2020	162	0
2021	310	0
2022	319	0

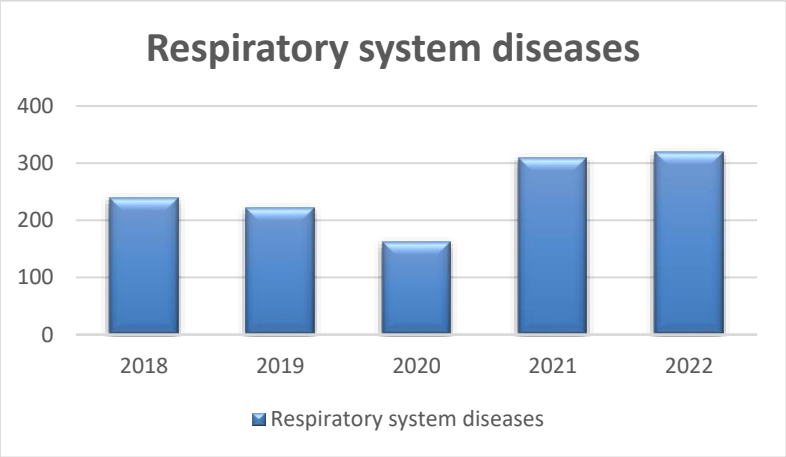

Fig. 1. Statistics of mass damages at oil sites in Iraq / southern Iraq / Basra Governorate / South Rumaila oil site, for five years

Table 2

Statistics on mass damages in petrochemical plants in Iraq / southern Iraq / Basra Governorate / Tanuma city for five years

Year	No. of pollution	No. of compensation
2018	414	0
2019	510	0
2020	602	0
2021	701	0
2022	836	0

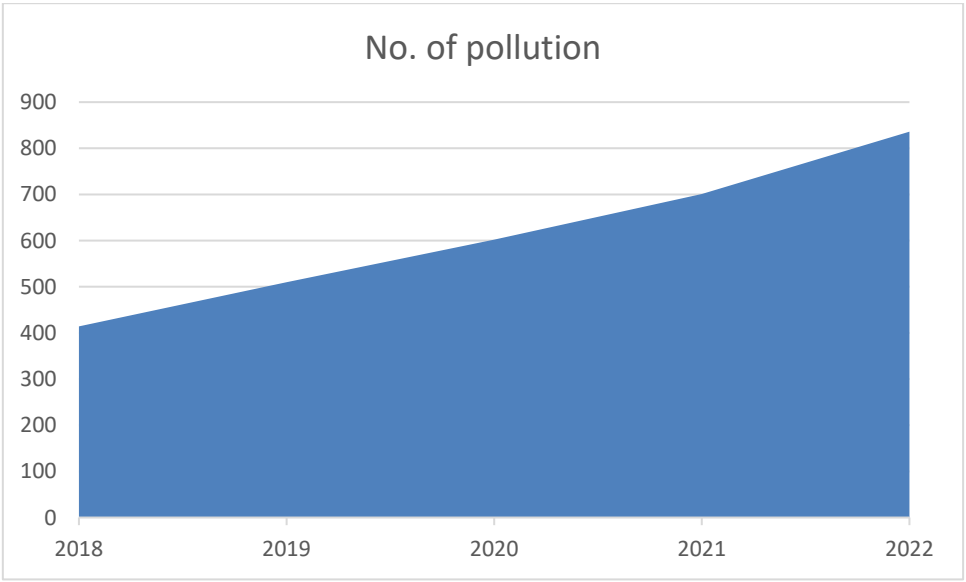

Fig. 2. Statistics on mass damages in petrochemical plants in Iraq / southern Iraq / Basra Governorate / Tanuma city for five years

Table 3

Mass damage statistics table for poisoning as a result of eating fish caught in the Al-Sanaf Marsh in Iraq / southern Iraq / Dhi Qar Governorate / Suq Al-Shuyoukh city, for five years.

year	No. of poisoning cases	No. of law suit
2018	16	0
2019	20	0
2020	15	0
2021	8	0
2022	6	0

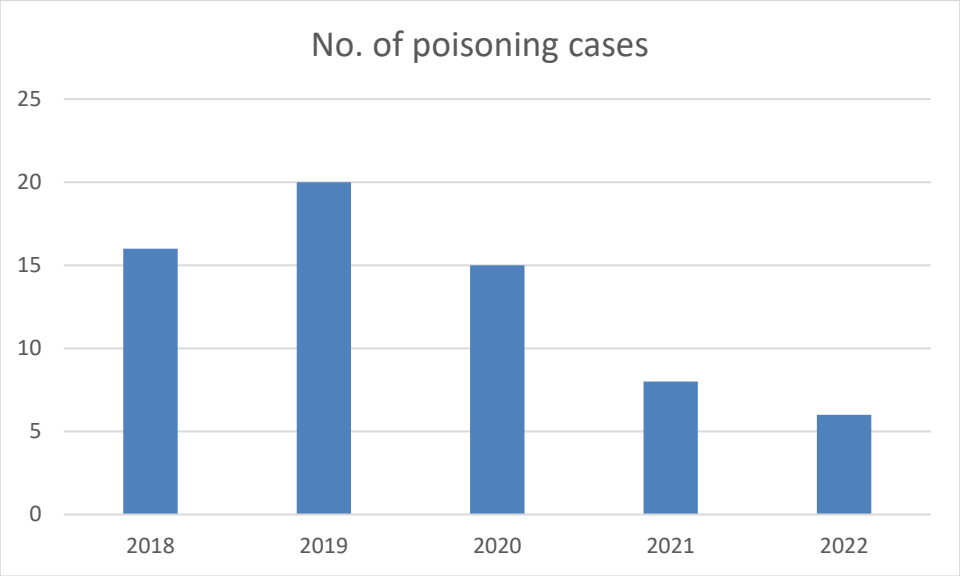

Fig. 3. Mass damage statistics table for poisoning as a result of eating fish caught in the Al-Sanaf Marsh in Iraq / southern Iraq / Dhi Qar Governorate / Suq Al-Shuyoukh city, for five years

Safety Condition Criterion for the Possibility of Mass Harm

Tightening cases of compensation for collective damage within the scope of collective labor contracts under the premise of the general commitment to safety that prevails in public and private productive and economic institutions, which are obligated to provide the highest levels and safety requirements to accommodate unusual damages in the collective labor relationship.

In the same context, major economic institutions, among their safety obligations include respecting neighbouring residential complexes for the concept of safety in the technical sense, which requires them to provide safety standards with the utmost attention to avoid atypical damages (Dionne, 1992).

This is achieved through

1. Civil commitment in the residential life of cities is based on ‘denying harm’ based on the principle of civil safety, which means that the nature of the residential life of cities has nothing to do with the typical form of damage, nor the unusual or exceptional form of damage of a collective scope.

2. Establishing the concept of environmentally friendly business, which includes collective harm, so cities and environmentally friendly life appeared.

3. Give a classification of foodstuffs between healthy and natural organic sources and inorganic materials mixed with chemicals or manufactured materials.

4. The commitment of economic institutions to the necessity of clarifying risk patterns in the goods produced and services provided as a prelude to avoiding typical damages. As for non-typical damages, they do not fall within the description of the expected typical form of damages (Bebchuk, 1984).

The Relationship of Accompanying Contracts to Collective Damages

The criterion of probability in unusual damages makes it part of the normal course of work of economic institutions that produce goods and provide services based on the 'preventive system' merely because of the possibility of damage occurring even if it is not described as potential damage (Richman, 2004)

For example, insurance contracts for workers against work risks, life insurance immunization campaigns and medical inoculations against types of germs, viruses, or communicable diseases, all of this within the scope of the production unit.

The classification was made into the second decade in the following description (Steadman, 2013).

1. It is an independent contract from the basic contract from which collective harm may be achieved, so it has no relation to it in terms of validity and invalidity.

2. It is a contract linked to the employment contract that causes the possibility of collective harm, so its status in terms of validity and invalidity is linked to the original contract.

3. It is a supplementary contract that does not appear except if unusual collective harm appears, so it is dormant during the implementation stage of the employment contract from which the collective harm results.

In general, the position of the secondary or accompanying contract with the primary contract falls within the scope of the potential nature of the occurrence of collective harm.

Therefore, one of the things that consolidate the center and scope of the dispute in collective harm is by giving a complementary character to the contracts accompanying the parent contract that was linked to or resulted in the collective harm (Inglis, 2010).

The Relationship of Collective Damages to the Model Contract

Classifying mass damages as exceptional, atypical damages has led to the emergence of the typical form, which means including all possible damages and mentioning the possible circumstances and causes that lead to them.

Thus, a jurisprudential trend emerged calling for reducing the nature of possibility through control and specification of the model contract in the advanced sense.

All of this falls within the line of explaining the center of the dispute on both sides of the damage which are 'the affected class and the employer'.

The obligations specified in the model contract have a protective nature for both parties (Inglis, 2010).

The first party 'the employer': Determining the damages, even if they are possible, makes the employer aware of his contractual position regarding the damages that can be covered if they occur. It also enables him to pay attention to the preventive aspect of avoiding collective damages.

The second party 'the affected class': The bargaining position of the workers in concluding the basic contract when they imagine the damages in the parent contract, even if it is a possibility, makes their negotiating position in the original contract and secondary contracts such as insurance losses clearer and stronger.

In general, the standard contract is accompanied by a geographical dimension, which is the location of the work, which is the location of the production unit of a factory or factory.

If the damage is caused to a source that is outside the workplace and cannot be linked to the source, which is the employer, then we will be facing damage that is foreign to the contractual relationship established by the model contract.

In general, assessing compliance with safety requirements or determining the nature of the damages and the extent of the potential danger thereof to the collective or individual cases of the affected class may require the use of specialized expertise from medical sciences and pure sciences in explaining the premises, causes and consequences.

Conclusions

1. The center of the dispute is by shifting from the individual character of the plaintiff in his capacity to the rest of the affected people from the same source based on the implementation of the idea of the 'model lawsuit' and its effects apply to all the affected people who are informed of the lawsuit or join.

2. The alternate or secondary center that adopts litigation by financing mass tort litigation will achieve a secondary position in litigation.

3. The personal characteristic of collective damage takes a general nature represented by the diversity of the damage in its source among more than one individual, whether the damage is of the same type or

another type provided that the source or cause of the collective damage is unified such as the polluted production unit from a factory or factory.

4. The benefit from litigation in a collective damage lawsuit occurs when a positive ruling is in favor of the lawsuit. The model includes the ruling that includes all the affected classes in collective damages so that each person receives compensation for the amount of the damage he suffered.

5. The proof of collective damage based on the model lawsuit relies and is based on the cause of the damage in the presence of collective damage and not the cause of personal harm to the owner of the model lawsuit or the first lawsuit in collective damage.

6. The damages are open in terms of material or moral damages and their characteristics are direct and indirect, expected and unexpected, to be classified in light of them being atypical damages resulting from a usual situation in the contractual relationship or unacceptable in the legally existing situation in tort liability.

7. The most important evidence that these collective harms are not typical or common is that they include a group of people in a certain class such as workers or a certain entity such as population centers.

8. The technical meaning of the employer's commitment and attempt to get rid of collective harm is not considered because collective harm is not typical.

The breach of the employer's contractual obligations is more than a source of collective damage.

9. The legitimacy of financing litigation in transferring the adversarial position to financial institutions adopting a collective injury lawsuit is the basis for accepting litigation without saying that litigation is financing trading, even if it is determined that the purpose is profitable for those institutions especially in factoring contracts.

10. The center of the dispute does not express the nature of the dispute whether a personal or real interest or right or anyone who has been harmed by an act thus the prosecution starts from the personal nature of the claim to the model lawsuit and from the personal right of the affected people or the general right of the state when harming the population to the financing party. In financing litigation file a lawsuit on behalf of those affected in the litigation financing contract that establishes the rights of the parties. This meaning is achieved even if the financing contract is fictitious because the apparent situation is approved without the real situation such as benefiting from the number of affected people or the profitable nature of the institution's pursuit of profit.

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Conflict of Interest. None.

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MIGRATION STUDIES

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CONTEMPORARY MIGRATION IN THE TIMES OF FAR-RIGHT

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Abstract
The modern trend of the emergence of far-right movements is related not only to countries with totalitarian regimes. Recent elections have demonstrated that countries with democratic systems today have a demand for the radicalization of politics. Socio-economic factors in the context of migration policy are not fully implemented by liberal tools, which have proven inadequate in regulating social development in countries open to migrants. This creates a values gap regarding equality between the status of the local population and that of state-supported migrants.
On the other hand, Russia's information policy deliberately creates a negative image of Ukrainian refugees, exporting a culture of hatred towards national minorities and migrants. This article examines how this impacts the formulation of a unified European policy strategy. The research hypothesis posits that the threat posed by the trend towards far-right movements is not primarily a result of migration policy, which has been reloaded following Russia's large-scale war against Ukraine. Rather, it is a reaction to the formation of a geopolitical international order through liberal tools that have proven incapable of addressing the challenges of racism and nationalism in European countries.
Issues of social protection from poverty and unemployment, the devaluation of multiculturalism, the artificiality of inclusivity, political corruption, and populism have prompted a reevaluation of liberal ideas, which have taken on new, decisive characteristics in neoliberalism. However, this has not stopped racist, national, and religious intolerance, which, under migration policies aimed at supporting and protecting migrants, has merely become a matter of time before open far-right calls erupt.
Analysis of resolutions and votes in the Parliamentary Assembly of the Council of Europe (PACE) has allowed for the establishment of a certain voting logic on migration issues in relation to the internal political climate of countries that refrain from integrating migrants into their national space. This may indicate that with the rise of far-right sentiments, such trends could increase.
Keywords: far-right, migrants, migration policy, PACE, resolutions, war of Russia against Ukraine.

Introduction

The large-scale war of Russia against Ukraine has posed a challenge to the migration policy of European Union countries. It became clear that a reboot of the overall strategy for migration inclusivity was necessary, as European countries were unprepared for the large influx of forcibly displaced refugees due to Russia's aggression.

In March 2022, a 10-point plan was presented to enhance European coordination regarding the reception of people fleeing the war in Ukraine. Among the proposed solutions were the creation of an EU

platform for registration, coordination of transport and information hubs, development of national emergency plans, and the establishment of unified guidelines for the reception of unaccompanied minors (European Commission, 2022).

According to official EU data, among the countries that have officially provided support to Ukrainian citizens on their territory are Germany and Poland. By mid-2024, the support policies of these countries not only continued but also strengthened. For example, in September 2023, Germany granted asylum to 1,156,225 Ukrainians, and by June 2024, this number increased to 1,306,505 Ukrainians. Similarly, Poland also increased its assistance to Ukrainians from 955,355 to 961,180 (Eurostat, 2024). In comparison, Denmark, Estonia, France, Austria, Bulgaria, and Sweden reduced the amount of assistance to Ukrainians, while Norway, Finland, Portugal, the Netherlands, and Belgium increased their support in accordance with each country's internal policies (see Fig. 1).

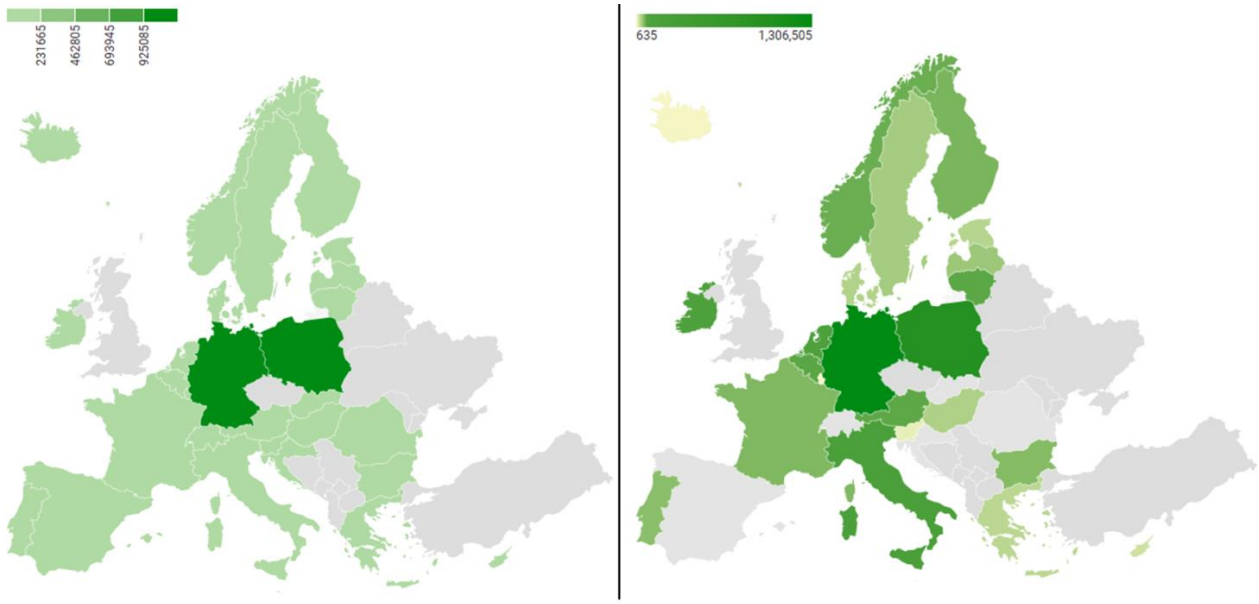

Fig. 1. Comparative Visualization of European Countries Providing Support to Ukrainians in 2023 and 2024

To investigate the changes in migration policy attitudes in European countries and to establish the rhetoric of hate towards migrants that has emerged amid changing globalization processes, sessions and reports from the Parliamentary Assembly of the Council of Europe were analyzed, focusing on migration policy issues from 2022 to 2024. This analysis helped identify countries that are quite cautious about integrating migrants into state policy and to establish a political logic related to the rise of far-right sentiments in these countries.

Methodology

The research is based on the analysis of sessions of the Parliamentary Assembly of the Council of Europe (PACE), which addressed issues related to the causes of external and internal migration, child migrants who were forced to migrate without parents, protection and safety standards, local attitudes towards migrants, and threats leading to the escalation of conflicts. These conflicts can occur both within countries and at the international level, potentially triggering a new wave of migration processes.

The document analysis helped establish the context of discussions and voting, which, until 2023, occurred solely within the socio-economic sphere. The large-scale war of Russia against Ukraine, along with Russia's informational interference in the domestic politics of countries that provided support to Ukrainians, shifted the focus of migration policy to the political context.

It was found that from 2022 to 2024, the issue of refugees was raised in the context of migration and integration policies in European countries, critiques of antisemitism and Islamism, the involvement of third

countries in providing protection, healthcare, labor, and rights for migrants, as well as the role of media and society in combating hate speech in the public sphere. However, starting in 2023, the topic of migrants began to acquire a political context, primarily due to the electoral process.

Mapping the work of PACE sessions allowed for the visualization of geographical patterns in attitudes towards migrants, as well as tracking changes in policies supporting or opposing the integration of migrants against the backdrop of electoral processes occurring in European countries. It can be a tool for analyzing and predicting political decision-making mechanisms in future migration processes.

Parliamentary Assembly of the Council of Europe (PACE)

The functioning principle of the Parliamentary Assembly of the Council of Europe (PACE) is based on key tasks that involve balancing the power of representatives from European countries. This body consists of 306 parliamentarians from 46 member states, serving as an advisory body to the Council of Europe. However, the issues discussed and the decisions made reflect the overall attitude towards international problems. While resolutions and recommendations may be ignored by the international community, they carry political weight in the development of a unified strategy for promoting democracy.

As stated on the official website, in the Parliamentary Assembly, the number of representatives and, accordingly, votes is determined by the size of the country. The largest number is 18, while the smallest is 2. Ukraine and Poland each have 12 representatives, Monaco and Liechtenstein each have 2 representatives, Bulgaria has 6, and Lithuania has 4. The meetings also include 18 observers from the parliaments of Canada, Mexico, and Israel. Similarly, 2 representatives from the Turkish community in Cyprus (Northern Cyprus) have the same rights, although they formally belong to the delegation of the Republic of Cyprus.

Currently, PACE has 9 committees, including the Committee on Migration, Refugees, and Displaced Persons. As noted on the official PACE website, "the committee shall consider all relevant matters related to migration, asylum, and displacement, in Europe and other relevant parts of the world, focusing in particular on the persons affected and their rights" (PACE, 2024a). In January 2022, Ukrainian Member of Parliament Oleksii Honcharenko was elected as the chair of the Committee.

One of the important functions of this body is monitoring the fulfillment of commitments. The oversight of member states' compliance with their obligations in the field of human rights and democratic standards transforms this body into «a watchdog of democracy» (a phrase previously associated with journalism). PACE can establish committees and missions to assess situations in countries and provide recommendations for improvement. Additionally, PACE actively collaborates with other institutions of the Council of Europe, such as the Committee of Ministers, as well as with international organizations to ensure a comprehensive approach to addressing issues. During public debates and hearings, PACE is capable of drawing attention to and shaping the agenda on important matters.

For example, on January 25, 2022, a vote took place regarding the challenges to the credentials of the Russian parliamentary delegation on significant grounds, initiated by Ukraine. This concerned the deprivation of Russia's voting rights due to violations of rights and freedoms within Russia itself. Despite the Commission's conclusions reiterating position on the non-recognition of the illegal annexation of Crimea and expressing "deep concern about the escalating tensions which threaten security in Europe and the Russian Federation’s build-up of troops along the border with Ukraine" (PACE, 2022, 2422/2), the ratification to revoke Russia's voting rights did not occur. However, nearly a month later, on February 24, when Russian President Vladimir Putin announced the beginning of the invasion of Ukraine, the stance towards Russia began to change.

On March 15, during an extraordinary session, a conclusion titled "Consequences of the Aggression of the Russian Federation Against Ukraine" was adopted. As a result of this conclusion, Russia was expelled from the Council of Europe. This was supported by 216 delegates, with 0 against and three abstentions (Poland, Germany, Bulgaria).

PACE migration policy and social policy

Since the beginning of the full-scale war in Ukraine, debates have taken place, and Resolution 2448 was adopted in June 2022, titled "Humanitarian consequences and internal and external displacement in connection with the aggression of the Russian Federation against Ukraine" (77 votes in favor, 0 against, 1 abstention (Switzerland)). The discussion focused on humanitarian assistance and the protection of the rights and needs of Ukrainian citizens in Council of Europe countries that require support. At the level of European support, the Assembly strongly condemned the forced deportation by the Russian

Federation of over 1 million Ukrainians from temporarily occupied territories of Ukraine to its own territory under the guise of "humanitarian evacuation," noting with alarm that among them were 183,000 children (PACE, 2022b, 2448/2).

The Assembly urged member states to develop action plans to address the humanitarian crisis in order to avoid the misunderstandings and chaos that were observed in the early days of the war. Recommendations were made for those states that do not have a tradition of receiving migrants to reflect on their recent experiences to anticipate a paradigm shift (PACE, 2022b, 2448/14). It was also suggested to develop an integrated approach to assessing the humanitarian needs of Ukraine. In this context, support from international organizations, particularly the UN High Commissioner for Refugees and the International Organization for Migration (IOM), is extremely important (PACE, 2022b, 2448/15).

Thus, a call was made for joint cooperation and the unification of efforts to provide humanitarian assistance to Ukrainian migrants. However, this was only the beginning of significant work, as the realities of the war demonstrated the imperfection of European countries in responding to mass population migration within a short timeframe.

During 2022-2024, PACE discussed issues related to the humanitarian crisis caused by the war, access to housing, educational and medical services, as well as strategies for promoting tolerance and mutual respect for migrants in European society. Recommendations were proposed to strengthen cooperation, along with suggestions for financial, psychological, and integration support (e.g., see PACE, 2023c, 2503). Vulnerable population groups were also identified, for which a support strategy was developed. This can be illustrated by the issue of Ukrainian children who were forced to arrive in European countries unaccompanied by adults.

In June 2022, Resolution 2449 was adopted, titled "Protection and alternative care for unaccompanied and separated migrant and refugee children" (77 votes in favor, 0 against, 2 abstentions – Switzerland and Austria). The main issue addressed the priority of ensuring the safety of children who have been forced to remain abroad without their parents. It was noted that the ongoing aggression of the Russian Federation against Ukraine has resulted in horrific consequences for the mass displacement of migrant children or refugee children, many of whom are unaccompanied or separated from their families (PACE, 2022c, 2449/3).

It was emphasized that in the context of the emergency concerning the rights and safety of Ukrainian children, there is a constant need for member states to strengthen a coordinated approach at the European level among countries of first arrival, transit countries, and host countries to ensure the safety of children. This should occur through the immediate identification, registration, and provision of all protection guarantees in quality alternative care facilities (PACE, 2022c, 2449/13,).

The forced migration of the Ukrainian population, occurring both to European countries and Russia, automatically placed Ukrainian children in unequal rights situations. Russia has repeatedly deliberately substituted the term "deportation" with "migration". The illegal forced deportation of Ukrainian children from temporarily occupied territories became the focus of attention at the UN Security Council meeting on April 5, 2023. Over 50 countries issued a joint statement regarding these illegal actions by Russian authorities. The joint statement highlighted certain facts: "The Russian authorities have detained and forcibly deported over 19,500 Ukrainian children from their homes in Ukraine to Russia. This included the deliberate separation of children from their parents and the abduction of children from orphanages before sending these children to the Russian Federation" (Suspilne. Novyny, 2023).

On April 27, 2023, the Parliamentary Assembly unanimously adopted Resolution 2495, titled "Deportations and forcible transfers of Ukrainian children and other civilians to Russian Federation or to Ukrainian territories temporarily occupied: create conditions for their safe return, stop these crimes and punish the perpetrators." The resolution states that the forced displacement of the civilian population of Ukraine, particularly children under the age of 17, to the Russian Federation or to temporarily occupied Ukrainian territories is a particularly serious indication of this aggression (PACE, 2023a, 2495/1).

The practice of illegal deportation of Ukrainians to the Russian Federation from the temporarily occupied territories in Donetsk and Luhansk regions was initiated even before the full-scale aggression of the Russian Federation against Ukraine on February 24, 2022, in the form of deportation to the Russian Federation. This included children from orphanages and children with disabilities from specialized institutions. Since then, this practice has intensified and evolved, and it is clearly planned and systematically organized as part of state policy (PACE, 2023a, 2495/4).

In May 2023, during a joint briefing in Rome with Italian Prime Minister Giorgia Meloni, Ukrainian President Volodymyr Zelensky emphasized that the abduction of Ukrainian children by Russia is a particularly sensitive issue for him and all Ukrainians. "Thousands of Ukrainian children have been forcibly

taken to the territory of the aggressor state. There is complete analytical evidence – it is known that 19,393 children have been taken, with specific names, surnames, and dates of their abduction. They have been stolen by Russia" (UNIAN, 2023).

In January 2024, the Council of Europe Commissioner for Human Rights, Dunja Mijatović, highlighted in her annual report during the winter session of PACE: "Some Ukrainian children have received Russian citizenship and have been adopted by Russian families. This practice appears to be supported by Russian officials at the highest level. Children who have been separated from their parents during an emergency humanitarian situation cannot be considered orphans and, therefore, cannot be adopted" (Ukrinform, 2024).

Thus, the EU migration policy to protect the rights, safety and integration of Ukrainian children was aimed at protecting and preserving identity, while the Russian policy of separating children and propaganda around their adoption is aimed at destroying Ukrainian identity. While Europeans discussed procedures for the rapid identification and registration of Ukrainian children who were forced to migrate, in Russia these children were forcibly removed, leaving them in a vulnerable position without a homeland, without parents, and without a biographical history. By separating children from their relatives and implementing a program of adoption of Ukrainian children, Russia has not only rejected the possibility of returning these children home but has openly demonstrated a forced policy of assimilation into Russian culture.

PACE Migration Policy and Political Elections

Since the fall of 2023, the rhetoric of PACE sessions regarding migration policy has begun to acquire a political context. Issues of xenophobia, intolerance, and aggressive actions towards migrants, which have arisen as a consequence of electoral campaigns, are being raised. At the 21st session of the PACE Assembly on October 10, 2023, dedicated to the challenge of far-right ideology to democracy and human rights in Europe, debates took place regarding the threats to democratic institutions posed by far-right extremists. The draft resolution emphasizes that politicians and political parties must be at the forefront of responding to far-right extremism, both in publicly defending human rights and democratic principles and in unequivocally rejecting all forms of racism and intolerance, hate speech, incitement to racial hatred, and aggressive actions.

In the explanatory note by Samad Seyidov, "far-right extremist ideology" is defined as follows: " There is not a universally agreed definition of far-right extremism. As an umbrella term, it can encompass a heterogeneous set of ideologies, beliefs and narratives. For the purposes of this report, three defining characteristics are outlined, that are to all be present to fulfil classification as far-right extremism. First, a belief in some form of natural inequality or hierarchy between peoples or groups of people, which may include nationalism, nativism, racism, xenophobia, antisemitism, Islamophobia, and homophobia. Second, a belief in authoritarianism. Third, an implicit or explicit aim to destroy the democratic system" (PACE, 2023e, 15826/9).

According to his remarks, the difference between right-wing radicals and far-right extremists is that the former recognize parliamentary democracy, are hostile to liberal democracy, and publicly condemn violence. Far-right extremists legitimize violence, have sympathizers, but lack official membership, a central headquarters, or a single leader. "Neo-Nazism and skinhead culture being overtaken in certain States by anti-Islam and anti-migrant activism as the most prevalent topics of far-right extremism" (PACE, 2023e, 15826/18).

On October 15, 2023, parliamentary elections were held in Poland, where the ruling party "Law and Justice" (Prawo i Sprawiedliwość), led by Jarosław Kaczyński, received the majority of votes (35.4%). The second place was taken by the "Civic Coalition" (Koalicja Obywatelska) of former Prime Minister Donald Tusk (30.7%). Three other political forces also won seats: the "Third Way" Coalition (Trzecia Droga), the "New Left Party" (Nowa Lewica) (or "Lewica"), and the "Confederation of Freedom and Independence" (Konfederacja Wolność i Niepodległość).

Simultaneously with the parliamentary elections, a referendum was held, with the last of four questions addressing the admission of thousands of illegal immigrants from the Middle East and Africa to Poland under the EU's forced relocation mechanism. In contrast to the parliamentary elections, which saw a participation rate of 73%, the referendum demonstrated a low turnout (40%). Holding the referendum on the same day as the parliamentary elections allowed the ruling party to use the referendum campaign to promote the party's image.

Just a month later, the PACE report on the observation of the parliamentary elections noted that "the referendum was intended to mobilise voters sympathetic to the ruling party, to polarise electoral

discourse on issues that do not constitute a real social problem and to circumvent campaign financing regulations and other restrictive measures applied to the parliamentary elections" (PACE, 2023d, 15861/34).

The report also stated that during the electoral campaign, "PiS [Prawo i Sprawiedliwość] and Confederation used anti-migrant narratives, some of which were highly negative and at times xenophobic and misogynistic. Personal verbal attacks against the main party leaders were widespread" (PACE, 2023d, 15861/60).

Thus, the topic of migration in the parliamentary elections in Poland was one of the main themes, consciously polarizing Polish society. In the same PACE report, it was noted in paragraph 62 that "the Confederation's main messages revolved around limiting the country's welfare system and restricting aid to Ukraine and refugees, while Third Way focused on reinstating national unity and breaking the PiS-KO [**Prawo i Sprawiedliwość-Koalicja Obywatelska**], dual polar political spectrum, and the New Left on social issues and women's rights. Some members of the Roman Catholic clergy campaigned for the ruling party, which, although not prohibited, was seen by many as a clear advantage" (PACE, 2023d, 15861/62).

On January 23, 2024, a discussion took place regarding the report by Pierre-Alain Friedez on migration and asylum in electoral campaigns and its implications for the reception of migrants and their rights. It was noted that "the Assembly is concerned at the intensification of a partial and biased treatment of the issue of migration and asylum in election campaigns which legitimises political proposals aimed at blocking access to rights of migrants, refugees and asylum seekers, in contravention of the Council of Europe's standards" (PACE, 2024b, 2525/2).

The use of migration issues during electoral campaigns has recently taken the form of hate speech, posing a threat to the safety of people of foreign descent. It was suggested "to develop a code of conduct for electoral candidates and/or for the media to combat narratives which run counter to the European Court of Human Rights case law on regulating freedom of expression and the prohibition of hate speech" (PACE, 2024b, 2525/8.1).

Referring to a number of recommendations of the European Parliament and the Council (e.g., CM/Rec(2022)16[1]) from the Committee of Ministers to Member States on the fight against hate speech (European Commission, 2022b, 3), the need for self-regulation of private and online media regarding the presence migrants and refugees in the media and refraining from spreading false information.

"The Assembly calls for greater pan-European co-operation against hate speech and discrimination covering, *inter alia*, the treatment of the theme of migration and asylum during election campaigns" (PACE, 2024b, 2525/14). In the recommendation of the Council of Ministers of the EU, paragraph 41 emphasizes that "the media and journalists should, in their efforts to provide accurate and reliable information, avoid derogatory stereotypical depiction of individuals, groups and communities and give voice to diverse groups and communities in society, especially when reporting on matters of particular public interest and during election periods" (European Commission, 2022b, 41). Resolution 2525, which expresses concern about biased treatment of migrants during election campaigns, was supported by 68 deputies (53 votes "for", 7 "against", 9 "abstentions"). It is interesting that Germany gave 3 votes "for" and 2 "against", France – 5 votes "for" and 2 "against"; Italy 5 votes "for", 6 "abstentions". The Czech Republic, Finland and Sweden cast one vote "against". Countries with an ambiguous position on this resolution were highlighted in yellow on the map (Fig. 2).

Despite the condemnation of hate speech during electoral campaigns, the commitment to ensuring the rights and freedoms of migrants, and the call for enhanced international cooperation among European countries, the Resolution remains advisory in nature. The explanatory memorandum by Pierre-Alain Friedez to this Resolution indicates that political calls have shifted towards the center-right sector of the political landscape. Examples include "Alternative für Deutschland" in Germany, "UKIP" in the United Kingdom, "ZP" in Turkey, and "Reconquête" in France. Friedez also noted that "the major crises and high insecurity suffered by certain countries provide fertile ground for exploiting migratory movements at election time, causing major risks to the rights and lives of men, women and children in border areas, as is currently the case between Poland and Belarus" (PACE, 2023b, 15832/23).

Friedez reminded that the topic of migration during electoral campaigns is often used more as a tool for political struggle rather than as a genuine political proposal from political forces, referencing the history of the Brexit vote. "In fact, the rhetoric and political proposals that follow this pattern rarely tackle the problems they are supposed to resolve, one regrettable example being Brexit which does not appear to have resolved the problem of unemployment for the British people" (PACE, 2023b, 15832/33). He cited the 2022 electoral campaign in France, where the electoral program included calls to revoke the right to education for children whose parents are illegal migrants.

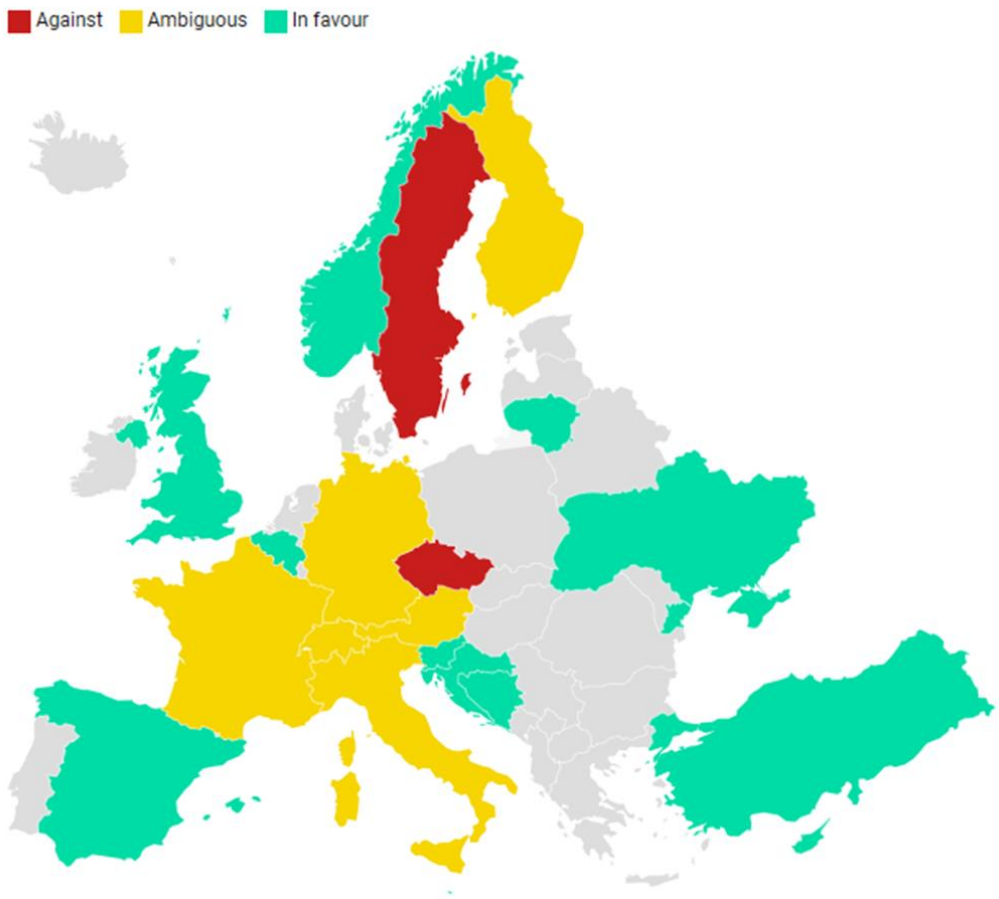

Fig. 2. Voting in PACE on the Resolution 2525 "The Topic of Migration and Asylum in Electoral Campaigns and Its Consequences for the Reception of Migrants and Their Rights"

The importance of Pierre-Alain Friedezs' report lies not only in highlighting the electoral context as a significant issue of intolerance towards migrants but also in identifying another vulnerable group in migration policy – local organizations and communities that facilitate the reception of migrants.

Undoubtedly, the trend of using hate speech during the electoral process began long before the war in Ukraine. The events of the "Arab Spring" and the war in Syria prompted European Union countries to implement policies to protect migrants. As it turned out, migration policy became not only a new vector for the development of European multiculturalism but also a new challenge. Uncontrolled migration exacerbated internal conflicts and led to the victory of right-wing parties in parliamentary elections, whose electoral platforms relied on restricting or completely banning the reception of migrants.

Still, in October 2020, PACE adopted a resolution to raise awareness and combat Islamophobia in Europe (PACE, 2020, 15169). In the same month, the Venice Commission presented a report on the study of electoral law and the organization of elections in Europe, highlighting several issues related to voting transparency, political party and candidate financing mechanisms, media independence in electoral processes, and the accessibility of the electoral political process for all population groups, as well as negative campaigning.

For example, paragraph 156 states: "Negative campaigning is a worrying trend of electoral campaigns worldwide. Also in a number of CoE member states, the campaign atmosphere has been lately dominated by political polarisation, defamation or denigration of political opponents and negative campaigning. Extreme examples recently include Georgia, Hungary, Poland, and Serbia. Some political parties even used inflammatory and racist rhetoric, targeting ethnic, religious or other minorities in the respective country. Hate speech against political opponents and national minorities is especially grave and reprehensible" (Venice Commission, 2020, P. 25). This refers to the presidential elections in Poland, where Andrzej Duda was elected in July 2020.

In September 2022, this issue was revisited. During a speech at the Committee on Equality and Non-Discrimination, Momodou Malcolm Jallow noted that Islamophobia is used both in individual attitudes and in political discourse. " In a political landscape characterised by the rise of racist and xenophobic movements, such misconceptions are often instrumentalised to trigger division within society and sow the seeds of hate for political gain. Furthermore, this kind of discourse tends to spread from extremist movements to mainstream political parties, which is a reason for serious concern, considering that countering intolerance and promoting peaceful living together should be a top priority for all forces across the political spectrum" (PACE, 2022e, 15616/4). On March 15, 2022, a resolution was adopted declaring March 15 as International Day Against Islamophobia.

Conclusions

However, concerns about the use of migration issues during elections, which could lead to the victory of far-right parties, have long been raised in PACE. On June 8, 2012, the Committee on Migration, Refugees and Displaced Persons heard a report by Daphne Dumery titled "The portrayal of migrants and refugees during election campaigns" (PACE, 2012, 12953). In her report, Ms. Dumery noted that the topic of migrants and refugees had become a key issue in the electoral campaigns of political parties, significantly influencing the development of xenophobia." During election campaigns, some candidates and political parties habitually present migrants and refugees as a threat and a burden on society, which increases negative reactions among the public to immigration and immigrants" (PACE, 2012, 12953/4).

This trend indicates a lack of strategy to protect democratic institutions and the rise of xenophobic populist parties. The media, social networks, and biased public opinion polls contribute to the spread of xenophobic rhetoric. The financial and economic crisis, which led to a decline in the labor market, as well as the rise of terrorism, fostered a pathological fear of foreigners. Political parties exploit this fear, promoting xenophobic thinking to win political elections. "Through ambitious demonstrations and campaigns focusing on freedom of speech, the far right increasingly portrays itself as a keen champion of democracy, playing on the fears of European citizens in order to promote their “cause” by offering simple answers to social challenges that are complex" (PACE, 2012, 12953/16).

An example of such phenomena occurred in Norway in July 2011, when a member of the far-right anti-Muslim organization "Knights Templar," Anders Breivik, committed two terrorist acts resulting in the deaths of 77 people. Additionally, skinhead movements in Russia and Hungary led to the creation of the Alliance of European National Movements (AENM), which included far-right parties from Hungary ("Jobbik"), France ("Front National"), Italy ("Fiamma Tricolore"), Sweden ("NationalDemokraterna"), and Belgium ("Front national"). By 2011, Muslims, Roma, and Jews had become the focal point of hostility. Furthermore, parliamentary systems in Austria, Denmark, the Netherlands, and Italy were formed alongside center-right parties.

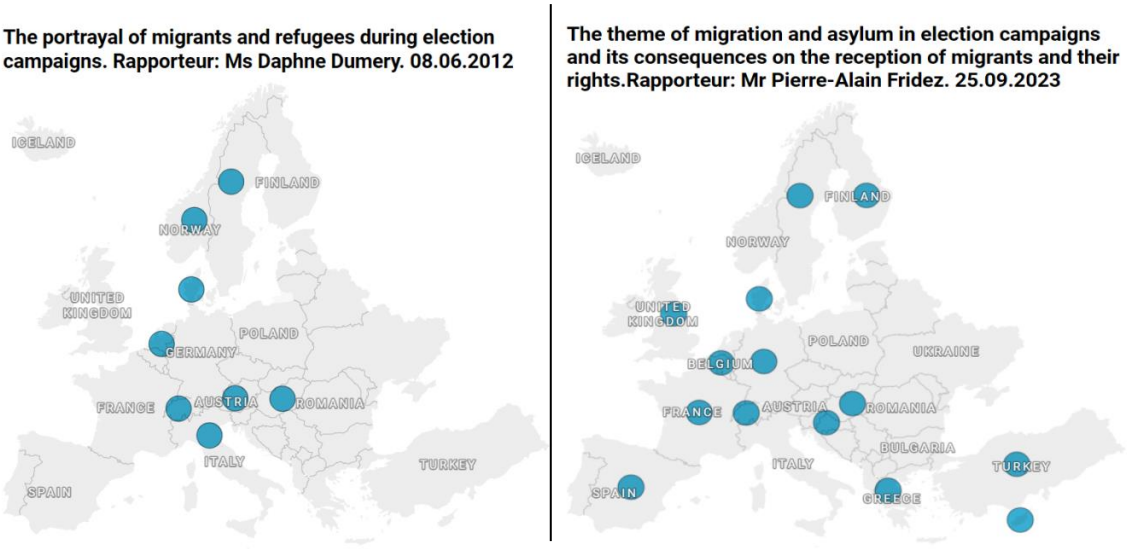

Fig. 3. Comparative visualization of European countries with a high risk of xenophobia towards migrants (explanatory memoranda of 2012 and 2023)

Thus, the rise of populist political parties and their influence on the political design of parliamentarism through calls to restrict the rights of migrants has been a trend in electoral campaigns for over 10 years. Figure 3 shows the countries that have been included in the explanatory memoranda of two speakers regarding the topic of migrants in electoral campaigns. Countries such as Hungary, Sweden, Denmark, and Switzerland are still under the influence of anti-migrant discourse today. Moreover, over the past decade, new countries have emerged where European politicians use hate speech in electoral campaigns. In the context of information influences from Russia, which deliberately demonizes the image of migrants as a destructive group in European society, there are risks of revising refugee and migrant admission policies. The rhetoric of defending national interests may lead to an increase in populism in political discourse.

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Abstrakt článku by měl mít přibližně 1800 znaků a měl by být doplněn 6-10 klíčovými slovy.

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Acknowledgements

The section is for expression of gratitude to individuals or organisations for all possible technical assistance, ideas, financial (material) aid, which made the research possible, etc.

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