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BELARUS AT THE UNITED NATIONS: ASSESSING ITS POLITICAL TRACK RECORD

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There is much focus on the United Nations in 2020 as it celebrates its 75th anniversary, which, in turn, generates many expectations from the organization. The UN, however, can do only as much as it is allowed by its institutional building. In particular, it is much constrained to deliver on the so-called first-tier peace and security cluster, whereas it can do far more on the second-tier non-security issues. Belarus has been engaged with the UN since 1945 with a variable degree of success. Belarus' most conspicuous involvement in the United Nations has been taking place since 2005 as a result of its unifying initiatives.

Keywords: United Nations; Belarus; UN institutional building; first-tier issues; second-tier issues; unifying initiatives.

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БЕЛАРУСЬ В ОРГАНИЗАЦИИ ОБЪЕДИНЕННЫХ НАЦИЙ: ОЦЕНКА ПОЛИТИЧЕСКИХ ДОСТИЖЕНИЙ

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В связи с празднованием 75-летия основания Организация Объединенных Наций привлекает все больше внимания, что, в свою очередь, порождает многочисленные ожидания от организации. Однако система ООН способна сделать ровно столько, сколько позволяет ее институциональное строительство. В частности, ее деятельность по комплексу вопросов первого уровня – вопросам мира и безопасности – ограничена в большей степени, нежели деятельность по вопросам второго уровня, не относящимся к безопасности. С 1945 г. Республика Беларусь с переменным успехом сотрудничает с Организацией Объединенных Наций. Наиболее заметна деятельность Беларуси в ООН, начиная с 2005 г., благодаря выдвижению ряда объединяющих инициатив.

Ключевые слова: Организация Объединенных Наций; Республика Беларусь; институциональное строительство ООН; вопросы первого уровня; вопросы второго уровня; объединяющие инициативы.

Благодарность. Автор статьи хотел бы выразить особую признательность заместителю министра иностранных дел Республики Беларусь Андрею Дапкюнасу за ценные общие рекомендации по работе в системе Организации Объединенных Наций, которые были сформированы на основе его многолетнего опыта работы в должности Постоянного представителя Республики Беларусь при ООН в Нью-Йорке.

Также хотелось бы поблагодарить начальника главного управления многосторонней дипломатии Министерства иностранных дел Республики Беларусь Ирину Величко, которая ранее занимала должность заместителя Постоянного представителя Республики Беларусь при ООН в Нью-Йорке, за ее предложения по вопросам торговли людьми.

Кроме того, автор статьи выражает признательность Постоянному представителю Республики Беларусь при отделении ООН в Женеве Юрию Амбразевичу за экспертные рекомендации по проблемам стран со средним уровнем дохода, которые являются результатом его собственного комплексного исследования, опубликованного в журнале “Женевский политический бюллетень” в июле 2019 г.

Хотелось бы поблагодарить заместителя Постоянного представителя Беларуси при отделении ООН в Женеве Вадима Писаревича за его предложение отразить сходство между Советом Безопасности ООН и Системой Европейского концерта XIX в., а также за помощь в подборе некоторых источников и материала для исследования.

Introduction

Anniversaries of international organizations usually attract great global media and public attention. Furthermore, they present a unique opportunity to take stock of international organizations' track records and to ponder over their future relevance. Something along these lines we have witnessed as recently as June 2019, when the International Labour Organization (ILO) staged its centenary celebration, with numerous heads of state and government coming to Geneva to pay tribute to the ILO's indispensable and commendable work.

As for the year of 2020, it is undoubtedly the United Nations that is poised to capture the limelight as the organization is celebrating its 75th anniversary. Three quarters of a century is rather a long period for an international organization. The mere fact that the United Nations still exists testifies to the continued relevance of the organization. When asked whether the world needs the UN, the overwhelming number of respondents worldwide would certainly answer in the affirmative.

However, the situation with the UN is not as simple as it may appear to an ordinary observer. Indeed, throughout its history the United Nations has gone through many successes, but it has experienced as well many failures. Some praise it for its permanent quest for peace, justice and prosperity. Others accuse it of irrelevance, internal corruption and bloated bureaucracy.

Political scientists associated with the realist international theory would claim that the United Nations is nothing more than the reflection of great power politics and can go as far as great powers allow it to go. Their intellectual opponents from the liberal international theory would counter that the United Nations and its multiple agencies have made us all interdependent and interwoven to such an extent as to rule out the possibility of a major great power war. Perhaps, both camps are right.

What the anniversaries present, however, is not just an opportunity to celebrate the achievements and deliver earth-shattering statements. Even more so, it is an opportunity to take a *critical* look at organizations, to glean something from their past experience that would allow us to apply it with success in the future to the advantage of all.

It is exactly with this logic in mind that this essay has been written. Therefore, the essay is neither an attempt at writing a history of the United Nations, nor is it an effort at narrating Belarus' activities in the United Nations. Numerous books and articles on both abound.

So, what it is instead is an undertaking at realizing a number of objectives. First, the essay will take a close look at the UN institutional building in order to reveal what is possible and what is not possible in the United Nations. Second, the essay will analyze how Belarus was able to tap into those opportunities at the United Nations presented by the organization's institutional structure. Finally, the essay will try to predict how the UN is likely to evolve in the years to come and what the past experience of Belarus at the United Nations tells us about its future role in the organization.

Basically, it will be an assessment of Belarus' *political* track record at the United Nations, that is, an appraisal of its political initiatives, because it is these kind of initiatives that contributed to the common good of all member states, and which also served in the bargain to raise the geopolitical profile of our own country.

The UN institutional building

One can often hear accusations that are lavishly thrown at the United Nations, for example: "Who was responsible for genocide in Rwanda in 1994?", "Surely, it was the United Nations because it failed to step in", "Who was responsible for the US invasion in Iraq in 2003?" "It was the United Nations, and specifically, its Security Council, as the latter failed to prevent it".

Such kinds of accusations actually have very little to do with reality. Their purpose is, rather, is either to serve someone's political ends at the expense of the universal organization or to create media hype and sensation. Thus, the UN often appears as the "culprit". But the organization finds itself in this situation absolutely unfairly. There are actually limits to what the United Nations can do. It is important to see and understand those limits before laying the blame for all troubles in the world on the United Nations.

True, the United Nations did not emerge from scratch. Its founders had before their eyes the experience of the League of Nations (League), an international organization that had been established in the wake of the World War I. Naturally, much has been "copied" from what had worked in the League and has been "pasted" onto the newly created United Nations Organization.

For example, the League had an Assembly, which included all members, and a Council, a body with limited membership. Similar structures emerged in the UN, they are the General Assembly and the Security Council. The League had a secretariat, a position of a Secretary General and a mandates system over colonial territories. Similar institutional features were created in the United Nations (the Secretary General, the Secretariat and the Trusteeship Council).

Notwithstanding these similarities, the United Nations was given by its founders two crucial new functions that the League did not have. First, the founders created the Economic and Social Council as one of the main organs of the United Nations. It was clearly done with the Global Depression of the 1930s in mind. The 1930s global economic travails were thought to have contributed immensely to the World War II, whereas the League did not have a mandate to tackle them. So, the shortcoming was rectified in the context of the United Nations.

Second, and most importantly, the League was paralyzed in its action by the requirement of consensus. Indeed, decisions in both the Leagues' Assembly and its Council were made only by consensus. This institutional arrangement was actually the League's major flaw, because it forestalled any collective action against aggressive foreign policies that Axis powers began demonstrating in the 1930s.

Thus, the founders came up with the idea of a Council with two categories of membership (permanent and non-permanent), which, they thought, would be a significant improvement over the Leagues' Council. Indeed, while the League's Council could have been paralyzed by any of its members, the UN Security Council, according to its designers, would be incapacitated only by any of its five permanent members – USSR, USA, France, Britain and China (the Big Five), which were given by the UN Charter the right of veto, but not by non-permanent members.

But, the idea of an "exclusive club" was not a novelty either because there was also a historic precedent for it. Following the Napoleonic Wars great powers of the day established at the Congress of Vienna in 1815 the Concert of Europe. This structure aimed, above all, at forestalling revolutions and fighting liberalism in Europe.

As Henry Kissinger noted in his "Diplomacy" (1994), "the Concert of Europe implied that nations that were competitive on one level would settle matters affecting overall stability by consensus" [1, p. 83]. Indeed, the Concert operated on the basis of consensus among the five key European powers which are Austria, Britain, France, Prussia and Russia. Over the following four decades these powers almost always thought in unison that allowed for their collective action when it was needed. But, as their foreign policy priorities changed with time, they began thinking differently, common action became impossible and the Concert fell apart.

Why the idea of a Concert-like "exclusive" club was replicated in the UN context? Perhaps, because at the end of World War II nothing indicated unequivocally that its victorious powers would not be able to cooperate for many years to come as effectively as their predecessors did in the Concert of Europe. As Henry Kissinger pointed out in his "Diplomacy": "Roosevelt's [Frank Delano Roosevelt] concept of the Four Policemen [USSR, USA, Britain and China] was in fact structurally similar to Metternich's Holly Alliance. Each system represented an attempt to preserve the peace through a coalition of victors upholding shared values" [1, p. 397].

Therefore, in terms of institutional arrangements the United Nations is not, and has never actually been conceived, as an ideal universal structure destined to resolve all problems in the world. It is certainly far from being a kind of a world government that many may incorrectly take it for and thus expect impossible from it. The organization was merely designed as an improved variant of the League with some useful borrowings from the even earlier collective governance experiences such as the 19th century's Concert of Europe.

Consequently, the realist theory proponents are absolutely right by saying that the United Nations can go only as far as its permanent members can allow it to go. Consider, for example, two very similar cases related to the invasion of Iraq. In the first case dated from 1991 the five permanent members of the UN Security Council gave their "green light" for collective action against Iraq. Thus, the war was declared legitimate, and the UN was praised worldwide.

By contrast, in 2003, the Security Council's Big Five were divided. Consequently, the US and its allies went to war without international "blessing". As a result, the 2003 war was declared by the world's majority to be illegitimate, and the UN was vilified.

The key conclusion from these musings is that the United Nations can effectively deliver on critical issues of international peace and security only if the Big Five think identically. More than two hundred vetoes cast by the permanent members in the Security Council since 1945 indicate that they have differed in opinion far too often[1].

What can also be inferred from this analysis is that as the Organization's institutional arrangement has empowered the Big Five on international peace and security matters, so has it significantly limited the scope for other UN member states to pursue and realize their own ideas and initiatives in these crucial domains.

It means that other member states can realize their peace and security-related initiatives, which for the sake of convenience may be dubbed first-tier issues, only if those conform to the permanent five's individual vision and interests. A clear example of this is provided by the never-ending process of the UN Security Council reform. All attempts at enlarging this main organ over the past three decades have run into nowhere, largely because of the Big Five's attitudes.

But, the United Nations is not only about peace and security. Its founders demonstrated great foresight by establishing the Economic and Social Council (ECOSOC). Conceived initially as a body to deal with the 1930s depression-like challenges, the ECOSOC actually grew into something far larger. It became an umbrella or an overarching framework, if you will, under which a whole array of functional commissions, standalone agencies, programmes and the like on economic, social, environmental and other adjacent issues was subsequently created.

As a result, the United Nations, when it comes to these non-security matters, which for the sake of convenience can be called second-tier issues, presents something that the world has never experienced before. Indeed, neither the League nor the Concert of Europe were ever preoccupied with such concerns. But these kind of issues are extremely important insofar as they closely interconnect all of us, make us interdependent, and as the liberal theorists claim, make a major great power war unimaginable.

What is more, it is here, in this second-tier realm, in which the Big Five see less, if often any, strategic concerns, where other UN member states can take the lead on some issues, bring their ideas to fruition, and, thus, do something that brings benefit to everyone.

So, where does Belarus, *a founding member of the United Nations,* with its 75 years of experience, stand in the organization in the context of this institutional arrangement?

Belarus at the United Nations

With the view to answering the question posed above it would make sense to introduce three conditional time periods of Belarus' engagement with the United Nations: 1945–1990, 1990–2005, and 2005 – present.

1945–1990. Belarus started at the United Nations very well indeed. At the first session of the General Assembly, held in 1946, the delegation proposed a resolution entitled "Extradition and punishment of war criminals". The resolution requested both UN member states and other countries to take most vigorous measures to search for war criminals, arrest and extradite them to the countries, where they had committed crimes.

Belarus went further with the topic of war crimes and tabled a draft resolution at the 23rd session the UN General Assembly in 1968 on "Question of the punishment of war criminals and of persons who have committed crimes against humanity", which main idea was not to apply the statute of limitations to war crimes and war criminals. The resolution was adopted by consensus.

These two resolutions undoubtedly fell to the first-tier peace and security cluster, but we succeeded be-

[1]See: United Nations Security Council veto power [Electronic resource]. URL: https://en.wikipedia.org/wiki/United_Nations_Security_Council_veto_power (date of access: 20.04.2020).

cause everyone in the UN General Assembly, including the Big Five, agreed with our proposed action.

A couple of years later, at the 28th session of the General Assembly, held in 1973, Belarus sponsored a resolution on "Use of scientific and technological developments in the interests of peace and social development". The resolution contained a number of relevant appeals to member states and international organizations. It was our first "inroads" into the second-tier cluster on the United Nations agenda. We succeeded and the resolution was adopted by consensus.

The year of 1973 was memorable for Belarus for another reason, namely, because it was elected to the UN Security Council as a non-permanent member. We served on there in the course of the two subsequent years (1974–1975). It was the only time that Belarus has ever served on the Security Council. It goes without saying that in the bitter atmosphere of cold war politics we, while in the Security Council, strictly adhered to the Soviet foreign policy line.

So, this four and a half decade-long period was generally marked for Belarus by a few initiatives, although generally our freedom of action was constrained by the fact that Belarus was not an independent country.

1990–2005. It makes sense to begin this second period not from 1992, when Belarus began acting in the United Nations as an independent state, but rather from 1990. It is so because in 1990 Belarus proposed at the UN General Assembly a draft resolution on Chernobyl that became and still remains one of the areas for priority action for our foreign policy.

The resolution under a rather lengthy title "International co-operation to address and mitigate the consequences of the accident at the Chernobyl nuclear power plant", adopted by the UN General Assembly by consensus, has generally tasked the United Nations to tackle the problem of Chernobyl. Subsequently, the Inter-agency task force on Chernobyl was established and many UN agencies began their long-term involvement in Chernobyl related activities.

In the context of this resolution Belarus has always closely cooperated with the Russian Federation and Ukraine, the other two most affected countries. The latest resolution on Chernobyl, submitted by Belarus as a main sponsor, entitled "Persistent legacy of the Chernobyl disaster" was adopted by the UN General Assembly in December 2019. Its main focus is on the need to promote sustainable development of the Chernobyl-affected regions. This mandate is fully in line with the United Nations' overall mandate for sustainable development. On the initiative of Belarus 26 April was proclaimed the International Chernobyl Disaster Remembrance Day in the UN since 2017.

The topic of Chernobyl is one falling into the second non-security cluster. Belarus, as the most affected of all, has certainly been the most vigorous in raising this issue at the United Nations. Our political lead here is well established and respected by both UN membership and relevant international organizations. Suffice it to say that in recent years it has invariably been Belarus that sponsored various side-events on the International Chernobyl Disaster Remembrance Day whether in Geneva, New York, Vienna or elsewhere. Other countries and partners fully acknowledge our leadership and always join us.

Apart from the issue of Chernobyl, the 1990–2005 period was notable for some of our initiatives in the realm of security issues.

Belarus became the first among successor states of the former Soviet Union to renounce nuclear weapons, and complete the withdrawal of all nuclear weapons from its territory by the end of 1996.

Belarus' aspiration to strengthen security and stability in the European region transformed into initiative to establish a nuclear-weapon free zone in Central and Eastern Europe put forward in the beginning of 1990s. Consequently, a relevant resolution was tabled by the delegation of Belarus at the 53rd session of the UN General Assembly in December 1998. The resolution was adopted by a vote.

Belarus' consistent policy in the field of international security, disarmament and non-proliferation was reflected in the resolution titled "Prohibition of the development and manufacture of new types of weapons of mass destruction and new systems of such weapons", which is being tabled by our country in the UN General Assembly on a regular basis since 1990. This resolution is of warning nature, as preventive measures are the best way of dealing with potential threats to international peace and security.

To sum up, during this 15-year long period Belarus generally has been more visible in the United Nations than during the preceding four decades. We have laid the foundation for the UN system to address Chernobyl on a permanent basis. We have made significant "inroads" into the peace and security domain of the United Nations. But the fact that some of our initiatives were put to a vote indicated that the interests of great powers were at stake.

Furthermore, Belarus has actively participated in various UN conferences and events on economic and social matters held in abundance throughout this period, for example, the 1994 International conference on population and development, the 1995 Social Summit, the 1996 Habitat conference, the 2000 UN Summit, the 2001 International conference on financing for development. However, during this period we have not come up with our own initiatives in this second-tier realm that would be demanded by the international community and that would make us really visible and indispensable in the United Nations.

That, perhaps, explains the fact that during this time frame Belarus has twice lost election to the United Nations Security Council in 1993 and in 2001.

2005 – present. The year of 2005 truly marked a watershed in Belarus' approaches to the United Nations. At that year's central event (the United Nations Summit) President of the Republic of Belarus Alexandr Lukashenko announced two important initiatives.

First, the President called upon the international community to recognize the diversity of ways towards progressive development. Was it really necessary to state such an obvious thing? Yes, it was, because this postulate was not so obvious in the harsh geopolitical atmosphere of the new millennium's early years, when some Western countries tried to impose their will on the rest of the world by means of war and disregard for international law.

Many back then thought that the *unipolar moment* with all its negative implications was for long with us to stay[2]. But Belarus was not among those pessimists. We have unambiguously stated that it is diversity, not uniformity, that drives human development and progress. As a matter of fact, it was a very bold step to state such a thing loud and clear from the UN General Assembly's rostrum.

With the benefit of hindsight, however, it can safely be said that the vision of global diversity voiced by the President of the Republic of Belarus has been fully vindicated. Indeed, by the end of that decade the *unipolar moment* faded away and with it disappeared any serious attempt by Western countries to impose so-called democratic and liberal forms of domestic governance on others. Ever since 2005, Belarus did its best at the United Nations to draw attention to the "diversity" initiative and reflect it in the organization's various documents.

Moreover, the "diversity" initiative has been properly developed in conceptual terms and presented to the global public in a comprehensive piece written by me under the title "The emerging global system: embracing diversity-politic and partnerships" [2].

Its central tenet is that while global politics in the past was characterized by "concentrated" systems in terms of actors and types of challenges, the current system is a "diffused" one. This new system can effectively be governed with the logic of diversity and the tool of inclusive partnerships [2, p. 66–74]. More on partnerships will be said below in this essay.

Second, at the 2005 UN Summit President Alexander Lukashenko urged the international community to take vigorous action against the crime of trafficking in persons. No one envisaged at that time that over the coming years combating human trafficking will have become Belarus' hallmark initiative.

Foreign partners often ask Belarusian diplomats what drives us to be so proactive in this field. First and foremost, it was our domestic action. Namely, Belarus has erected and implemented very robust anti-trafficking legislation in 2003–2005, which allowed us to reduce the crime to such an extent that it actually ceased to bother the public.

That success, in turn, enabled us to share national experience at higher levels. What is more, our active engagement in global anti-trafficking discourse since 2005 has served to raise our knowledge of the problem, which allowed Belarus to consistently propose new solutions[3].

To name just some of them. Following the President's call, the delegation of Belarus has proposed at the 60th session of the UN General Assembly in 2005 to forge a "Global partnership against human trafficking", which implies close co-operation among countries, international organizations, civil society and private sector. This notion has since then invariably been reflected in all anti-trafficking resolutions, declarations, reports, etc.

Next year, in 2006, Belarus tabled at the General Assembly for the first time a draft resolution on "Improving the coordination of efforts against trafficking in persons". The resolution gave birth to the Inter-agency coordination groups against trafficking in persons (ICAT), which today brings together 23 international agencies. ICAT is the crucial international body that closely coordinates activities of its members, carries our research and offers advice to countries and other stakeholders.

Belarus sponsors the above resolution on a biennial basis. The latest resolution was adopted by consensus by the UN General Assembly in December 2019. It is the key omnibus UN anti-trafficking resolution that provides relevant mandates to the United Nations and many of its agencies and contains important action-oriented recommendations to member states.

Since 2005 Belarus began advocating the need to develop a global plan of action on human trafficking. In our view, a global plan was needed in order to provide a comprehensive overarching political framework to global anti-trafficking efforts, which would also spell out roles for various stakeholders. The case for a global plan was well and succinctly laid out by Sergei Martynov, former Minister of Foreign Affairs of the Republic of Belarus, in his article entitled "Human trafficking: beyond the protocol" [3].

It took Belarus five years of relentless and painstaking work to bring the idea of a global plan to fruition. As a result, the UN General Assembly adopted the Global Plan to Combat Trafficking in Persons on

[2]The term "unipolar moment" was invented by American political scientist Charles Krauthammer. See: *Krauthammer C.* The unipolar moment [Electronic resource] // Foreign Affairs. 1990. Vol. 70. No. 1. URL: http://users.metu.edu.tr/utuba/Krauthammer.pdf (date of access: 20.04.2020).

[3]For more information on how Belarus' knowledge on human trafficking evolved see: *Makei V.* Human trafficking in the post-cold war period: towards a comprehensive approach [Electronic resource] // Journ. of Internatl. Affairs. URL: https://jia.sipa.columbia.edu/online-articles/human-trafficking-post-cold-war-period-towards-comprehensive-approach (date of access: 20.04.2020); *Sychov A.* Human trafficking: a call for global action [Electronic resource] // Globality Studies Journ. 2009. Issue 14. URL: https://gsj.stonybrook.edu/article/human-trafficking-a-call-for-global-action/ (date of access: 20.04.2020).

30 July 2010. By the way, in a couple of years that day, the 30 July, was declared by the UN General Assembly to be the International Day against Trafficking in Persons.

Belarus succeeded with the Global Plan, because it was able to rally around it a group of committed countries that vigorously pushed the initiative to its completion. This group was institutionalized under the name of the group of friends united against human trafficking (Group). Today, it has in its ranks 22 UN member states from different parts of the world. It operates in New York, Vienna, Geneva and Paris. Its members cooperate closely in advancing anti-trafficking resolutions and stage various relevant side-events, including in partnership with ICAT.

Since its establishment in 2010, the Group has invariably been chaired by Belarus. Since then the Group has organized five meetings at the ministerial level, with the latest being held in September 2019. The meetings end up with declarations, which set forth some guidance for the Group's "field" activities. The Group's primary focus has always been the Global Plan of Action. In particular, members of the Group work together in advancing regular Belarus-sponsored resolutions on the Global Plan at the UN Commission on crime prevention and criminal justice (UN Crime Commission) and at the ECOSOC.

In recent years, Belarus has been in the lead in advancing a number of specific aspects of the human trafficking cluster, which experts often refer to as new dimensions of human trafficking. In particular, in 2014 and 2016 Belarus sponsored at the UN Crime Commission draft resolutions on organ trafficking[4], in 2018 – on trafficking in persons and technology, the plan for 2020 is to table an ECOSOC draft resolution on trafficking in supply chains.

As was mentioned earlier, in the context of its "diversity" initiative Belarus began speaking loudly about global partnerships. Indeed, in today's "diffused" world we can achieve success against any transnational challenge only when all positive stakeholders (states, international organizations, civil society, private sector, academia) work together.

Partnerships are especially relevant and possible in the realm of second-tier non-security issues. A clear example of this can be seen from a Belarus-sponsored resolution titled "Strengthening the engagement of all members of society in crime prevention", which we proposed at the UN Crime Commission in May 2019. The resolution was adopted by consensus and was sponsored by nearly 40 countries, including Austria, Canada, Japan, France, Italy, Norway, Russia, Sweden, Thailand, Turkey, United Kingdom, the USA. This fact clearly indicates one thing, namely, that UN member states support our vision of partnerships.

There are two more second-tier matters, which Belarus holds very dear. These are the topic of middle-income countries (MICs) and the issue of the family.

MICs represent a diverse group of around 100 countries as classified by the World bank's income per capita criteria. The active discourse on MICs, including in the United Nations, emerged in the middle of the past decade due to certain global political and economic developments. What distinguishes middle-income countries from other groups is the fact that they play a dual role. Indeed, on the one hand, they still need international assistance for their own development. On the other, they increasingly become donors of international assistance.

What is of a particular importance for middle-income countries is to institutionalize their cooperation with the United Nations system through the development of a strategic document because the MICs is the only major group in the United Nations that lacks such a document, and hence, it lacks systemic cooperation with the UN system.

Belarus has been very actively involved in this topic ever since it emerged. We are a middle-income country and we share the MICs "dual role" mentality. Belarus has staged a number of conferences and side-events of MICs, at which we actively advanced the issue of a strategic document. Moreover, along with Costa-Rica Belarus created and co-chaired in the UN the Like-minded group of countries supporters of middle-income countries that brings together 13 UN member states. To make sure that our efforts are practice-oriented and bring tangible benefits to MICs, we successfully initiated development of the United Nations Industrial Development Organization (UNIDO) strategic framework for partnering with middle-income countries, which was adopted by the UNIDO General Conference in November 2019.

One can find a comprehensive and detailed analysis of this issue in an article titled "Middle-income countries: a long journey to UN institutionalization", written by Yury Ambrazevich, Permanent Representative of Belarus to the United Nations Office in Geneva [4].

As for the family, this issue has been in the forefront of global discussions for the past two decades. Yet, the debate is becoming increasingly polarizing and divisive as Western countries seek to embed in UN documents their radical views on the diversity of family forms. This, however, cannot be accepted by a very large number of other states, including Belarus, which historically adhere to the values of the traditional family.

Belarus stepped in the debate in 2013. Moreover, in partnership with Egypt and Qatar we established the Group of friends of the family. Today this group comprises 25 UN member states. It naturally works to

[4]More on the topic see: *Makei V*. Trafficking in human organs // Forced Migration Review. 2015. Issue 49. P. 91–92.

advocate the values of the traditional family, often in cooperation with like-minded partners from international organizations and civil society.

Understanding that it is impossible to reconcile the two camps in their views on the family any time soon, Belarus tries to make the debate less polarizing and divisive. Driven by this logic, I wrote a major article entitled "Identity politics and culture wars: a new determinism?" [5].

The article clearly demonstrates why and how so-called "libertarian" family values emerged in the West as a result of the 1960s culture wars, and why similar attitudes did not and could not emerge in other parts of the world [5]. The article's key message is this: if we cannot come to a shared view on the family, let us understand why we have different views, let us respect each others' views, and let us refrain from imposing on each other something that the other group does not accept.

By the way, a very similar "unifying" message came from me even earlier, that time in the area of human rights, through a comprehensive essay entitled "Human rights: what and who made them divide the world" [6].

Indeed, as the essay shows, our "different approaches to human rights stem from the countries' specific historical experience of development, which in some cases forged a centralized and collective nature of societies, whereas in others they were conducive to decentralization and individualism. Understanding the historical reasons behind other countries' different stance on human rights may contribute to non-confrontational international relations" [6]. In the current poisonous atmosphere of the UN Human Rights Council, it is a recipe that all would be well advised to heed.

As the above two publications indicate, Belarus truly attaches great importance to doing something "unifying". We never hesitate to propose an action that may close the gap between UN member states on any divisive and polarizing topic. As a matter of fact, the "unifying agenda" has become a distinguishing feature of all of our initiatives at the United Nations in the period since 2005, whether it is diversity, trafficking in persons, crime prevention, middle-income countries, family, narcotic drugs, technology and some others. In all of these instances we propose action that brings benefit to all and which leaves no one behind.

Looking beyond 2020

How the 75th anniversary will affect the United Nations? That is the question that is being frequently asked these days. Many pundits would say that we should expect nothing significant occurring at the organization as nothing important has happened to the UN in the wake of its previous anniversaries and summits.

So, according to this logic, the United Nations will inevitably revert to its "business-as-usual" once the world's leaders deliver their statements at the summit and leave for home. There is certainly a grain of truth in this logic, which is buttressed by a number of serious arguments.

First, as it has been shown in one section above here, the United Nations is institutionally constrained and can deliver, especially on peace and security, only as much as its leading powers allow it. Can we expect any institutional overhaul in connection with the current anniversary like, for instance, an enlargement of the UN Security Council, which would mend the shortcomings? Unfortunately, we cannot, because these are not currently on the agenda.

Second, there is certainly some degree of disappointment with the United Nations and disbelief in what it can do. It is best demonstrated in the proliferation over the past two decades of various close clubs that bring together a limited number of participants, who believe that it is easier to decide on a specific issue within a small circle rather than at the United Nations. There are many such: G7, G20, the Middle East Quartet, BRICS and so on.

Third, and most importantly, history teaches us that truly drastic international changes are possible only as a result of global catastrophes, but not during times of peace, because it is extremely hard to mobilize and motivate people when they are not much troubled[5]. Indeed, both the League and the United Nations are testimonies to such horrible experiences. Such kind of understanding also rules out the possibility that the United Nations will be replaced by a third generation of international organization any time soon[6].

Yet, it will be extremely pity if the United Nations remains anchored by the above constraints, trends and developments, which are beyond its current ability to master. It is especially pity as we realize that these factors significantly hamstring the organization in its ability to deliver on its key mandate – supporting member states in implementing the Sustainable Development Goals (SDGs). Furthermore, it is particularly pity, because ordinary people around the globe increasingly realize that only by acting together can we overcome global challenges, like the novel coronavirus that is ravaging the world as this essay is being written.

[5]The argument has been well presented by James Traub in his book "The best intentions" (2006). The book is devoted to Kofi Annan, former UN Secretary-General.

[6]The notion of a third generation of international organizations implies creation of a set of new organizations. The League and some other organizations founded along with it after World War I are considered the first generation of international organizations, while the UN system and other organization set up after World War II are regarded as the second generation of international organizations.

But what can be done?

Dag Hammarskjöld, the highly esteemed second Secretary-General of the United Nations, once said: "Never measure the height of a mountain until you have reached the top. Then you will see how low it was" [7, p. 265]. Member states, which are not indifferent to the fate of the United Nations, should be well advised to be guided by that valuable saying. In practice it means always aspire for impossible.

It is exactly with that attitude with which Belarus is going to continue its engagement with the United Nations beyond the anniversary year. We will certainly continue to be as active as before, if not more so, in advancing our well known unifying second-tier initiatives. What is more, we will aspire for what at present seems indeed impossible. In particular, we attach paramount importance to the idea of launching a comprehensive security dialogue that was proposed by the President of the Republic of Belarus at the opening of the 26th session of the OSCE Parliamentary Assembly in July 2017.

After all, irrespective of how far Belarus can go with its initiative, we are absolutely convinced that we are right in proposing a global security dialogue at a time when one is urgently required. And we hope that history will ultimately prove that we were right.

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INTERNATIONAL COOPERATION OF BELARUSIAN UNIVERSITIES IN THE FIELD OF HUMAN RIGHTS TEACHING AND RESEARCH

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The study is devoted to the analysis of long-term cooperation of Belarusian universities with their Swedish partners in the field of teaching and research on human rights. Using concrete examples, the author shows the most successful forms of Belarusian-Swedish cooperation, which influenced not only the situation in higher education, but also the perception of human rights issues in the Belarusian society as a whole (development of lecture courses, publication of research results, training seminars, exchange of teachers and students). The most notable results have been achieved towards gender equality.

Keywords: Belarus; Sweden; Belarusian State University; Raoul Wallenberg Institute; Belarusian-Sweden relations; Swedish International Development Cooperation Agency; human rights; gender equality.

МЕЖДУНАРОДНОЕ СОТРУДНИЧЕСТВО УНИВЕРСИТЕТОВ БЕЛАРУСИ В СФЕРЕ ПРЕПОДАВАНИЯ И ИССЛЕДОВАНИЯ ПРАВ ЧЕЛОВЕКА

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Анализируется многолетнее сотрудничество белорусских университетов с шведскими партнерами в сфере преподавания и исследования прав человека. На конкретных примерах автор показывает наиболее успешные формы белорусско-шведского сотрудничества, которые оказали влияние не только на ситуацию в сфере высшей школы, но и на восприятие проблематики прав человека в белорусском обществе в целом (разработка лекционных курсов, публикация результатов научных исследований, обучающие семинары, обмен преподавателями и студентами). Наиболее заметные результаты были достигнуты в направлении обеспечения гендерного равенства.

Ключевые слова: Беларусь; Швеция; Белорусский государственный университет; Институт имени Рауля Валленберга; белорусско-шведские отношения; Шведское агентство международного сотрудничества для развития; права человека; гендерное равенство.

In modern Belarus, the theme of human rights is becoming more and more common subject of keen public attention and intensive expert discussion. The specificity of this discussion is largely given by the so-called "Soviet heritage". It lies in the fact that in the conditions of the ruling political regime at that time the main political emphasis was the promotion of collective socio-economic guarantees and deny of the existence of universal values. In the Belarusian SSR, which was a composite part of the Soviet Union and formally had a pretty democratic constitution, the right to work, free education, medical care, and other rights were proudly declared. While freedoms advocated by Western countries (freedom of speech, thought,

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assembly, the right to own and publicly express their own opinion), were recognized only formally. In practice, they were considered not only secondary, but also harmful. In the opinion of Soviet leaders, the priority of personal rights of citizens undermined the stability and unity of the society, served as a tool of "bourgeois influence". Interpretation of human rights was the central theme of the ideological struggle, in which, according to Soviet ideologists, there was no and could not be peaceful coexistence.

Pivotal socio-political and economic transformations of the late 1980s – early 1990s, which are still ongoing in most new independent states, set a thorny issue of ensuring real freedoms and human rights. Belarus, as well as other post-Soviet countries, started the process of transition from declarations of human rights to their implementation in practice. However, due to objective and subjective reasons, this process has been delayed and has not lost its relevance in the current political *agenda* by now.

One of the most important factors, contributing to the increased interest in human rights problems in Belarus, was the extension of international cooperation. It gave countries in transition possibilities to study and use the experience of ensuring human rights, accumulated by developed countries over a long period. The experience of Sweden and other Northern European countries, that set high standards of human rights protection to be their recognizable "brand", and important basis for economic and social well-being traditionally cause the greatest interest in Belarus.

One of the striking examples of international cooperation in the field of human rights was the long-term partnership of the largest Belarusian universities with the Raoul Wallenberg Institute of Human Rights and Humanitarian Law (Raoul Wallenberg Institute). Due to its significant influence on the academic discussion of human rights in Belarus, this format of the Belarusian-Swedish interaction deserves a special scientific study.

The launch of the long-term academic interaction between Belarus and Sweden in the field of human rights was given by a joint seminar held in Minsk on the basis of the faculty of international relations of the Belarusian State University (FIR BSU) on 21 November 2008, as part of Swedish presidency in the Council of Europe. The event was dedicated to the theme "Implementation of human rights in a european perspective – exchange of experiences and challenges for the future". The seminar was attended by the representatives of the Belarusian Ministry of Foreign Affairs, the Ambassador of Sweden to Belarus S. Erickson, the adviser on strategic planning and quality assurance at the Raoul Wallenberg Institute M. Johansson, Belarusian and foreign scientists, students [1].

After the successful seminar, the Swedish side, appreciating the high potential of Belarusian teachers and students, suggested continuing the implementation of joint activities. The Institute informed the leadership of the FIR BSU about the intention to seek financial support from the Swedish International Development Cooperation Agency (Sida). 2009 was marked by mutual visits and lectures, in which the representatives of the FIR BSU and the Raoul Wallenberg Institute took part. The leadership of the institute was interested in how the human rights problem is presented in the educational process of Belarusian universities, how high the interest is in this issue on the part of teachers and students. The Belarusian side drew attention to the fact that the planned joint activities would remain within the framework of scientific and educational activities and did not get into a wider political space.

Given the particular sensitivity in perceiving human rights issues in the power vertical of Belarus, partners from the two countries agreed on the "basic rules" of joint projects. It was decided to focus on the expansion of scientific research in the direction of theory and practice of activities in the field of human rights. Scientific research was supposed to become, according to partners, a platform for expanding and updating existing and creating new training courses in human rights. Moreover, it was planned to devote not only separate courses to teaching various aspects of human rights, but also, if possible, use special modules for this purpose within other broader socio-humanitarian disciplines.

An important formal step in the bilateral activities was the Memorandum of cooperation, signed on 1 December 2009, by the rector of the Belarusian State University academician S. Ablameyko and the director of the Raoul Wallenberg Institute L. Holmström. The signed document outlined the development of the existing and introduction of new training courses on human rights topics at the faculty of international relations and the faculty of law of the BSU, the exchange of teachers and staff, the provision of scholarships for master degree programs at Lund University to Belarusian students. Among the promising areas of cooperation was the transfer of the necessary literature and databases to the BSU library, the translation of the most relevant educational and scientific literature into Russian or Belarusian, the organization of seminars in Sweden for representatives of Belarusian state institutions and public organizations. Several other forms and mechanisms of cooperation were also envisaged [2].

Looking ahead, it should be noted that the second similar memorandum between the BSU and the Swedish partner organization was signed on 16 November 2016, by rector S. Ablameyko and director of the Raoul Wallenberg Institute M. M. Kjaerum during his visit to Minsk.

After the signing of the first memorandum, the active preparation of a cooperation program, clarification and coordination of positions on all planned activities began. As a result of the efforts undertaken, the Raoul Wallenberg Institute received state funding to support academic cooperation with Belarus for a period of four and a half years, namely from 1 January 2011, to 1 July 2015. The Swedish grant was called "Promoting democracy in Belarus through human rights capacity building".

In addition to two BSU faculties, Belarusian National Technical University (BNTU) and Belarusian State Economic University (BSEU) were invited to participate in academic cooperation. For the next years, the promotion of the ideas of human rights and gender equality in Belarusian universities, among young people, in state and public institutions was declared as the main task of cooperation. It was supposed to achieve these goals, first of all, through the training and professional development of experts, the creation of an educational, scientific and methodological base at the Belarusian State University. The authors of the joint program of action concept hoped to expand the interaction between the universities, government structures, and public associations in the field of human rights. It should be emphasized that the mainstream of joint activities was achieving gender equality. Such an approach to cooperation suited the Belarusian partners, since the gender theme did not cause strong rejection in Belarus, it was in this area that the country had significant achievements.

Despite the growing contradictions between Belarus and the European Union as a whole and Sweden in particular at the end of 2010 and the beginning of 2011, inter-university partnership started quite actively. On 8 February 2011, a bilateral training seminar "Gender equality and its maintenance in higher educational institutions of Belarus" was held on the basis of BNTU in Minsk, in which several dozens of teachers and graduate students took part. On 10 February 2011 Belarusian and Swedish participants gathered at the one-day round table "Teaching human rights in higher educational institutions of the Republic of Belarus", the task of which was to take an inventory of existing human rights courses and studies at Belarusian universities, as well as to discuss the prospects for their further development.

With the introduction of EU sanctions against several Belarusian leaders and enterprises after the well-known events related to the presidential election in Belarus (December 2010), as well as with official Minsk's retaliatory measures against many representatives of the European Union member states, a certain threat to the implementation of agreements between partners occurred. In these sophisticated conditions, the Ministry of Foreign Affairs of the Republic of Belarus, represented by then Deputy Minister V. Voronetsky, provided the necessary support to the university consortium. On his behalf, on 20 January 2011, a delegation of the Raoul Wallenberg Institute, composed of Emma Melander Borg, D. Geer, and dean of the FIR BSU V. Shadurski was received at the ministry. During the constructive meeting, the main directions of the ongoing Belarusian-Swedish academic dialogue in the field of human rights were supported.

It should be recognized that the tension in international relations was still being influenced the course of the project. So, many important visits of foreign researchers to Belarus did not take place. The Swedish ambassador for human rights, H. Dahlgren, was unable to speak at BSU in November 2011, although the question of his visit to Belarus was agreed upon in advance. Such external obstacles created certain organizational and financial problems that caused tension on both sides.

That situation, as well as the increasing number of joint meetings, visits and exchanges, raised the question of the need for clear coordination of partners' actions, and mechanisms for quickly finding solutions acceptable to all parties.

The answer to this challenge was the creation of the Steering Committee, which on an equal footing included leadership and faculty of partner faculties. On 16 March 2011, on the basis of BSU, its first meeting was held, initially consisting of 8 people, including deans of the faculties of BSU (S. Balashenko, V. Shadurski), BNTU (G. Brovka), BSEU (A. Shklyarevsky). Since 2011, all the decisions on future events, organizing internships, defining selection criteria for participants of foreign trips, etc. were taken at meetings of the Steering Committee, which were held, as a rule, at least twice a year. Participation in the work of the council has become a good source of mutual enrichment in the field of management culture (conducting discussions, reaching compromise solutions, reasoned justification of certain decisions, etc.) existing in the academic environment not only from different countries, but also from various universities. The coordination of cooperation on the Belarusian side was entrusted to the deputy dean of the FIR BSU A. Selivanov. He carries out his assignment to date.

Within the framework of the Steering Committee, three working groups were created: monitoring and evaluation working group, gender participation working group and students participation working group.

A deeply scientific and balanced approach to the topic of human rights, a high level of qualification of experts invited to training seminars, the possibility of an open discussion at events in Belarus and other countries, financing of trips both within the country and abroad contributed to an increase in the number of university teachers and researchers, interested in developing academic cooperation. The expansion of the Belarusian participants was facilitated by one of the most notable events of the second year of partnership – the study program "International and Swedish experience in the promotion and protection of human rights: theory and practice". The program, organized on the basis of the Raoul Wallenberg Institute in Lund on 5–16 November 2012, was attended by about 30 participants from universities, state institutions and non-governmental organizations of Belarus. The program content – lectures, seminars, presentations, study visits were adapted to the specific interests of the participants. Simultaneous interpreting was organized for non-English speakers, and all travel expenses were covered by the Swedish side.

During the program, its participants had the opportunity not only to listen to lectures by qualified specialists of the institute on human rights issues in Sweden and other countries, but also to discuss the situation with understanding and interpretation of human rights in Belarus. It should be emphasized that an active and open discussion during the meeting, Belarusian and foreign participants never acted in an accusatory manner. The parties did not try on the roles of "teachers and students". Such an approach formed trust between representatives from different countries, strengthened the culture of dialogue. Foreign participants in the events had the opportunity to notice the high level of Belarusian citizens' education, based on a critical approach to the analyzed reality. During the contacts, foreigners discovered new facets of the young East European state, striving to build constructive relations with neighboring countries. The Belarusian representatives had the opportunity to make sure that respect for human rights, the real separation of branches of government, transparency in the activities of all levels of government are the most important condition for the successful development of Sweden.

After 2012, similar trips of numerous Belarusian delegations to Sweden repeated two more times – in 2013 and 2014.

The events noted above – conferences, seminars, meetings, study visits contributed to the expansion of the circle of specialists for whom the problematic field of human rights has become not only a more understandable topic, but also motivated them to further research and implement human rights in specific areas of life. This was the concrete result of international academic cooperation not only at the level of specific universities, but also throughout the country.

To improve the access of Belarusian teachers and specialists to foreign "classics" aimed at studying human rights in 2013, three well-known foreign publications were translated into Belarusian and Russian. As a result, the library of Belarus received the 5th edition of R. Smith "International protection of human rights", the world-famous university textbook, translated from English into Russian, published in a circulation of 3000 copies. The textbook examined the history of human rights, the main international documents and case law of international regulatory bodies, and also analyzed the activities of international organizations (UN, Council of Europe, OSCE, OAS, CIS) in the field of human rights [3].

In the same 2013, a book of another British author A. Clapham "Human rights: very brief introduction" was published in a print run of 5 000 copies in Belarusian [4]. And finally, in four languages (English, French, Russian, and Belarusian) and again in a quite large print run for Belarus (1500 copies), C. Viale's book "The lexicon of human rights" was published [5].

Despite the continued high interest of Belarusian specialists in translated publications, the Steering Committee decided to concentrate more on the publication of Belarusian studies and training materials. One of the first publications in this series was a textbook "Human rights" published in 2015 under the scientific editorship of S. Balashenko and E. Deikalo. The collective study guide made it possible to form a comprehensive understanding of the legal regulation of human rights. It examined the norms of both the national legislation of the Republic of Belarus and international law, presented judicial practice related to various aspects of both domestic and external legal protection of human rights [6].

As already noted, an increase in the number of specialists has contributed to the fact that the topic of human rights has become the subject of positive reflection in public discussions and the media. A serious marker for the advancement of human rights issues in Belarus was the adoption of the Interagency plan for the implementation of recommendations adopted by the Republic of Belarus following the second cycle of the universal periodic review of the UN Human Rights Council, and the recommendations addressed to the Republic of Belarus by human rights treaty bodies for 2016–2019 years. The Interagency plan approved by the Decree of the Council of Ministers of the Republic of Belarus of 24 October 2016 No. 860 became a conceptual document aimed at facilitating the implementation of international obligations in the field of human rights by the Republic of Belarus, including the improvement of legislation and law enforcement practice [7].

The adoption of this plan was an important signal that the topic of human rights in Belarus finds a more prominent place not only on the agenda of educational institutions and non-governmental associations, but also state bodies. Why did the government take this step? In our opinion, diplomats, scientists, and experts were able to convince decision-makers that the topic of human rights not only provides a specific reason for domestic and international criticism of Belarusian realities, but also represents the country in many respects from a positive perspective. So, according to the UN development program, in the ranking of the human development index for 2015, Belarus took 50th place, entering the group of countries with a high level of human development. According to the information of the United Nations Population Fund at the end of 2014, Belarus took 1st place in the world in reducing maternal mortality and was included in the number of 42 states in which 100 % of cases are delivered by qualified medical personnel. The preamble to the Interdepartmental plan also indicated that according to the report of the UN Children's Fund for 2014, Belarus had the best rate in the region of the Commonwealth of Independent States in terms of child mortality. The Republic of Belarus was included in the list of 25 countries most favorable for motherhood, and ranked 31st in the world in terms of gender equality [7].

An even more optimistic situation has developed in the field of gender equality. In the history of the Republic of Belarus, there have been five national plans for achieving gender equality. With the approval of every further plan, its content became more balanced and reasonable, the terminology used in the document improved. Thus, the first plan was called the National plan of action for the advancement of women for 1996–2000, which shows its focus exclusively on women. The fifth National plan of action for gender equality in the Republic of Belarus for 2017–2020 was adopted by the resolution of the Council of Ministers of the Republic of Belarus on 17 February 2017 No. 149. Monitoring the implementation of this document, which was widely attended by the representatives of the university consortium, was entrusted to the Ministry of Labor and Social Protection of the Republic of Belarus. The Ministry was instructed with annual (by 20 March) submission of information about the implementation of the national plan to the Government of the Republic of Belarus[1].

In more favorable conditions, the preparation of a new cooperation program between the consortium of Belarusian universities and the Raoul Wallenberg Institute took place without any special obstacles. This institute received Sida funding as part of a new stage of cooperation called "Academic cooperation on human rights in Belarus, 2015–2019". At this stage, in addition to the three partner universities, it was planned to invite representatives of regional universities of Belarus to academic interaction.

Based on the plans, other universities joined the inter-university network: Polotsk State University (2014), Mogilev State University (2016), and Gomel State University (2018). This circumstance gave new dynamics not only to Belarusians studying foreign experience, but also created the conditions for more active inter-university partnership not only on a broad topic of human rights, but also on other pressing topics. In addition to the employees of the six universities mentioned above, teachers and students of all Belarusian universities were constantly invited to the inter-university events in the field of human rights.

Gender equality remained the central element of academic cooperation, as before. Achievements in this area can be assessed as the most significant.

Thus, as a pilot project, the Council of the FIR BSU prepared and launched the implementation of the FIR BSU Gender plan for 2015–2017. The main place in the plan was dedicated to gender education of the academic staff and the administration of the faculty, overcoming gender stereotypes, forming attitudes of gender-neutral behavior, attracting the attention of as many people as possible to this problem field[2].

According to the initiators of the plan, the expansion of the gender dialogue within the faculty was designed to make the functioning of the team more understandable, transparent, fair, and therefore more effective. Effective, from that point of view, so as not to waste precious time and energy on the reproduction of outdated stereotypes about the roles of men and women.

Drawing up a gender plan has become a tradition not only at the FIR BSU. This format of activity was adopted by several other universities. Participants of the events, aimed at achieving gender equality, shared their experience in scientific, educational, and other publications [8].

The next significant step in the implementation of joint actions of Belarusian universities and the Raoul Wallenberg Institute was the conduct of a gender audit in April – December 2017 at the FIR BSU. The organizers defined its main task as an analysis of the implementation effectiveness of the FIR BSU gender plan, as well as the provisions and recommendations of the legislation of the Republic of Belarus in the field of gender equality. An organizing committee of the study was created, and several working groups were formed from teachers and students. As a part of the audit, a sociological survey of 50 employees and 269 students was conducted, they were asked to answer several questions related to gender equality. The organizing committee carried out focus group studies, analyzed statistical data available in the faculty documentation, and complied with a time budget. An active discussion started at the FIR BSU on how to overcome gender stereotypes, how to improve communication between the dean's office and teachers, teachers and students. The audit report was published in both Russian and English [9].

The head of the organizing committee for the audit, senior lecturer of the FIR BSU, Y. Zinchenko, gave a brief but succinct description of this landmark event: "It was an interesting experience, primarily because it was a reflection on how we live, how we allocate our

[1]Decree of the Council of Ministers of the Republic of Belarus of 17 Feb. 2017 No. 149 "On approval of the National plan of action for gender equality in the Republic of Belarus for 2017–2020" [Electronic resource]. URL: https://www.pravo.by/upload/docs/op/C21700149_1487883600.pdf (date of access: 22.03.2020).

[2]Materials of the current archive of the dean's office of the FIR BSU. Gender Plan of the FIR BSU for 2015–2017.

time, how we evaluate our capabilities. The work with the obtained material showed that it is not always possible to identify problems"[3] [9, p. 14].

Another significant achievement of the cooperation between Belarusian universities and the Raoul Wallenberg Institute was a large-scale mobility of teachers and students, which was fully funded by the Swedish side. Numerous visits to foreign universities allowed Belarusian representatives to study the experience of foreign colleagues, establish new connections, and popularize the achievements of their country and their universities (see table).

The number of employees and students of Belarusian universities who went abroad in the framework of cooperation with Swedish partners only during the last three years (2017–2019)

Year	Number of teachers visiting abroad	Number of students visiting abroad	Total
2017	39	30	69
2018	41	24	65
2019	66	44	110
2017–2019	146	98	244

N o t e. Calculation based on the materials of the current archive of the dean's office of the FIR BSU. Information on cooperation with the Raoul Wallenberg Institute. 2015–2017.

An important result of the recent years, which, in our opinion, is systematic and long-term, is the creation of the Human Rights Centre at the FIR BSU in 2016. Its main goal defined by the Supervisory Board was to unite the efforts of the Belarusian university community representatives in inter-university interaction and interdisciplinary cooperation. The leadership of the centre was entrusted to the associate professor at the BSU E. Konnova.

Since its creation, the centre has begun active work on the basis of the approved strategy, which outlined its main tasks, principles, and activities. This inter-university social structure is called upon to continue researching the field of human rights promotion. However, at the new stage of academic cooperation, the main emphasis should be placed on the principle of interdisciplinary studies of human rights, on the practical application of the scientific analysis results.

An interdisciplinary approach to the study of human rights is ensured by the previous active involvement in the university consortium of representatives of various specialties and scientific sectors. Experts in medicine, architecture and construction, economics, and computer science have become increasingly involved in the discussion about the practical implementation of human rights. For compliance with legal standards, the labour sphere, architectural and construction norms, standards in the field of education, and medical care began to be actively analysed. Attention to the rights of the most vulnerable groups (people with disabilities, elderly people, women, children, refugees, stateless persons, and migrants in general) has increased.

Thus, at the moment, the centre has already implemented 12 interdisciplinary studies on relevant human rights topics, including applied research, which were carried out in close cooperation with state bodies of the Republic of Belarus [10].

Another new trend that has emerged in the activities of the university consortium and the Human Rights Centre, in particular, is the establishment of stable contacts between scientists, on the one hand, and representatives of the legislative, executive and judicial authorities of Belarus, on the other. Only in 2019, a seminar and conference, in which the listed categories of specialists took part, were successfully held based on the mentioned centre. During the discussions, new proposals and topics for joint development arose[4].

It becomes more and more obvious that to be successful and effective in the modern world, representatives of all fields of activity (scientists and experts, politicians and businessmen, government officials and public activists) should, figuratively speaking, wear "human rights glasses".

To sum up, the topic of human rights in Belarus is becoming increasingly relevant. It becomes the cornerstone of the transformation of the country and society. This circumstance confronts the participants of the Belarusian-Swedish academic cooperation with increasingly complex tasks – expanding and deepening the analysis of human rights issues from both theoretical and practical sides. As the study of accumulated experience shows, the use of an interdisciplinary approach, as well as more active interaction of specialists from various scientific sectors, representatives of state power and civil society structures can contribute to improving the quality of research.

[3]Translated by *V. Sh.*
[4]2nd International conference "Interdisciplinary approach to research in the field of human rights" [Electronic resource]. URL: https://fir.bsu.by/faculty/centres/human-rights/hrc-events (date of access: 12.04.2020).

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THE INSTITUTE OF INTELLECTUAL PROPERTY IN THE CONTEXT OF DIGITALIZATION WHILE ENSURING INNOVATIVE SECURITY AND HUMAN RIGHTS

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The article deals with the problem of the functioning of the institute of intellectual property in the context of digitalization challenges, with regard to the necessity of ensuring innovation security and respect for human rights. In the context of digital reality, mechanisms for creating, using, and protecting intellectual property are becoming particularly relevant, and intellectual property itself is positioned as a source of economic and innovative development. The aim of the study is to analyze the functioning of the institute of intellectual property in the frame of digitalization, the need to ensure innovative security and human rights. Implementation of the research goal was achieved through the integrated use of methods of system and comparative analysis, systematization and formalization, historical and statistical methods. The transformation of the institute of intellectual property is considered in the context of the main objectives of the strategy of the Republic of Belarus in the field of intellectual property for 2012–2020. Risks and dominants of the development of the system of protection of intellectual property rights in the context of human rights and digitalization of society are identified.

Keywords: digitalization; human rights; intellectual property; innovative security; intellectual property rights; the protection of intellectual property.

ИНСТИТУТ ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ В КОНТЕКСТЕ ДИГИТАЛИЗАЦИИ ПРИ ОБЕСПЕЧЕНИИ ИННОВАЦИОННОЙ БЕЗОПАСНОСТИ И ПРАВ ЧЕЛОВЕКА

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Рассмотрена проблема функционирования института интеллектуальной собственности с учетом вызовов цифровизации, необходимости обеспечения инновационной безопасности и соблюдения прав человека. В условиях цифровой реальности механизмы создания, использования и защиты интеллектуальной собственности приобретают осо-

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бую актуальность, а сама она позиционируется в качестве источника экономического и инновационного развития. Целью исследования является анализ функционирования института интеллектуальной собственности в условиях дигитализации, необходимости обеспечения инновационной безопасности и соблюдения прав человека. Цель исследования была достигнута посредством комплексного использования методов системного и сравнительного анализа, систематизации и формализации, исторического и статистического метода. Трансформация института интеллектуальной собственности рассматривается в контексте основных задач Стратегии Республики Беларусь в сфере интеллектуальной собственности на 2012–2020 годы. Определены риски и доминанты развития системы охраны и защиты прав интеллектуальной собственности в контексте прав человека и цифровизации общества.

Ключевые слова: цифровизация; права человека; интеллектуальная собственность; инновационная безопасность; институт интеллектуальной собственности; защита интеллектуальной собственности.

Globalization of the economy and comprehensive digitalization are key characteristics of the current stage of the evolutionary development of the socio-economic and production model of society. The rapid pace of digital transformation is due to its possible positive consequences for the economy and society. The main advantages of digitalization involve the emergence of economic and social effects of digital technologies for business and society, raising the quality of life by improving the satisfaction of people's needs, productivity growth; the emergence of new business models and forms of business that increase the profitability and competitiveness of activities, ensuring the availability and promotion of goods and services, increasing the transparency of economic operations and ensuring their monitoring, the emergence of human-substituting management systems [1].

The widespread introduction of innovative technologies changes all spheres of the life of modern society, entails the emergence of new types and areas of social activity with unregulated legal relations, among which there are interrelated problems of creating and using digital intellectual property, human rights and ensuring security in the context of global digitalization and innovative development [2].

However, digitalization can bring negative consequences to human life. In relation to digitalization, the main external challenges for the state are issues of its national security and competitiveness in the world market, whereas, at the individual level, the most urgent problem is the preservation of the user's digital data. In addition, due to the expansion of the range and individualization of digital services, the effectiveness of the current control system in the field of digital services is reduced, which entails no less significant threats: cyber attacks, copyright infringement, online piracy, distribution of malicious content, and digital fraud [3]. Under these circumstances, ensuring the security of innovative development of the individual, society and the state becomes particularly relevant and entails the need to introduce the concept of "innovative security" as an integral part of national security, by which we mean the state of protection of national interests from external and internal threats arising in the context of innovative development [2].

The issue of the entire range of legal aspects in general, from changing legislation to ensuring human rights in the digital world, which in the context of the globalization of the economy and comprehensive digitalization of industrial, political and social processes is an essential element of the system for ensuring the security of individuals, society and the state, is also debatable.

At the same time, intellectual property is now rightly considered the main civilizational driver of development. The institute of intellectual property is the foundation of the modern global economy. Becoming available, new results of intellectual and creative activity and their legal protection in domestic and foreign markets are followed by the material movement of goods and services. Intellectual property has long been recognized as a key and almost inexhaustible resource of the economy. But today it is also becoming a tool for the development of digital technologies, creating an independent global digital market, the growth of which exceeds the positive dynamics of many traditional "material" commodity markets. Thus, the protection of the intellectual property is a dual-task designed to ensure both human rights and national interests of the state.

The origin of the concept of intellectual property is based on the theory of natural law, according to which the right of the creator of any creative result, whether it is a literary work or invention, is its inherent, "natural" right, arises from the very nature of the creative activity and "exists independently regardless of the recognition of this right by the state authority". As a property right, the right to the result of creative activity provides the copyright holder with an exclusive opportunity to dispose of this result at his own discretion, with the elimination of all third parties from interfering in the exclusive sphere of the copyright holder. The Massachusetts law of 17 March 1789 stated that "there is no property owned by a person more than that which is the result of mental labor" [4].

Intellectual property rights are similar in nature to property rights, since the objects of these rights are involved in civil turnover and the relations related to them are regulated by the norms of civil law. To understand the essence of intellectual property rights, it is necessary to consider their similarities and differences with property rights.

The content of these two categories of rights has much in common. In both cases, the owner of the property, whether it is intellectual or physical, has the right to dispose of it at his discretion, that is, he has the rights to use, own and dispose of this property.

However, the objects of property ownership and intellectual property are different. If property ownership involves some tangible goods or values that have an embodied tangible form, i. e. property, it should be noted that the objects of intellectual property may not always have an embodied form, they may be intangible incorporeal things. For example, an invention has a material form and is an object of intellectual property, since in the process of its creation, not only physical but also intellectual labor was expended. Production secrets, in turn, are also objects of intellectual property. Intellectual labor was also expended their development, but they do not have a material form.

Whereas initially inventions and production secrets, which were protected by patent law, were considered an object of intellectual property, then later, with the development of the world community, scientific and technological progress and international trade relations, the range of intellectual property objects expanded significantly. For example, the Convention establishing the World Intellectual Property Organization (WIPO) of 14 July 1967, determines that intellectual property involves exclusive rights relating to:

- literary, artistic and scientific works;
- performing activities of artists, sound recording, radio and television broadcasts;
- inventions in all areas of human activity;
- scientific discovery;
- industrial design;
- trademarks, service marks, brand names and commercial designations;
- protection against unfair competition;
- all other rights related to intellectual activity in the industrial, scientific, literary and artistic fields[1].

Since the Republic of Belarus is a party to this convention and a member of WIPO, the above-mentioned provisions are reflected in the civil legislation of the Republic of Belarus. Art. 980 of the Civil Code of the Republic of Belarus defines three groups of intellectual property objects: results of intellectual activity; means of individualization of participants of civil turnover, goods, works or services; other results of intellectual activity and means of individualization of participants of civil turnover, goods, works or services[2].

Following the theory of natural law, which formed the basis of the legislation of many countries of the world in the field of intellectual property, all objects of intellectual property can be divided into two categories, referring to them in such terms as literary property and industrial property. These terms are also enshrined in international WIPO conventions: the Paris convention for the protection of industrial property of 20 March 1883, and the Berne convention for the protection of literary and artistic works of 24 July 1971[3].

Literary and artistic works cover all works in the field of literature, science and art, no matter how and in whatever form they are expressed[4]. It should be noted that in the civil legislation of the Republic of Belarus, there is no such concept as literary property, but the objects listed above covered by this concept are protected by a separate branch of intellectual property law, called copyright and related rights[5]. As the name implies, that area of law covers two groups of rules: copyright and related rights. These two groups of rights are part of the same branch, since their object is literary property and no formalities are required over arising of these rights, but the object itself, regarding which the right arises, should be represented in some kind of objective form. However, copyright and related rights arise from different entities. So, if copyright arises from the author, creator of a work of science, literature and art which is the result of his creative activity, then related rights arise from the performers of such works[6].

With regard to industrial property the objects of protection are patents for inventions, utility models, industrial designs, trademarks, service marks, trade names and indications of origin or appellations of origin, as well as the suppression of unfair competition [4]. The concept of industrial property includes inventions, utility models, industrial designs, selection achievements, production secrets (know-how), means of individualization of participants in civil turnover, goods, works, services.

It should be noted that the protection of exclusive rights to objects that make up this category has a different nature. For example, inventions, utility models, industrial designs and selection achievements are protected by a patent. It means that exclusive rights are granted to their creator only if the authorized state body establishes compliance of these objects with the

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[2]Civil Code of the Republic of Belarus of 7 Oct. 1998 No. 218-3 // Natl. register of legal acts of the Repub. of Belarus. 2001. No. 7–9. 2/744.

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[6]Agreement on uniform principles of regulation in the field of protection and protection of intellectual property rights [Electronic resource]. URL: http://www.consultant.ru/document/cons_doc_ LAW_113008/ (date of access: 22.01.2020).

requirements of novelty, usefulness and uniqueness. In the Republic of Belarus, such a body is the National Center for Intellectual Property (NCIP). A patent certifies the right of authorship, the exclusiveness of the rights to an invention for 20 years[7].

In respect of production secrets, due to the fact that they are subject to secrecy, the exclusiveness of the rights of their owner is not certified by a patent. Information that constitutes the secret of production is protected in the trade secret regime.

Another institution of industrial property is the means of individualization of participants in civil turnover, goods, works, services, which include brand names, trademarks and service marks, and geographical indications. The intellectual property designations of merchandise or in other words means of individualization of participants in civil turnover are not by their nature intellectual works. However, they are equated to objects of intellectual property protection. This approach can be explained by the high level of trade development, including international trade. In the modern world, there is a need to saturate the market with goods and services to meet the needs of the population. As a result, consumer markets are represented by a wide range of different products from different manufacturers. Trademarks, brand names and other similar means serve the function of individualization of the manufacturer and its products, as well as carry information about the business reputation of the manufacturer of products, their quality. Thus, the means of individualization of participants in civil turnover contribute to the development of fair competition in the market of goods, works and services. In order to gain the customer's trust, manufacturers strive to improve the quality of their products and their competitiveness. In this regard, it is of great importance to prevent the use of means of individualization by persons who are not their owners. In fact, this is the main reason for classifying the means of individualization of participants in civil turnover as objects of intellectual property.

Appellations of origin are also equated to objects of intellectual property. They are designations containing the modern or historical, official or unofficial, full or abbreviated name of a country, geographical object or any locality, as well as a designation derived from such a name and made known as a result of its use in relation to a product whose special properties are exclusively or mainly determined by the natural conditions or human factors peculiar for a given geographical object [5].

Thus, based on the foregoing, we can give the following definition of the concept of intellectual property as a set of exclusive rights to the result of intellectual activity and equated means of individualization.

Today, intellectual property, along with goods, services and finance, is one of the four baskets of world trade. Commercialization of intellectual property objects can provide GDP growth. According to experts, in the most developed countries, it can vary from 60 to 85 %, since the basis of most innovations in the scientific and technical sphere, which form the knowledge-intensive sector of the economy of industrialized countries, is made up of intellectual property objects [6]. In this context, a challenge for the state is to ensure the high-quality functioning of this institution, which is impossible without creating an adequate mechanism for the protection of intellectual property rights, corresponding to objective realities. Structurally it should aline not only with legal regulations but should also comprise effective and competent state bodies. Among such bodies, a significant role is assigned to customs authorities, since they are the ones that guard the interests of copyright holders when importing goods into the territory of the state in violation of their rights.

With the development of digital technologies and the Internet, the products of creative industries (works of literature and art, audio-visual content, engineering solutions) become vulnerable to illegal use. According to Rambler group, the damage from piracy suffered by copyright holders in 2017 is about 70 bln rubles. Unfortunately, digital technologies of hackers are developing almost on a par with security technologies. Today, the challenges that affect the institute of intellectual property are the following:

1) poor working culture of business with intellectual property, which can lead to the following risks:

• loss of rights to the technologies used by organizations and being developed;

• loss of investment in research and development (R&D);

• lack of authority to suppress unfair actions of competitors;

2) the share of intangible assets of organizations is less than 1 %. Its growth is possible as a result of the active involvement in civil and economic turnover of technological solutions used by organizations that have legal protection, and their fair assessment by organizations, which is now hindered by the current tax regime[8];

3) digitalization of the economy.

Indeed, intellectual property law has contributed to the development of technologies, which, in turn, today have a significant impact directly on the institute of

[7]Agreement on uniform principles of regulation in the field of protection and protection of intellectual property rights [Electronic resource]. URL: http://www.consultant.ru/document/cons_doc_ LAW_113008/ (date of access: 22.01.2020).

[8] Idem.

intellectual property law. The main challenges here are the following:

• the laborious process of concluding a contract, requiring special knowledge and costs, equivalent to reproduction and production, carried out in fact with one-click;

• extremely complex chains of relationships between authors and co-authors, as well as consumers, associated with the use, processing and creation of new intellectual property items, resulting in difficulties in determining the novelty and creative contribution. This leads to an increase in the number of judicial disputes and the burden on the judicial system, the deformation of relations and the increase in social tension between the authors of open publications and patent holders;

• the emergence of new digital standards for the description of intellectual property, suitable directly for production, does not preclude obtaining legal protection with the help of formal textual descriptions [5].

Legal protection of intellectual property objects arises due to the fact of their creation, if these are objects of copyright and related rights, or as a result of the provision of legal protection by an authorized state body, if these are objects of industrial property.

The State Committee on Science and Technology of the Republic of Belarus (SCST) is in charge of the intellectual property management system. It is a republican government body of the Republic of Belarus, ensuring the implementation of state policy in the field of protection of rights of intellectual property. The SCST is subordinate to the NCIS, which directly ensures the protection of intellectual property rights and performs the functions of the patent body of the Republic of Belarus defined by the legislation. The body that considers disputes arising from the application of legislation regulating property and personal non-property relations emerging in connection with the creation, legal protection and use of intellectual property objects is the Judicial Board on intellectual property of the Supreme Court of the Republic of Belarus.

Another body subordinate to the SCST is the Republican scientific and technical library, which serves as the only publicly accessible state repository of patent documents in the republic.

Also, the intellectual property management system in the Republic of Belarus consists of such institutions as patent attorneys and appraisers of intellectual property objects. Patent attorneys are citizens of the Republic of Belarus who are entitled to represent individuals and legal entities before the patent authority of the Republic of Belarus. Appraisers are individuals certified in accordance with the established procedure who conduct an independent assessment of intellectual property objects personally as individual entrepreneurs or as employees of a legal entity or an individual entrepreneur who performs the assessment.

As you can see, NCIS is the key state institution in the Republic of Belarus that provides protection of intellectual property rights. However, its functions are limited to registering intellectual property objects, issuing licenses for their use, and others.

The process of commercialization of intellectual property leads to the fact that the latter turns into an object of sale, in other words, into a product. At the same time, being a product, it can have both an intangible form in the form of license agreements and agreements on the transfer of rights to use certain intellectual property objects, and a material form presented together with material values in which it creates added value as a result of the use of license contracts and agreements. Such material values can be produced both on the territory of the state, and come from outside its borders to the domestic market. The customs authorities, due to the nature of their activities, namely ensuring the legal procedure for moving any movable property across the customs border, as well as real estate equated to it, are precisely those state bodies that guard the interests of copyright holders when moving goods across the customs border of the Republic of Belarus and the Eurasian Economic Union (EAEU).

A properly functioning intellectual property institution encourages the development of scientific and technological progress and innovation, and is also a powerful tool for economic growth. According to analysts of the East Economic Forum, the institute of intellectual property is a factor capable of increasing the competitiveness of the economy of any state, depending on how well it functions. The quality of its functioning is evidenced by the level of protection of exclusive rights of copyright holders. When assessing the competitiveness of the world's economies in the Global competitiveness ranking for 2014–2015 on the indicator of intellectual property rights protection, Finland takes the leading place. Intellectual property accounts for 20 % of the country's 256.9 trln US dollars in GDP [6]. This is due to the fact that intellectual property creates added value that allows companies to capitalize on their assets and attract new investments. In other words, the more efficiently the rights of owners of intellectual property objects are implemented, the more favorable the conditions for foreign investment into innovative activities are, as well as in the commercialization of intellectual property objects.

In so far it is evidenced by the methodology for evaluating the GCI Index, the quality of functioning of the intellectual property institute is based on the following:

• adequate legal intellectual property framework, designed to meet international standards and generally recognized world practice;

• the efficiency of public institutions responsible for the enforcement of intellectual property rights;

• the activity of copyright holders in the use of procedures for protecting their exclusive rights.

The last point is to some extent a consequence of the first two.

Successful implementation of the tasks set by the Strategy of the Republic of Belarus in the field of intellectual property for 2012–2020, approved by the Decree of the Council of Ministers of the Republic of Belarus of 2 March 2012 No. 205 in the areas of development of the institution of intellectual property, will ensure the widespread use and commercialization of rights to results of intellectual activities in order to enhance the competitiveness of the Belarusian economy, as well as to ensure security and respect for human rights. On this account, the most important areas of transformation of the sphere of intellectual property of the Republic of Belarus in accordance with the national security strategy are the following:

• raising public and business awareness in the field of intellectual property;

• improving the legal framework for the creation, use and protection of intellectual property;

• encouraging the creation of intellectual property;

• development and implementation of new digital technologies for intellectual property management;

• accounting and protection of the rights of authors and other copyright holders in the digital environment.

At the same time, it is important for the state and civil society to encourage, rather than limit, the sphere of intellectual property. It seems promising to study, generalize and implement international experience and standards in the field of intellectual property rights into national legislation. In this context, we consider it appropriate to create an interdisciplinary group of experts consisting of practicing lawyers with sufficient experience in this field, IT specialists, etc. to make appropriate proposals and recommendations. This will allow the institute of intellectual property in modern Belarus to become a catalyst for innovative processes in economic and public life, and the implementation of human rights in this context will enable the implementation of the intellectual property rights protection for both creators of copyright objects and consumers of intellectual works.

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TOOLS FOR ENSURING GENDER EQUALITY IN THE ACADEMIC SPHERE OF THE REPUBLIC OF BELARUS[1]

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The article deals with the problem of ensuring gender equality in the academic sphere of the Republic of Belarus. Despite the absence of normative legal documents in Belarus specifically aimed at ensuring gender equality, there are three key tools that are aimed at establishing gender equality in the country's higher education institutions: gender education, gender audit, and gender plan. The article analyzes the results of the development and implementation of these tools in the framework of academic cooperation of the Raul Wallenberg Institute of Human Rights and Humanitarian Law (Sweden) and Belarusian universities. The purpose of this article is to systematize the experience of implementing gender plans and gender audits in life activities of higher education institutions, analyze the quality of development, adaptation and implementation of gender equality tools in Belarus. Implementation of the research goal was achieved through the integrated use of methods of system and comparative analysis, systematization and formalization, historical and statistical methods. Based on the analysis, a number of proposals were developed to improve the use of gender equality tools in Belarusian universities: implementation of the principles of active participation and transparency, introduction of relevant gender indicators in the regular reporting system, integration of the theory of chance and the theory of change.

Keywords: gender equality; gender equality tools; gender education; gender audit; gender plan.

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ИНСТРУМЕНТЫ ОБЕСПЕЧЕНИЯ ГЕНДЕРНОГО РАВЕНСТВА В АКАДЕМИЧЕСКОЙ СФЕРЕ РЕСПУБЛИКИ БЕЛАРУСЬ

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Рассмотрена проблема обеспечения гендерного равенства в академической сфере Республики Беларусь. Несмотря на отсутствие в стране нормативных правовых документов, специально направленных на обеспечение гендерного равенства, можно выделить три ключевых инструмента, действие которых ориентировано на становление равенства полов в высших учебных заведениях страны: гендерное образование, гендерный аудит, гендерный план. Анализируются результаты разработки и внедрения данных инструментов в рамках академического сотрудничества Института прав человека и гуманитарного права имени Рауля Валленберга (Швеция) и белорусских университетов. Цель статьи – систематизация опыта имплементации гендерных планов и гендерных аудитов в жизнедеятельность учреждений высшего образования, анализ качества разработки, адаптации и внедрения инструментов обеспечения гендерного равенства в Беларуси. Цель исследования была достигнута посредством комплексного использования методов системного и сравнительного анализа, систематизации и формализации, исторического и статистического метода. На основе проведенного анализа был разработан ряд предложений по совершенствованию использования инструментов обеспечения гендерного равенства в белорусских высших учебных заведениях: реализация принципов активного участия и гласности, включение гендерных показателей в регулярную систему отчетности, интеграция теории случайности и теории изменений.

Ключевые слова: гендерное равенство; инструменты обеспечения гендерного равенства; гендерное образование; гендерный аудит; гендерный план.

Human rights protect the dignity and freedom of every individual (regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status) and collectively form the basis of the legal status of the individual. They are a complex object of research due to their multi-aspect nature, variability of ensuring standards and ethical significance of the problem field. The problem of human rights and freedoms in the modern world is not entirely new. Today, research in the field of human rights in the Republic of Belarus is primarily interdisciplinary in nature: from the interaction of legal disciplines in the process to the synthesis of human rights issues in the medical, economic, legal, political and technical sciences. Methodological issues of research in the field of human rights, the methodology for conducting comparative research on human rights, integrating the gender dimension into them, ensuring the quality of research in this area, and applying tools to ensure human rights and gender equality in all spheres of modern society remain debatable.

Gender equality is not only one of the fundamental human rights, but also a necessary foundation for a peaceful, prosperous and sustainable development. Providing women and girls with equal access to education, health care, decent work and participation in political and economic decision-making processes will contribute to the sustainability of the economy and benefit society and humanity as a whole. Gender equality and the empowerment of women and girls will require increased efforts, including strengthening the legal framework to combat the deep-rooted practice of gender discrimination, which is often the result of patriarchal attitudes and related social norms.

The issue of gender equality has been on the agenda of the world community many times since the adoption of such documents as the Universal declaration of human rights (1948) and the International treaty on civil and political rights (1976). These documents contain the idea that all people are equal and have the same rights in all spheres of society. In 1967, the UN adopted the Declaration on the elimination of discrimination against women, and in 1979 the Convention on the elimination of all forms of discrimination against women. Currently, 189 out of 193 countries have ratified this convention, the Republic of Belarus ratified it on 2 April 1981. In order to ensure gender equality the 1995 4th World conference on women established gender mainstreaming, a major global strategy for the promotion of gender equality. Gender mainstreaming is commonly interpreted as "… the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality" [1, p. 1].

In September 2015, the UN General Assembly adopted a Resolution on "Transforming our world: the 2030 agenda for sustainable development". The document defined 17 main goals of humanity in the field of sustainable development of the world community, whose tasks are complex and indivisible. Along with such goals as eliminating poverty and hunger everywhere, and promoting healthy lifestyles, goal 5 is to achieve gender equality and empower all women and girls [2].

In our country, the National action plan on gender equality in the Republic of Belarus for 2017–2020 has been approved in order to develop mechanisms for introducing a gender approach in the process of developing and implementing state policy measures in various spheres of society's life. This is the 5th policy document aimed at ensuring equal participation of men and women in all spheres of life. There is also a National Council for Gender Policy under the Council of Ministers of the Republic of Belarus, which coordinates the ongoing gender policy in the country and develops coordinated actions aimed at ensuring compliance with the provisions of this Convention on the elimination of all forms of discrimination against women and its Optional protocol. The chairman of the council is the Minister of Labor and Social Protection[2].

In the academic sphere of the Republic of Belarus, there are no normative legal documents specifically aimed at ensuring gender equality. The formation of a strategy for working with staff is generally based on the legislative framework and reflects the social policy of the Belarusian state. However, there are three key tools that are aimed at ensuring gender equality in higher educational establishments of the country: gender education, gender audit, and gender plan. In the context of the stated problem we consider the essence of each of these mechanisms.

The study of international experience in the use of gender equality tools in higher education was made possible by the academic cooperation of a number of higher education institutions in Belarus with the Raoul Wallenberg Institute of Human Rights and Humanitarian (Sweden), which makes a significant contribution to a broader understanding of and respect for human rights and international humanitarian law. The academic cooperation is based on the following four objectives: education (increasing the number of quality courses on human rights (or where human rights and gender equality are integrated), which are supported and provided by targeted academic institutions in Belarus), research (improving the quality and accessibility of relevant research results in the field of human rights (including gender equality), which will be used for public policy dialogue, formal and non-formal education, etc.), institutional development (more active interaction and involvement of academic institutions with social actors on topical issues of human rights and gender equality), and increased access to education and research in the field of human rights and gender equality among European, regional and Belarusian scientists and students.

In this context gender in the academic collaboration, being considered as a cross-cutting issue in the framework of cooperation and the gender mainstreaming strategy, plays a key role in all of the work done in respect of the four main areas. Each area has its own gender mainstreaming task:

1) education (to ensure that the educational opportunities created and supported by the cooperation lead and contribute to the goal of achieving gender equality in Belarus);

2) research (to ensure that research carried out within the framework of the cooperation takes into account gender aspects and addresses gender issues that are relevant to Belarus);

3) institutional development (to promote and support the development of institutional capacity of organizations to address gender inequalities at the work place and interaction with students);

4) information and educational activities (to raise awareness about the gender equality in society and disseminate results of the cooperation to a broader public).

In the context of the stated problem we consider in more detail the experience of developing and implementing tools for ensuring gender equality in the life activities of universities of the Republic of Belarus. It is important to clarify that this study does not address the evaluation of the results, impact, effectiveness and efficiency of gender education, gender audit and gender plan. It focuses on the methodology, quality of development and implementation of these tools in Belarus.

In a narrow sense, gender education is educational programs on gender issues that are taught in various versions to students, usually majoring in social sciences and the humanities. In a broader sense, gender refers to education that promotes gender equality and helps overcome negative gender stereotypes. In this sense, gender education does not necessarily have to be expressed in any specific educational programs, it seems to be present in the processes of training and education and is part of the ideology of higher education [3].

Gender education is recognized by researchers as an educational model that considers gender interests, takes into account the presence of gender problems in the social development of society and the education system, and a search for ways to solve them is being made.

Gender education involves mastering the system of knowledge and skills and their use not only in everyday life, but also in the process of professional activity. At the same time biological differences are not crucial for shaping the psychological and social characteristics of women and men. It is based on the principles of gender equality and the rejection of harmful stereotypes that characterize the role of men and women

[2]The provision on the National Council for Gender Policy under the Council of Ministers of the Republic of Belarus : approved by the resolution of the Council of Ministers of the Republic of Belarus 30 of June 2012 No. 613 // ETALON. Legislation of the Repub. of Belarus / Natl. center of the legal information of the Repub. of Belarus. Minsk, 2017.

in society. This means that everyone, regardless of gender, can choose a profession, passion and life priorities. Gender-oriented development of the education system will contribute to the elimination of gender stereotypes at the level of society and the establishment of gender equality.

The system of gender education and enlightenment in Belarus began to take shape in the late 1990s and early 2000s. However, at the moment, it can be argued that this work requires systematization and improvement.

The history of the formation and development of gender education in higher education is represented by four stages [4].

The first stage can be called organizational and educational. This is the emergence of gender studies in the education system.

The second stage is the period of institutionalizing gender in education: gender knowledge, gender course, gender discourse. This is the period of the creation of a gender-sensitive and anti-discrimination regulatory framework that regulates relations in the higher education system (including regulations on ensuring equal rights of women and men in the fundamental laws: the Constitution, the Education Code, etc.).

The third stage involves the recognition of clear professional standards and criteria in the field of gender research and gender discourse, and the consolidation of scientists and teachers around gender issues. This is the adoption of special laws on gender equality and gender-oriented strategic documents (concepts, strategies, programs and action plans for the promotion of gender equality) where the long-term gender policy of the state in the field of gender education is defined.

The fourth stage is related to the process of legitimation and dissemination of gender education in higher education.

The period of systematization of the main principles, goals, tasks and directions of state policy on the issue of equality of women and men in the educational sphere provides for the introduction of gender knowledge at all levels of the education system, raising public awareness on gender issues and the formation of egalitarian gender perceptions on gender relations, while at the same time orienting educational institutions to develop new didactic materials and curricula in accordance with the principles of gender equality.

The National action plan on gender equality for 2017–2020 in the Republic of Belarus highlights the need to include gender education in the component of the knowledge system, to conduct gender expertise of textbooks, to disseminate gender knowledge and improve the level of gender culture[3].

Today, the main policy document binding to form a gender culture in educational institutions is the Concept of continuous education of children and young students in the Republic of Belarus (2016–2020), the first version of which was approved by the Decree of the Ministry of Education of the Republic of Belarus in December 2006. According to this program document, educational work was carried out in educational institutions of the Republic of Belarus from 2007 to August 2015. Under this document gender education, aimed at the formation of students' ideas about the role and life purpose of men and women in modern society, was recognized as one of the components of education[4].

On 1 September 2015, on the basis of para 1 of Art. 95 of the Code of the Republic of Belarus on Education, the Decree of the Ministry of Education of the Republic of Belarus on approving the Concept of continuous education of children and young students (Concept) entered into force[5]. In the new document, family and gender education are united by a common goal of forming, first and foremost, a responsible attitude to the family, marriage, upbringing of children, and only then conscious ideas about the role and life purpose of men and women in modern society. Nevertheless, gender education, according to the Concept, involves mastering the essence and content of the concepts "gender", "gender stereotypes", "gender roles", as well as forming a non-discriminatory attitude to representatives of both sexes.

The gender situation in educational institutions, according to the results of the study, enrollment in primary school among boys (76.2 %) is more timely than among girls (65.7 %).

In the Republic of Belarus, in 2019, the attendance of primary and secondary schools by boys and girls was almost the same: the indices of gender equality in the primary and secondary education system are close to one. After completing the compulsory level of education, boys are more likely than girls to leave general educational establishments to receive vocational or specialized secondary education, so the number of girls enrolled in general secondary education exceeds the number of boys. Gender differences in attendance of educational institutions are particularly pronounced among young people aged 20 and over: the proportion of girls aged 20–24 receiving education is 1.5 times higher than that of boys.

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[3]Resolution of the Council of Ministers of the Republic of Belarus of 17 Feb. 2017 No. 149 on approval of the National action plan for ensuring gender equality in the Republic of Belarus for 2017–2020 [Electronic resource]. URL: http://www. government.by/ru/solutions/2816 (date of access: 14.01.2020).

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[5]Idem.

The high educational level contributed to Belarus becoming one of the top 16 countries in terms of the women's development index. So, the number of female students in the 2017/2018 academic year was 56.9 %. Among employed in the economy, the share of working women with higher education is 33.9 %, while the same indicator among men is 24.4 %. Among the teaching staff of universities women make up 55.7 % [5]. However, the post of rector of a higher educational establishment is taken only by 3 women, which is 5.8 % of the total. The share of women among vice-rectors and directors of branches is 25 %, deans of faculties and deputy deans – 36.5 %, heads of departments – 34.3 % [6].

The second tool for ensuring gender equality in the academic field is gender audit. Gender audit is a tool and a process that identifies problem areas and difficulties in establishing gender equality, recommends methods for solving these problems, and records positive experience in achieving gender equality.

By its nature, gender audit is a "social audit" and belongs to the category of quality checks. It creates prerequisites for identifying key problems, recommends ways to solve them, offers possible improvements and innovations, and increases collective potential. It evaluates the progress made in gender issues, helps organize initiatives aimed at achieving gender equality, and provides training for the team on gender issues through teamwork and information exchange. An important component of gender audit is the development of recommendations on its results, the list of which corresponds to the peculiarities of implementing gender approaches in a particular environment [7].

In 1919, the International Labor Organization (ILO) was founded, the activity of which is aimed at implementing the fundamental principles and rights of women and men in the field of work. At the same time, gender equality is an integral part of the program to ensure decent working conditions and poverty reduction.

The first gender audits were conducted in 2001 in accordance with the Integrated gender policy of the ILO. In 2007, the ILO published a guide on gender audit, which detailed the planning, preparation and implementation of gender audits. Since 2009, gender audits have been conducted at enterprises and organizations of post-Soviet societies.

According to the gender audit guide the ILO identifies 12 main topics for analysis in the course of a gender audit:

1) current gender issues at the national and international level, discussions on gender issues affecting the organization where the audit is being conducted, the relationships of this organization with the national mechanism for gender equality and women's organizations;

2) the main strategy of the organization in the field of gender equality and its reflection in the objectives of the organization or unit, its programs and budget;

3) the promotion of gender equality in the implementation of various programmes and projects;

4) availability of gender experts and a gender strategy aimed at increasing competence in this area;

5) information, knowledge and experience management;

6) monitoring and evaluation systems and methods used;

7) the choice of partner organizations;

8) outcomes and reputation in the public eye;

9) decision-making in the field of promoting gender equality;

10) personnel policy and human resources;

11) organizational culture;

12) representation of achievements in the field of gender equality.

For each of the topics, a list of key issues is developed, the main function of which is to raise awareness and identify existing problems.

The integration of gender audit in the activities of universities will serve as a tool and process based on the principles of active participation. It will contribute to the organization's self-learning process by methods of effective implementation of an integrated gender approach in practice. The results of gender audit can determine the effectiveness of implementing gender mainstreaming, assess the relative progress in advancing gender equality and the effectiveness of the implementation of the gender plan, identify the main problems related to the integration of gender education and gender-oriented approach in the higher education system of the Republic of Belarus, develop practical recommendations to address possible issues and improve strategies for gender equality in the academic field, record positive experiences in achieving gender equality [8].

The main objective of gender auditing is to promote self-training of the organization in the effective application of an integrated gender approach in the organization's policies, programs and functioning, as well as to assess the extent to which the adopted policy is reflected in the work of individual employees, structural divisions and higher education institutions as a whole.

The first gender audit in the field of higher education of the Republic of Belarus was conducted in 2017 at the faculty of international relations of the Belarusian State University (FIR BSU). The activities of the gender audit covered 115 employees of the FIR BSU (29.7 % of the total staff), including 49 men (42.6 %) and 66 women (57.4 %). 354 students participated in the surveys and discussions (19.1 % of the total number of students in the 2017/2018 academic year), including 137 men (38.7 %) and 217 women (61.3 %) [9].

The second experience of conducting gender audit in the Republic of Belarus was the gender audit of the faculty of management technologies and humanitarization of the Belarusian National Technical University (FMTH BNTU) in 2019. Its objective was to assess the quality of implementation of the BNTU's gender plan for 2017–2019, and the main areas of audit were education, science, public relations and management. The audit covered 115 employees of both sexes of the FMTH BNTU (49 men and 66 women), 354 students of both sexes of the FMTH BNTU (137 men and 217 women), 83 local regulations were analyzed as well as 2105 publications of teaching staff and students.

In the framework of the implementation of the gender audit of the FMTH BNTU the following methods were used: quantitative and qualitative analysis of statistical data and documents, questionnaire survey, comparative and gender analysis.

In order to implement audit activities, the following tools were developed and used: instructions for analyzing documents, tables for a quantitative (statistical) analysis of areas of audit, a table for (qualitative) analysis of a document, questionnaires for a sociological survey of employees (men and women) of the faculty, questionnaires for a sociological survey of students of the faculty, questionnaires-assessment forms of events, tables for quantitative (statistical) analysis of students of the faculty.

In the course of the gender audit, the effectiveness of implementing the gender plan of the FMTH BNTU, administrative system for supporting the implementation of the gender plan, gender policy and an integrated gender approach, gender equality promotion was evaluated. Also, gender audit contributed to team building and stimulated the development of inter-faculty communication.

Gender audit extended collective capacity of gender analysis of various aspects of professional activity of employees (men and women) of the faculty. It revealed the strengths and weaknesses of FMTH BNTU to promote gender equality, contributed to the development of practical recommendations for the implementation of gender mainstreaming and strengthened team spirit, stimulate the analysis and exchange of information.

The results obtained suggest that the experience of gender audit proved to be a valuable opportunity for organizational training of both institutions. These two studies improved the collective capacity of both institutions to collect statistics and data on gender issues within the country, which had not previously received such structured attention. In the course of the study, each institution tested a method for collecting data and exchanging information between all departments and units. If these methods are further developed, and if a regular monitoring system to collect at least basic statistics from across the organization on a periodic basis is installed in each faculty (preferably in the form of an online internal database), it will enable an assessment of progress and tracking the changing trends overtime and deepening the organizational learning not only on gender but in general terms.

In addition, the research process itself, as well as the data collection process, contributed to raising awareness of gender issues. Through data collection, efforts to ensure gender equality in institutions have become more visible. Both studies paved the way for fruitful conversations, dialogues, and reflections on gender issues and increased gender awareness among students and teachers.

In respect of inclusiveness (stakeholder involvement), the model for creating a Gender Audit Organizing Committee, consisting of representatives of various departments and units, various working groups operating in close cooperation, was satisfactory. The model presents the following strengths: the diversity of actors, units and departments; separation of duties (data collection, analysis and reporting) between working groups; meetings enabling collective planning and implementation; and strong support from the senior staff.

It was found that the development and implementation of gender audit in two universities meet the goal of analyzing the institutional gender situation. Both studies reflect strong intentions and relevant approaches. However, their scope, evidence base, and coverage of key research areas are not broad enough to understand the overall institutional state and best practices at the university.

The next tool for ensuring gender equality in higher educational establishments is a gender plan. The gender plan is a document that contains the main goals of the organization in the field of gender equality and determines the order of implementation of the work planned in this direction, indicating its goals, content, scope, methods, sequence and timing. The gender plan is drawn up for a specific time period and is aimed at ensuring gender equality in a particular structural unit and (or) university as a whole [7].

The goal of the gender plan is to coordinate actions aimed at preventing gender discrimination, creating conditions that ensure full implementation of the personal potential of women and men in all spheres of life and gender equality in the workplace.

Gender action plan is a set of short, medium and long-term actions that outlines the steps by which an institution plans to implement its gender equality policy and achieve its gender goals. It can also be called a gender equality action plan or a gender plan. The gender action plan tool is commonly used in international organizations, government institutions, higher education institutions, civil society organizations, international financial institutions, and other kind of organizations. Institutions develop gender action plans to identify specific actions, tactics, or results targets for the practical implementation of their gender equality policies and gender mainstreaming strategies (i. e., gender mainstreaming in all areas of activity).

These plans are flexible and adaptable strategic plans for long-term change through short, medium and long-term actions including specific targets; with a collective focus rather than on single unrelated interventions. They are usually formed using a holistic and general institutional approach that covers the entire range of operations and activities, including all programs, projects, policies, institutional practices, rules, procedures, structures, organizational culture, daily routines, management, finance, communications, human resources, and so on. In the plans the steps by which the institution will integrate gender perspectives in all these areas are also determined.

In the context of higher education, the gender action plan sets out a road map that leads to institutional changes to achieve internal equality between men and women and promotes gender equality in the production, dissemination and exchange of knowledge (research, education, information and educational activities). It usually outlines a sequence of systematic actions and steps that are expected to gradually transform a higher education institution into:

1) a workplace free from any gender prejudice or discrimination, where all employees can work safely, with dignity and have access to equal remuneration, resources and opportunities regardless of gender;

2) inclusive, emotionally-comfortable learning and teaching environment in which students can improve their knowledge, skills and competencies using pedagogical methods and techniques that are consistent with the principles and values of gender equality in relation to the gender aspects of their disciplines;

3) personality-oriented educational space for the production, exchange and transfer of knowledge.

The first gender action plan in the framework of higher education in Belarus was developed by the FIR BSU in 2014. The gender plan of the FIR BSU had a three-year implementation period from January 2015 until the end of 2017. The second initiative to adopt a gender plan was undertaken by the FMTH BNTU. The gender plan of the FMTH BNTU, designed for 2 years, was adopted in 2016 and entered into force in January 2017.

The purpose of the gender plan of the FIR BSU was to coordinate actions aimed at preventing gender discrimination and creating conditions that ensure a more complete implementation of the personal potential of women and men in all areas of the faculty's life.

The objectives of the FIR BSU gender plan were the following:

1) promotion gender parity at all levels of government;

2) introduction gender knowledge into the education system;

3) formation in the public consciousness the need for social equality of men and women in all spheres of public life;

4) transformation of the public consciousness, elimination of gender stereotypes associated with the idea of superiority and dominance of one sex over the other.

The main activities within the framework of this document, were advisory and were aimed at disseminating knowledge about the gender equality policy, developing and implementing a gender audit system and a gender-oriented development program, developing gender-neutral behavior and attracting the attention of as many supporters as possible to this problem field.

The implementation of the adopted plan showed an increase in the awareness of FIR BSU employees and students about gender education, gender culture and gender issues in Belarusian society. The gender equality issues began to be actively discussed, and in the faculty's public opinion the belief that achieving gender balance and gender equality leads to the establishment of more harmonious and fair relations in the team, creates a more favorable internal atmosphere, and improves the quality of professional activity was significantly strengthen [9].

As for the gender plan of FMTH BNTU, it focused primarily on improving the level of gender culture and gender education of faculty members and students. The starting point for the development of the gender plan was a comprehensive study of the initial situation at the faculty, which included the analysis of documents, statistical analysis of the number and composition of employees and students of FMTH BNTU, and a questionnaire survey of employees and students of the faculty.

The goal of the FMTH BNTU gender plan was to coordinate the promotion of gender education and research in the field of gender equality among employees and students of the FMTH BNTU, as well as to promote the development of a gender culture at the faculty. The tasks reflected the problem field of this particular faculty and were a kind of steps that contribute to the establishment of gender equality in the specified structural unit. The developed specific recommendations and corrective measures aimed at the smooth, step-by-step implementation of the system for ensuring gender equality at the FMTH BNTU.

There are many similarities between the two gender plans of universities. Both plans have twenty types of activities, listed in four categories: education, research, informational and educational activities or public relations and management.

A relevant integrated approach to gender mainstreaming in education can be seen in both gender plans. It was revealed that in both plans, a number of activities were developed to improve the gender competence of teaching staff. Some materials and guidelines for integrating gender issues into the educational process have been developed and implemented.

The implementation of the gender plan showed that measures to build the capacity of the teaching staff and develop materials are not enough to ensure the systematic and sustainable integration of gender aspects in education. Institutional policies made by senior managers and central government authorities are needed. For example, the creation of a methodological commission to promote the agenda of gender integration in education and disseminate it throughout institutions. Among other examples of the development of institutional policies to systematize gender integration in education are the following:

1) the introduction of compulsory gender courses in the curriculum so that each student takes at least one gender course for the entire duration of the study;

2) making gender modules obligatory in certain core courses;

3) adoption of mandatory rules and standards for gender-sensitive teaching, creating inclusive and gender-sensitive classrooms, etc.;

4) creating incentives for teaching staff to integrate gender issues in the curriculum.

In two gender plans education is a priority area as a key area of intervention and is broadly covered by a structured and relevant approach. Thus, both universities were careful not to be very ambitious in their first initiative to develop a gender plan and limited the scope of their pilot plans to only a few areas.

The analysis of the results obtained makes it possible to propose a number of initiatives to improve the use of gender audit and the gender plan as the tools for ensuring gender audit in Belarusian universities:

• to ensure more active participation of all stakeholders (faculty, research staff, students, administrative staff, management, etc.) in the development of subsequent gender plans and gender audit programs. This process should include representatives of different categories (students, teachers, administrative staff, trade union representatives, management, etc.) from different departments and units;

• to introduce relevant gender indicators in the regular reporting system of universities and(or) faculties. This will enable the institution to regularly monitor relevant indicators. For example, when conducting research related to statistics (publications, research grants, funding, etc.), information can also be provided by disaggregating researchers or authors by gender, as well as by disaggregating research results according to the degree of gender integration. Other gender indicators can also be developed for other areas of reporting, such as participation in conferences, training and other scientific events, recruitment, promotion, etc.;

• to introduce the theory of randomness in the gender planning procedure, which is a clear description of how and why the desired changes should occur at the university, as well as the theory of change (a logical chain of results). The theory of change describes how and why an expected change should occur in a particular context, and relates input data to actions, actions to short-term, medium-term, and long-term results (outputs, results, and impacts). It displays what the project, program, or plan is doing (its activities or actions) and how they lead to the desired goal. When the bridge between the actions and the goal is not exactly connected, the goal is unlikely to be achieved, since the project or plan does not have good planning.

The results of the implementation of gender education tools, gender audit and gender plan confirm the importance of international academic cooperation aimed at strengthening the capacity of Belarusian higher education institutions in the field of human rights and gender equality.

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THE RIGHT TO FAMILY REUNIFICATION[1]

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The article examines the mechanisms for implementing the right to family reunification at the international and national level, concludes that the right to family reunification should be more clearly recorded in certain international acts, justifies the need to amend the legislation of the Republic of Belarus and unify the legislation of the CIS countries in order to implement the right to family reunification by persons who have received additional or temporary protection.

Keywords: family reunification; family member; migrant; foreign citizen; migration policy.

ПРАВО НА ВОССОЕДИНЕНИЕ СЕМЬИ

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Исследуются механизмы реализации права на воссоединение семьи на международном и национальном уровне, делается вывод о необходимости более четкой фиксации права на воссоединение семьи в отдельных международных актах, обоснована необходимость внесения изменений в законодательство Республики Беларусь и унификации законодательства стран СНГ в целях реализации права на воссоединение семьи лицами, получившими дополнительную или временную защиту.

Ключевые слова: воссоединение семьи; член семьи; мигрант; иностранный гражданин; миграционная политика.

The realization by migrants of the right to family reunification, first of all, provides them with psychological, physical and economic protection. At the same time, promoting the implementation of this right contributes to solving a number of social and economic issues at the state level, in particular reducing the economic costs of material support for migrants, reduction in the number of illegal migrants, entering the country as a family member eliminates the need for refugee status.

Issues of legal regulation of the status of migrants and foreign citizens in legal science have been stu-

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died by such scholars as N. V. Valyushko [1], V. G. Tikhinya [2], S. V. Zenchenko [3], A. V. Selivanov [4], S. V. Simonova [5], etc. In comparison, the purpose of this article is to analyze international acts and national legislation on the protection of the family and make suggestions on improving the legal regulation of the provision of guarantees in the exercise by migrants of the right to family reunification.

The right to family reunification in international human rights instruments

More than 70 years ago, the 1948 Universal declaration of human rights (the Universal declaration) proclaimed the right to "found a family" and the right to protect the family "on the part of society and the state" (Art. 16). Art. 25 enshrines the right of everyone to "social services, which are necessary to maintain the health and well-being of himself and his family"[2]. The Universal declaration became the basis and impetus for states in the adoption of mutual international obligations to protect and ensure the right to a family, which subsequently found consolidation in a number of international treaties, both universal and regional. Thus, the International covenant on civil and political rights[3] of 1966 proclaims: "The family is the natural and fundamental unit of society and has the right to protection from society and the state" (Art. 23). In the Covenant on economic, social and cultural rights of the state[4], recognizing "the right of everyone to an adequate standard of living for him and his family", they undertake to take "appropriate measures to ensure the exercise of this right" (Art. 11).

The need for protection and family assistance from the state was also reinforced by the UN Convention on the rights of the child (1989), within the preamble of which states recognize that "a child needs to grow up in a family environment in an atmosphere of happiness, love and understanding for the full and harmonious development of his personality"[5]. This convention states: "States shall ensure that the child is not separated from their parents against their will" (Art. 9), and statements by the child or his parents "to enter or leave the state for family reunification should be considered positive by the participating states in a humane and operational manner" (Art. 10). Thus, the convention does not contain mandatory instructions for the adoption of specific measures by the state aimed at family reunification, but obliges them to positively consider such issues within their internal competence.

The right to family reunification and unity is of particular importance in connection with migration processes. In the summer of 1951, a conference was held under the auspices of the UN, which resulted in the adoption of the Refugee convention. The Final act of the conference recommends that governments of states take the necessary measures to ensure "the unity of the refugee family, especially in cases where the head of the family has fulfilled the necessary conditions for entry into a particular country"[6].

On 25 September 1981, the Executive Committee of the Office of the United Nations High Commissioner for Refugees adopted Conclusion No. 24 (XXXII) on the reunification of disparate refugee families. To this end, countries of asylum and countries of origin should make "efforts to ensure that the reunification of disparate refugee families occurs as soon as possible"[7].

It should be noted that the principle of family unity was not fixed in the Convention on the status of refugees, its content does not contain provisions on ensuring the right of states to protect refugee families. In development of this convention, under the auspices of the UN in 1990, the Convention on the protection of migrant workers and members of their families, Art. 44 which obliges states to take appropriate measures to ensure the unity of the families of migrant workers, and to facilitate the reunification of migrant workers with their spouses and minor children[8].

The European convention for the protection of human rights and fundamental freedoms of 1950 (including additional protocols) does not proclaim a right to family reunification. Art. 8 of this convention only protects the right to respect for personal and family life, for correspondence and the conditions for interference with this right only on the basis of law and in exceptional cases[9]. The member states of the European Union took the same path, securing in the Charter of fundamental rights of 2000 the right to respect for

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private and family life (Art. 7) and the right of the child to "permanent personal relationships and regular direct contact with both of their parents" (Art. 24)[10]. However, the European social charter of 1961 (revised in 1996) in Art. 19 provides for the obligation of states "to facilitate, to the extent possible, family reunification of a migrant worker who has received permission to settle in their territory"[11].

Of course, the state has the right to control the entry of foreigners into its territory, however, in our opinion, the absence of a clear fixation of the right to family reunification in these agreements can create difficulties for foreigners in obtaining protection in the European Court of Human Rights. This, in turn, can become an obstacle to obtaining the right to enter the territory of a certain state in order to reunite with the family. The clearly expressed wording of a specific law enables its uniform understanding and application, and does not allow a variety of interpretations.

By proclaiming the right to protect family life and not providing guarantees to preserve the integrity of the family, the state cannot fully ensure the protection of family values and respect for the family. The guarantees are designed to create conditions under which the rights enshrined in regulatory legal acts become a reality. Without appropriate guarantees, rights are a declaration and are formal in nature. Legal guarantees are embodied in special regulatory acts.

Significant experience in regulating migration processes has been accumulated by the Commonwealth of Independent States. One of the first recommendations adopted by the Inter-Parliamentary Assembly of the CIS on 29 December 1992, was the legislative act "On the agreed principles for the regulation of citizenship", Art. 8 of which the rule enshrined: "The resolution of issues of citizenship by the competent authorities should facilitate family reunification".

On 9 December 2000, the Interparliamentary Assembly of CIS Member States in the Decree "On the legal regulation of migration processes in the territory of the Commonwealth of Independent States" imposed on states the obligation to facilitate family reunification of migrant workers.

The model law on migration adopted at the plenary meeting of the Inter parliamentary Assembly of the CIS Member States in November 2015 contains Art. 14 "Migration with the aim of family reunification", which provides for the rights of spouses who are citizens of different states, as well as their children who are citizens of one state or different states, based on personal choice to live as a single family in the territory of any of the states of which at least one citizen from family members. In case of appropriate treatment by a citizen of the state, the state should facilitate the reunification of its divided family on its territory in accordance with its legislation and international agreements to which the state is a party[12].

The disadvantage of this rule is the restriction of the possibility for family members to reunite with a relative who legally resides in the territory of a state, and is not a citizen. Thus, the norms of the model code on family reunification are not applicable to persons wishing to reunite with a person who has the right to permanent residence in the territory of one of the CIS countries, or with someone who uses temporary forms of protection.

The national legislation of the CIS states independently determines the order of entry and family reunification.

Legislation of the Republic of Belarus on the right to family reunification

Significant experience in regulating migration processes, including family reunification, has been accumulated in the Republic of Belarus. The first State migration program for 2006–2010 included the following provision: "According to the principle of family unity proclaimed in the Republic of Belarus, family members of a foreigner granted refugee status, additional protection or asylum who arrived in the Republic of Belarus for family reunification within one year after notifications of a foreigner of a decision made at his request for protection, as well as of children born in the Republic of Belarus in the families of foreigners, one of whom is granted refugee status, before full protection or asylum, refugee status, additional protection or asylum are also granted"[13].

The Law of the Republic of Belarus of 23 June 2008 No. 354-3 "On granting refugee status, additional protection, asylum, and temporary protection to foreign citizens and stateless persons in the Republic of Belarus" (hereinafter – Law No. 354-3) clarified the concept of family reunification as "arrival in the Republic of Belarus for the purpose of joint residence of family members of

[10]The European Union Charter of fundamental rights [Electronic resource]. URL https://ru.qwe.wiki/wiki/Charter_of_Fundamental_Rights_of_the_European_Union (date of access: 02.03.2020).
[11]The European social charter [Electronic resource]. URL: https: //www.coe.int/ru/web/moscow/evropejskaa-social-naa-hartia (date of access: 02.03.2020).
[12]About the migration : the model law : supplement 1 to the Decree of Interparliamentary Assembly of the CIS member states of 27 Nov. 2015 No. 43-5 [Electronic resource] // ConsultantPlus: Belarus / "YurSpektr". Minsk, 2020.
[13]The State migration program adopted for 2006–2010 : adopted by the Decision of the Council of Ministers of the Republic of Belarus of 8 Dec. 2005 No. 1403 [Electronic resource] // Inform. legal system Business-Info / Natl. center of legal information of the Repub. of Belarus. Minsk, 2020.

a foreigner who has been granted refugee status, additional protection or asylum in the Republic of Belarus"[14].

A foreign citizen or a stateless person who has the right to family reunification can obtain the right to permanent residence in the Republic of Belarus. The Law of the Republic of Belarus "On the legal status of foreign citizens and stateless persons"[15] stipulates that foreigners are issued a permanent residence permit within the immigration quota established by the Council of Ministers of the Republic of Belarus. At the same time, foreigners with the right to family reunification move to the Republic of Belarus for permanent residence in order to live together outside the established immigration quota. Art. 55 of the said law defines the circle of persons entitled to family reunification: spouse, minor children, including adopted minor children, unmarried children, including adopted children older than 18 years old, disabled parents and adoptive parents. Assuming all the aforementioned persons have an invitation from a spouse, parents, adoptive parents, children, including adopted children, who are citizens of the Republic of Belarus or foreigners permanently residing in the Republic the face of Belarus. In some cases, the right to family reunification may be granted to other relatives of foreigners permanently residing in the Republic of Belarus, provided that the inviting person has sufficient housing conditions and a legitimate source of income providing him and his family members a living wage established in the Republic of Belarus[16]. Thus, the Republic of Belarus provides an opportunity to exercise the right to family reunification not only with a citizen of the Republic of Belarus, but also with foreign citizens permanently residing in Belarus.

It should be noted that the amendments to the Law of the Republic of Belarus of 4 January 2010 No. 105-З (hereinafter – Law No. 105-З) "On the legal status of foreign citizens and stateless persons in the Republic of Belarus" in December 2019 did not solve the problem of reuniting with the family of persons who received additional or temporary protection and who are not permanently resident in the Republic of Belarus.

In accordance with Art. 22 of the Law No. 354-З additional protection is granted to a foreigner for a period of up to one year, the period of its provision can be extended, but not more than by one year each time. According to Art. 23 of the same law, a foreigner who is granted additional protection receives the right only to temporary residence in the Republic of Belarus for the period of the provision of additional protection. Thus, a foreign citizen who has received additional protection cannot exercise the right to family reunification by virtue of the current norm of the Law No. 105-З, which provides the possibility of family reunification only with a foreigner permanently residing in the Republic of Belarus. We believe that it is necessary to eliminate these contradictions in the legislation of the Republic of Belarus and not to connect the possibility of exercising the right to family reunification of a migrant with permanent residence in the host state.

In addition, the presence of distribution quotas in the registration of applications for refugee status, additional protection or asylum, which are established annually by a Decree of the Ministry of the Internal Affairs of the Republic of Belarus, does not contribute to the realization of the right to family reunification. We believe that when exercising the right to family reunification, the maximum standards for the admission of migrants by citizenship and migration units should not be taken into account.

The Republic of Belarus regulates in sufficient detail the procedure for organizing the activities of state bodies to consider applications for refugee status, additional protection or asylum, as well as applications for assistance in family reunification. This work involves units and the Department of Citizenship and Migration, the Ministry of Foreign Affairs of the Republic of Belarus, diplomatic missions and consular offices of the Republic of Belarus. The legislation provides for reasonable enough time for consideration of documents and adoption of conclusions and final decisions[17].

Particular attention, in the Republic of Belarus, is paid to protecting the rights of children, including family residence. The Law of the Republic of Belarus on the Rights of the Child[18], adopted in development of the Convention on the rights of the child in 1993, obliged the state to take measures in case of emergency to protect the life, health and property of children, including measures to reunite them with their families and evacuate from the country (places) of their stay.

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[14] On granting foreign citizens and stateless persons refugee status, additional protection, asylum and temporary protection in the Republic of Belarus : Law of the Repub. of Belarus of 23 June 2008 No. 354-З [Electronic resource] // ConsultantPlus: Belarus / "YurSpektr". Minsk, 2020.

[15] On the legal status of foreign citizens and stateless persons : Law of the Repub. of Belarus of 4 Jan. 2010 No. 105-З // Natl. cegister of legal acts of the Repub. of Belarus. No. 15.2/1657.

[16] On the legal status of foreign citizens and stateless persons in the Republic of Belarus : Law of the Republic of Belarus of 4 Jan. 2010 No. 105-З [Electronic resource] // Inform. Legal system of Business-Info / Natl. center of legal information of the Repub. of Belarus. Minsk, 2020.

[17] Instructions on the organization of work when considering applications for refugee status, additional protection or asylum in the Republic of Belarus, applications for extending the period for providing additional protection in the Republic of Belarus, applications for assistance in family reunification, making decisions about loss, cancellation of refugee status or additional protection in the Republic of Belarus and the preparation of proposals on the need for decisions on the loss or deprivation of asylum in the Republic of Belarus : adopted by the Decision of the Ministry of Internal Affairs of the Repub. of Belarus of 22 June 2017 No. 173 [Electronic resource] // Inform. legal system Business-Info / Natl. center of legal information of the Repub. of Belarus. Minsk, 2020.

[18] On the rights of the child : Law of the Repub. of Belarus of 19 Nov. 1993 No. 2570-XII // Zvjazda. 11 Dec. 1993.

Ensuring the right to family reunification under the legislation of individual post-Soviet states

Many post-Soviet states have accumulated sufficient experience in ensuring the human right to family reunification. For example, in the Russian Federation, the state program has been approved to facilitate the voluntary resettlement of compatriots living abroad in the Russian Federation together with family members. The program is unlimited in nature and is aimed, on the one hand, to solve the tasks of the state in developing the territories proposed for resettlement, and on the other hand, to ensure the interests of immigrants and the host community.

In addition, a number of public organizations studying interethnic relations are currently operating in the Russian Federation: both state research and expert organizations (for example, the research department of the Russian Academy of Sciences), and non-governmental analytical centers (for example, the Center for Migration Studies). Unfortunately, there are no such public associations in the Republic of Belarus. One of the activities of the Belarusian Red Cross Society is the collection and registration of data on persons missing as a result of situations, in order to search for these people, help in restoring relations between family members, separated as a result of armed conflicts and emergencies, in the search specified persons and family reunification.

The Law of Ukraine "On the legal status of foreigners and stateless persons"[19] defines the concept of family reunification and indicates the need for documentary evidence of the availability of financial security for the maintenance of family members in Ukraine.

The issues of granting and extending the right to temporary residence for family reunification are sufficiently detailed in the legislation of the Republic of Moldova. Foreigners who have been granted the right to temporary residence, with the exception of persons to whom this right has been granted for study purposes, may apply to the competent authority for foreigners for the reunification of family members.

The Law of the Republic of Kazakhstan on migration[20] also establishes the procedure and rules for family reunification, containing a detailed list of persons that have this right, and setting restrictions. Immigration for the purpose of family reunification is not allowed in relation to family members who are on the territory of the Republic of Kazakhstan if the migration is for the purpose of receiving an education, seasonal foreign workers, humanitarian immigrants. It is noteworthy that the Law "On the legal status of foreigners of the Republic of Kazakhstan" does not provide, as a prerequisite, confirmation by an inviting person of solvency for family members to live in Kazakhstan (Art. 4)[21].

Conclusion

Thus, we can conclude that the existing international legal mechanisms and national law can successfully solve the problems of family protection.

In our opinion, the resolution of the following tasks, both at the international and national levels, will contribute to a more effective development of the state strategy in the field of migration policy:

1) in the CIS model law «On migration», it is advisable to include a rule on the right to reunite family members with a citizen of one of the CIS countries, or the right to permanent residence in the territory of one of the CIS countries, or with someone who uses temporary forms of protection;

2) we consider it reasonable to amend the law of the Republic of Belarus on the legal status of foreign citizens and stateless persons in order to eliminate differences between persons permanently residing in the Republic of Belarus and persons with additional and temporary protection in the sphere of exercising the right to family reunification and bring it into line with the law on refugees;

3) it is necessary to pursue a policy of supporting children's rights in the process of family reunification, to involve public associations more widely in activities to ensure the rights to family reunification.

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LEGAL REGULATION OF THE RIGHT TO WORK FOR PEOPLE WITH DISABILITIES AT THE INTERNATIONAL AND NATIONAL LEVELS[1]

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The article is devoted to the analysis of legal regulation of the right to work of people with disabilities. This article analyzes the stages of formation of international standards of the rights of people with disabilities in the sphere of employment, and puts emphasis on the measures that states should implement in domestic law to create equal opportunities, equal treatment, an integrated approach and social inclusiveness. Problematic areas of realization of labour potential are outlined and solutions are proposed as a result of the analysis of the legal regulation of the right to work of people with disabilities in the Republic of Belarus. The proposal to replace the system of workplace reservation for people with disabilities with a quota system, which has proved to be practically effective in a number of countries, has been substantiated. The article emphasizes that the basis for effective employment of people with disabilities is a balance between the guarantees of their rights in the area of employment relations and tax benefits, which encourage employers to provide employment to people with disabilities. The article formulates proposals to improve tax legislation in the Republic of Belarus.

Keywords: people with disabilities; the right to work; implementation of the labour potential; international standards of the right to work; domestic guarantees of the right to work; workplace reservation; job quotas; tax incentives for employers.

ПРАВОВОЕ РЕГУЛИРОВАНИЕ ПРАВА НА ТРУД ЛЮДЕЙ С ИНВАЛИДНОСТЬЮ НА МЕЖДУНАРОДНОМ И НАЦИОНАЛЬНОМ УРОВНЯХ

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Исследуется правовое регулирование права на труд людей с инвалидностью. Анализируются этапы становления международных стандартов прав людей с инвалидностью в сфере занятости и расставляются акценты на мерах, которые страны должны реализовать во внутригосударственном праве с целью создать равные возможности, равное обращение, обеспечить комплексный подход и социальную интеграцию. В результате рассмотрения правового регулирования права на труд людей с инвалидностью в Республике Беларусь обозначены проблемные зоны реализации

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трудового потенциала и предлагаются пути решения данной проблемы. Аргументировано предложение заменить систему бронирования рабочих мест для людей с инвалидностью системой квотирования, которая доказала свою практическую эффективность в ряде стран. Подчеркивается, что основой эффективной занятости людей с инвалидностью выступает баланс между гарантиями их прав в сфере трудовых отношений и налоговыми льготами, которые бы стимулировали нанимателя трудоустраивать людей с инвалидностью. Сформулированы предложения по совершенствованию налогового законодательства Республики Беларусь.

Ключевые слова: люди с инвалидностью; право на труд; реализация трудового потенциала; международные стандарты права на труд; внутригосударственные гарантии права на труд; бронирование рабочих мест; квотирование рабочих мест; налоговое стимулирование нанимателя.

Topic relevance

Population aging, new diseases emerging and spread of chronic diseases, environmental degradation, industrial accidents, increasing number of armed conflicts, natural and man-made disasters, illegal use of drugs and other factors are responsible for the increase in the number of people with disabilities[2]. According to the World Health Organization, more than 1 bln people (nearly 15% of the world's population) have a certain form of disability [1]. The International Labour Organization (ILO) estimates that 386 mln of the world's population of working-age people are disabled. In some countries, the unemployment rate among people with disabilities is as high as 80 %. Employers frequently believe that people with disabilities are incapable of performing work [2]. In Europe, one of the wealthiest regions in the world, the employment rate among the fully employable population is 66 %, while among the partially disabled the rate drops to 47 %. Only a quarter of severely disabled people are employed [3].

The consideration of domestic regulation of the right to work for people with disabilities should be based on a review of the international legal standards in the relevant area, which should in turn affect national legal systems. There is no comprehensive analysis of international legal instruments relating to aspects of employment of people with disabilities, nor of studies that could influence the formation of national policies of states towards the implementation of the labour potential of people with disabilities. For instance, O. V. Glikman investigates the protection of human rights in the labour field in the framework of the ILO without focusing on the problems of implementation of the labour potential of people with disabilities [4]. E. N. Yakovleva's research is the consolidation of the right to work of people with disabilities only in the ILO documents [5]. There is no comprehensive analysis of international legal acts relating to the employment aspects of people with disabilities which is capable of affecting the formation of national policies of states towards realizing the labour potential of people with disabilities.

Establishing the right to work of people with disabilities at the international level

Enforcement of the right of people with disabilities in the employment was addressed back in the first half of the 20th century in the documents of the ILO. The Workmen's compensation (accidents) convention of 1925 No. 17, and the Recommendation No. 22 on the minimum level of compensation for workers were adopted by the ILO to regulate the payment of compensation at the national level in case of labour capacity loss in the amount not lower than specified in the recommendations. ILO R043 – invalidity, old-age, and survivors' insurance recommendation of 1933 No. 43 has established compulsory insurance for listed persons employed, including those with modest assets, working on their own in the industrial, commercial or agricultural sectors.

Invalidity insurance (industry, etc.) convention of 1933 No. 37 and Invalidity insurance (agriculture) convention of 1933 No. 38, also testify to the standard-setting actions of the ILO in employment and social rights of persons with disabilities.

Hence, ILO international legal acts have initiated the development of international labour and social rights standards for people with disabilities. The acts established compulsory social insurance in case of disability, vocational guidance and training, protection against discrimination at work, guarantees for workers in case of disability due to an industrial accident or an occupational disease, additional guarantees for employees with disabilities. The rights of persons with disabilities in the employment have further been regulated by international law after the World War II with the creation of the United Nations.

The International bill of human rights declares the human rights of persons with disabilities, without taking into account the special needs of this category of individuals. In the first decades of the United

[2]The term "people with disabilities" is used in the article, referring to people with persistent health disorders; individuals who while interacting with social and domestic barriers need special facilities for their ability to engage effectively in society on an equal basis with other citizens. This definition corresponds to the norms of the UN Convention on the rights of persons with disabilities of 2006 and reflects first of all the social approach, then the medical one.

Nations work, the rights of people with disabilities were not singled out as a separate group, there was no comprehensive document on the rights of people with disabilities in the employment relationship, but certain international regulations in the mentioned direction were adopted. For instance, the United Nations Economic and Social Council (ECOSOC) Resolution 309E (XI) on social rehabilitation of the physically disabled of 1950, ECOSOC Resolution 1921 (LVIII) on prevention of disability and rehabilitation of disabled persons of 1975, ILO Recommendation No. 99 on the recruitment of persons with disabilities of 1955, ILO Convention No. 159 on vocational rehabilitation and employment of persons with disabilities of 1983 aiming to ensure vocational rehabilitation and social integration of persons with disabilities (para 2 of Art. 1).

The Declaration on the rights of mentally retarded persons of 20 December 1971 adopted by the General Assembly of United Nations stated that persons with intellectual disabilities have the right to work productively or in any other useful capacity. On 9 December 1975, the UN General Assembly adopted the Declaration on the rights of persons with disabilities. In the employment policy it established the right of persons with disabilities to vocational training and rehabilitation, education, employment services and other services that will enable them to maximize their potential and accelerate their social integration or reintegration.

The next stage in the establishment of international legal regulation of the right to work of people with disabilities is a shift of emphasis from the proclamation of the right to work in international legal instruments to the necessity for states to take the required measures to implement the labour capacity of socially vulnerable population groups. This move, with a focus on the social dimension, has been consolidated by the United Nations General Assembly on 3 December 1982 with the adoption of the World programme of action corcerning disabled persons (the WPA). "Disability is predetermined by the relationship between the disabled and the environment. It is revealed when they face cultural, physical or social barriers that prevent them from accessing different social life spheres that are accessible to other citizens"[3]. Disability is, therefore, a loss or limitation of the ability to participate in society on an equal basis with others. The WPA pays considerable attention to the aspects of restoring work capacity.

The WPA calls on "member states to promote the inclusion of persons with disabilities in the commercial marketplace through such measures as quota incentive schemes, preferential or targeted employment, loans or subsidies to small businesses, preferential contracts or production entitlements, tax benefits, contract compliance and other forms of technical or financial assistance to businesses employing workers with disabilities. Member states are encouraged to support the development of technical facilities and to ensure that persons with disabilities have access to the assistance they need to perform their work" (para. 129). It should be noted, however, that the WRA is of a recommendatory nature.

The second part of the article is addressed to the analysis of the quota system and substantiation of the necessity of its adoption in the Republic of Belarus. It is also devoted to the tax benefits for the employers in order to stimulate them to employ people with disabilities. In particular, specific measures of the program to promote inclusion of people with disabilities in open labour markets will be studied.

On the basis of a comparative legal analysis of international regulations securing the right to work of people with disabilities, it can be observed that there has been a transition from the establishment of the rights of people with disabilities in labour sphere to the development of the requirements to society.

Similar recommended provisions for the active involvement of states in the commercial marketplace by persons with disabilities were set out in the Standard rules for the equalization of opportunities of persons with disabilities (Rule 7) approved by UN General Assembly Resolution 48/96 of 20 December 1993.

At this stage, it can be said that there are no legally binding international legal acts concerning aspects of employment of people with disabilities, which would be valid to determine the national policy of states in the implementation of the labour potential of people with disabilities.

The adoption of UN General Assembly Resolution 56/168 on 13 December 2006, the Convention on the rights of persons with disabilities (Convention) and the Optional protocol have changed the attitude of society to this socially vulnerable category of population, singling out their rights into a separate group, and in the international legal regulation of their rights the social aspect has prevailed over the medical one. The purpose and the content of the Convention is studied by R. M. Khakimov [6].

The Convention concerns labour and employment issues in Art. 27: "The states parties recognize the right of persons with disabilities to work on an equal basis with others, in an environment in which the labour market and working environment is open, inclusive and accessible to persons with disabilities". States are committed to provide and enhance the work potential of persons with disabilities through the elimination of discrimination on the ground of disability, to protect the rights of persons with disabilities on an equal basis with other individuals to work in a fair and decent work environment, to improve labour market opportunities for their employment and professional advancement, to facilitate self-employment, entrepreneurship, cooperative development, to arrange comfortable workplaces for people with disabilities, etc.

[3]The World programme of action concerning disabled persons [Electronic resource]. URL: https://www.un.org/ru/docu-ments/decl_conv/conventions/prog1.shtml (date of access: 12.05.2020).

Domestic regulation of the right to work of people with disabilities

As noted in the Global report submitted under the ILO Declaration on fundamental principles and rights at work, the general trend has been to adopt the laws with supportive obligations to prevent discrimination and promote equality, rather than the laws that simply prohibit discrimination [7]. Such an approach seems more effective in addressing hidden discrimination. Specific measures are needed to integrate people with disabilities into open labour markets. States are responsible not only for ensuring that people with disabilities have access to adequate social protection, but also for implementing measures that provide them with economic rights and opportunities to participate fully in the labour market. Without actionable measures to both protect and assist people with disabilities, no country in the world can achieve sustainable development-related goals [8].

The Republic of Belarus undertook obligations to ensure the rights of people with disabilities, including employment, ratifying in 2016 the UN Convention on the rights of persons with disabilities of 13 December 2006. According to 1 May 2020, the number of disabled people in Belarus is 574 555 [9].

Public relations concerning the prevention of disability, social protection of disabled people, their professional and labour rehabilitation are regulated by the Constitution of the Republic of Belarus, by the Law of the Republic of Belarus of 11 November 1991 No. 1224- XII "On social protection of disabled people in the Republic of Belarus", by the Law of the Republic of Belarus of 23 July 2008 No. 422-3 "On prevention of disability and rehabilitation of disabled people", by the Labour Code of the Republic of Belarus (LC), which provides a wide range of guarantees for people with disabilities in the sphere of labour relations. For instance, there is no trial period for recruitment (para 4 of the part 5 of the Art. 28, part 1 of the Art. 287 of the LC), overtime, night work, work during public holidays and weekends are allowed only with the consent and on condition that such work is not prohibited by individual rehabilitation programmes (part 3 of the Art. 120, part 5 of the Art. 117, part 5 of the Art. 287 of the LC), delegation of employees with disabilities on a business trip is allowed only with consent (part 6 of the Art. 287 of the LC), the duration of the general work vacation lasts 30 calendar days (part 2 of the Art. 155 of the LC, annex 2 to the Resolution of the Council of Ministers of the Republic of Belarus of 24 January 2008 No. 100), replacement of work vacation with monetary compensation is not allowed (part 2 of the Art. 161 of the LC), in the event of a reduction in the number of employees with equal productivity and qualifications, people with disabilities are given the preferential right to remain at work (para. 3 of the part 2 of the Art. 45, part 8 of the Art. 287 of the LC), a fixed-term employment contract is to be terminated before the due date at the employee's request in the event of a disability that interferes with the performance of work under the employment contract (para. 1 of the Art. 41 of the LC), the obligation of the employer to establish a part-time or part-time work week, if it is provided by an individual rehabilitation program (para. 2 of the part 2 of the Art. 289 LC), the duration of a work shift cannot exceed seven hours (para. 3 of the part 2 of the Art. 115 of the LC), prohibition to establish an irregular working day (para. 2 of the part 1 of the Resolution of the Council of Ministers of the Republic of Belarus of 10 December 2007 No. 1695 "On Categories of employees not established an unregulated working day") and others.

Despite the guarantees of labour rights, social policy measures and the state programmes, the problem of employment of people with disabilities is an urgent concern in the Republic of Belarus. Belarus today has a high percentage of people with disabilities of working age, while the employment rate remains quite low. Of the more than 574 000 people with disabilities, only 18 % of working age are involved in professional activities, over 80 % are unemployed. Involvement in labour activity is especially low among the people with disabilities of the 1st and 2nd groups, unemployment in these groups reaches 90–95 %. Among those with the 3rd group of disability, about 50 % are employed. In comparison, 29 % of the 54 mln people with disabilities are employed in the USA, 40 % of the 5 mln people with disabilities in the UK and 80 % of the 60 mln people with disabilities in China [10].

According to the head of the department of labour, employment and social protection of Gomel City Executive Committee, A. P. Kluchynski, there are unemployed people with disabilities in Gomel in 2016 – 295 people, in 2017 – 256 people, in 2018 – 189 people, and in 2019 – 195 people.

Job quotas for people with disabilities

Although there are a number of guarantees of the rights of people with disabilities in the sphere of labour relations, it should be noted that there are certain problematic issues in the implementation of the right to work of people with disabilities. The workplace reservation system for employing people with disabilities that is currently in force in the Republic of Belarus is far from being efficient. Learning from the experience of developed European states, such as Germany for example, it has been shown that it is more economically efficient to integrate people with disabilities into the work environment than to pay disability allowance, Belarus should endeavor to promote conditions for people with disabilities to fulfill their work potential.

It would be expedient to formulate proposals for effective employment of persons with disabilities on the basis of the balance between guarantees of their rights in labour relations and tax incentives that would encourage employers to take on people with disabilities.

The procedure of establishing reservations for employing citizens who are in special need of social protection and are unable to compete on equal terms on the labour market is regulated by the Regulation approved by the Decision of the Council of Ministers of the Republic of Belarus of 29 November 2006 No. 1595. According to the department of labour, employment and social protection of the Gomel City Executive Committee, the ratio of reservations for employing people with disabilities and the actual number of people contracted for the last four years is expressed in 2016 – 95/4; in 2017 – 95/4; in 2018 – 95/13; in 2019 – 95/20. This ratio indicates the inefficiency of the reservation system in the implementation of the right to work for persons with disabilities.

Upon the results of the inspection in 2019, the Prosecutor General's Office of the Republic of Belarus revealed serious shortcomings in the legislative execution aimed to protect the rights and legal interests of the disabled. It was emphasized that the reservation of the workplaces for people with disabilities should be more effective. It was found that the "reserved" workplaces for the disabled were frequently not vacant. In other instances, the vacant workplaces were not used due to medical contraindications for this category of employees. As a consequence, only a small percentage of the disabled were employed on the reservation account [11].

The solution to this issue is to set quotas for the employment of people with disabilities. It is planned that in 2020–2022 Belarusian specialists will study the possibility of establishing quotas, which is specified in the National action plan for the implementation of the Convention on the rights of persons with disabilities in the Republic of Belarus for 2017–2025. The mechanism of job quotas for organizations employing people with disabilities has proved to be effective as a measure for the implementation of the labour potential of this category of the population.

The percentage of job quota in respect of the total number of employees in an organization is generally set between 3 % and 6 % in different countries of the world. Thus, in France it is 6 %, in the Russian Federation from 2 to 4 %, in Germany – 5 %, in Ukraine – 4 %, in India, Spain, Ireland – 3 %. In different countries this indicator is set for organizations with 20 employees (Germany, Hungary, France), 50 people (Spain). In Russia, for employers with more than 100 employees, the entity of the Russian Federation establishes a quota for employing people with disabilities in the range of 2 to 4 % of the average number of employees. For employers with at least 35 employees and no more than 100 employees the entity may set a no more than 3 % quota [12].

Job quoting obliges employers to provide employment to a specified percentage of people with disabilities, to adapt the main and auxiliary equipment, to adapt technical devices to the individual capabilities of this category of employees. If the established standard is not met, the employer bears administrative responsibility. The draft of the law "On the rights of persons with disabilities and their social inclusion" proposed for public discussion on 23 October 2018, at the National legal internet portal (pravo.by), does not provide for measures of responsibility of employers in case of failure to respect quotas (Chapter 6). Nor does the draft act establishes a correlation between the standard of job quotas and the minimum number of employees of the organization, actually obliging to apply quotas when the number of employees is 34. This estimate is based on the quota for employing people with disabilities envisaged in the draft law at the rate of 3 % of the average number of employees. The Art. 54 "Entry into force of this law" introduces the job quotas from 1 January 2023.

The experience of job quota mechanism in the Russian Federation demonstrates that a number of employers avoid employing people with disabilities and prefer to pay a fine. In particular, obligation default by an employer to create or allocate jobs for employment in compliance with the established quota, as well as refusal by an employer to employ a person with a disability within the established quota leads to an administrative fine under part 1 of Art 5.42 of the Administrative Code of the Russian Federation in the amount of 5000 to 10 000 rubles. In order to circumvent the law, employers establish several organizations so that the average number of employees in each organization does not exceed the relevant threshold [13, p.139].

The Law of Ukraine of 21 March 1991 No. 875-XII "On the bases of social protection of persons with disability in Ukraine" establishes measures of responsibility for default of quotas, particularly, if the average number of working people with disability is less than established, the employer annually pays to the Fund of Social Protection administrative and economic penalties: the average annual salary at the corresponding enterprise for each job assigned for the employment of people with disability and not occupied by the last.

These circumstances demonstrate the need to balance tax incentives for employers that encourage the employment of people with disabilities, job quotas and effective accountability measures.

It is reasonable for Belarus, taking into account the number of able-bodied people with disabilities and economic realities in the economic sphere, to set a 3 % job quota, while the number of employees of organizations exceeds 100 people.

Tax incentives for employers to promote employment of people with disabilities

Employees with disabilities exercise their labour potential in the context of the employer's additional responsibilities for the arrangement of working conditions and a decrease in performance due to physical (or mental) factors of the employee's activity. At present, the vast majority of organizations that could employ persons with disabilities do not have any additional advantages in this regard. It is therefore prudent to analyze the tax incentives provided for an employer who employs people with disabilities, as such benefits can serve as an economic stimulus.

The analysis of existing tax incentives shows that relevant preferences are granted to employers if there are people with disabilities at least 30 % of the list of employees. Before the application of the Decree of the President of the Republic of Belarus of 31 December 2019 No. 503 "On taxation", that is, until 1 January 2020, the percentage was higher – 50 %.

So in Belarus the exemption from the profits tax in the employment of people with disabilities concerns only a minor number of employers – organizations with at least 30 % of employees with disabilities (here gross profit is exempt from taxation, except for profit received from trade, purchasing and agency) and public associations Belarusian Society of the Disabled, Belarusian Society of the Deaf and Belarusian Association of the Visually Impaired (exempt from taxation of dividends charged by unitary enterprises whose property is owned by these associations). Therefore, there is no benefit in terms of gross profit if the list of people with disabilities is less than 30 % of the average number of employees or profit is received from trade, purchasing and agency activities, and not all public associations of people with disabilities setting up unitary enterprises are accounted for dividends (for example, the non-governmental organization Belarusian Association of Assistance to Disabled Children and Young Invalids is the founder of four unitary enterprises where people with disabilities are employed).

In this respect, it is proposed not to impose income tax on dividends that are charged to public associations of people with disabilities by unitary enterprises, where the property owners are the public associations. The expansion of this tax incentive will increase the income of public associations of people with disabilities, encourage the development of production and lead to an increase in jobs for people with disabilities [14, p. 84].

The above-mentioned criterion of the profit tax exemption is also hardly stimulating, as it is impossible to reach the level of employees of an organization with 30 % of the total number of employees with disabilities, except for specialized organizations. In order to introduce an effective incentive system for employers to employ people with disabilities, it is advisable to optimize the tax burden (on the payment of income tax), not providing for restrictions on certain businesses and the minimum threshold for its application with full tax exemption when the average number of employees with disabilities reaches 30 % or more. The above criterion of exemption from the profit tax is objectively hardly stimulating, as to reach the percentage of employees with disabilities in 30 % of the total number of employees, except for specialized organizations, which is almost impossible. In order to introduce an effective incentive system for employers to engage people with disabilities, it is advisable to optimize the tax burden (on the payment of income tax), which does not impose any restrictions on the types of business activities and the minimum threshold for its application. For this purpose it is required to establish a proportionally decreasing rate of the profit tax at a proportion increase of employees with disabilities with full exemption from the profit tax at the proportion of people with disabilities in the staff of 30 % and more.

Conclusions

The historical and substantive analysis of the international legal consolidation of the right to work of people with disabilities made it possible to highlight the following stages: the establishment of a number of rights of people with disabilities in the labour sphere in general international legal instruments, the elaboration of state requirements to guarantee the right to work of people with disabilities, the adoption of a special international legal instrument concerning the employment of people with disabilities, which imposes on states the obligation to formulate national policies.

International legal standards governing the right to work of people with disabilities suggest a quota system and tax incentives as a means of implementing the labour potential of the vulnerable category of society. Of more than 574 000 people with disabilities in Belarus, only 18 % of working age are involved in professional activities, over 80 % are unemployed. Involvement in labour activity is especially low among the people with disabilities of the 1st and 2nd groups, unemployment in these groups reaches 90–95 %. Among those with the 3rd group of disability, about 50 % are employed. As shown in this article, in the Republic of Belarus, there are good reasons to proceed from the currently inefficient system of reserving workplaces for people with disabilities to the quota system. It is reasonable for Belarus, taking into account the number of able-bodied people with disabilities and economic realities in the economic sphere, to set a 3 % job quota, while the number of employees of organizations exceeds 100 people.

In order to introduce an effective incentive system for employers to engage people with disabilities, it is advisable to optimize the tax burden (on the payment of income tax), which does not impose any restrictions on the types of business activities and the minimum threshold for its application. For this purpose it is required to establish a proportionally decreasing rate of the profit tax at a proportion increase of employees with disabilities with full exemption from the profit tax at the proportion of people with disabilities in the staff of 30 % and more. The implementation, in the Republic of Belarus, of a quota mechanism for workplaces for people with disabilities, based on economically justified incentives for employers in the sphere of taxation, will be a practical realization of the state obligations to create effective measures to integrate people with disabilities into open labour markets.

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INTERNATIONAL LEGAL COMBATING TRAFFICKING IN WOMEN FROM HUMAN RIGHTS AND GENDER PERSPECTIVE[1]

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The article considers specific issues regarding international legal combating trafficking in women from human rights and gender perspective and contains its definition. The author determines that international legal combating trafficking in women has a gender specificity. This brings the vulnerable position of women into focus in the process of development and adoption of measures to prevent trafficking, as well as the provision of assistance to victims and also envisages the involvement of non-governmental organizations. The author proposes a periodization of international legal framework in combating trafficking given the peculiarities of its foundation and evolution. Specific anti-trafficking efforts of the United Nations, Organization for Security and Co-operation in Europe, Commonwealth of Independent States are also considered. Special attention is paid to anti-trafficking activities of the Republic of Belarus.

Keywords: international legal combating trafficking in women; gender; human rights; *due diligence* standard.

О МЕЖДУНАРОДНО-ПРАВОВОМ ПРОТИВОДЕЙСТВИИ ТОРГОВЛЕ ЖЕНЩИНАМИ С УЧЕТОМ ОБЕСПЕЧЕНИЯ ПРАВ ЧЕЛОВЕКА И ГЕНДЕРНОГО РАВЕНСТВА

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Рассматривается международно-правовое противодействие торговле женщинами с учетом обеспечения прав человека и гендерного равенства, формулируется определение последнего понятия. Международно-правовое противодействие торговле женщинами имеет гендерную специфику, что предполагает уделение особого внимания уязвимому положению женщин при разработке и принятии мер по предотвращению данного преступления и оказанию помощи его жертвам, а также опосредует участие неправительственных организаций в этом процессе. Автор предлагает периодизацию договорно-правового регулирования противодействия торговле женщинами с учетом особенностей его становления и развития. Анализируется специфика деятельности Организации Объединенных Наций, Организации по безопасности и сотрудничеству в Европе, Содружества Независимых Государств в данной области. Особое внимание уделено усилиям Республики Беларусь по противодействию торговле женщинами.

Ключевые слова: международно-правовое противодействие торговле женщинами; гендер; права человека; принцип должной осмотрительности *due diligence*.

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Introduction

Combating trafficking in women has been the subject of numerous studies in international and national law. There are a huge number of publications devoted to analysis of international treaties in the said field. Paying special attention to the Protocol to prevent, suppress and punish trafficking in persons, especially women and children of 2000 (Trafficking in persons protocol)[2] (see [1–5] and other). C. Morcom and A. Schloenhardt consider a gendered conception of trafficking within Trafficking in persons protocol [6, p. 22–24]. Trafficking in women is a complex crime that can be qualified as a crime against humanity or a transnational organized crime (for more information see [7]). It is characterized by a huge number of victims. So there is a need for legal analysis of anti-trafficking legal measures from gender perspective and human rights approach at international and national levels. The purpose of the article is propose a periodization of international legal frameworks in combating women's trafficking given the peculiarities of its foundation and evolution, also to consider specific issues regarding international legal combating trafficking in women from human rights and gender perspective, to give its definition. Further, the article highlights specific anti-trafficking efforts of intergovernmental organizations such as the UN, Organization for Security and Co-operation in Europe (OSCE), and Commonwealth of Independent States (CIS), and produces recommendations for improving anti-trafficking activities of the Republic of Belarus.

Periodisation of the legal framework for international combating trafficking in women

The development of legal framework for international combating trafficking in women includes four periods. In order to follow the dynamics of its evolution, attention was paid to the following criteria: prevention, criminalization of trafficking in women and related crimes, prosecution and punishment of traffickers, identification of victims, assistance to victims and their protection.

The first period (1899–1918) is associated with the adoption of early international agreements to combat trafficking in women and has a number of features. At the *universal level* primarily international treaties to combat trafficking in women and girls were adopted[3] then followed international agreements on the abolition of slavery[4]. Secondly, early international agreements focused on combating the trafficking of white women and girls for sexual purposes. Thirdly, at the international level non-governmental organizations including the National Vigilance Association [8] were the first to draw public attention to the problem of trafficking in women and girls.

The second period (1919–1944) is associated with the work of the League of Nations and international agreements adopted under its auspices[5]. International agreements of this period relate to the sale of children of both sexes, along with criminal law norms, rules are set out with detailed regulation for the prevention of trafficking in women, the provision of protection of these persons during travel. Within this period, trafficking in women is considered exclusively in the context of prostitution.

The third period (1945–1999) covers the establishment of the UN and the adoption of numerous international documents. These documents can be classified into the following groups: 1) on combating trafficking in women as a criminal offence[6]; 2) on the provision of legal assistance by states[7]; 3) on the protection of human rights, aimed at eradicating the causes and

[2]Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations convention against transnational organized crime of 15 Nov. 2000 [Electronic resource]. URL: https://treaties.un.org/doc/Treaties/2000/11/20001115%2011-38%20AM/Ch_XVIII_12_ap.pdf (date of access: 18.03.2020).

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[4]Slavery convention of 25 Sept. 1926 [Electronic resource]. URL: https://treaties.un.org/doc/Treaties/1955/07/19550707%2000-53%20AM/Ch_XVIII_2p.pdf (date of access: 18.03.2020) ; Protocol amending the slavery convention of 23 Oct. 1953 [Electronic recourse]. URL: https://treaties.un.org/doc/Treaties/1953/12/19531207%2000-20%20AM/Ch_XVIII_1p.pdf (date of access: 18.03.2020).

[5]International convention for the suppression of the traffic in women and children of 30 Sept.1921 [Electronic resource]. URL: https://treaties.un.org/doc/Treaties/1921/09/19210930%2005-59%20AM/Ch_VII_3p.pdf (date of access: 18.03.2020) ; International convention for the suppression of the traffic in women and children of 30 Sept. 1921 [Electronic resource]. URL: https://treaties.un.org/doc/Treaties/1921/09/19210930%2005-59%20AM/Ch_VII_3p.pdf (date of access: 18.03.2020).

[6]Convention for the suppression of the traffic in persons and of the exploitation of the prostitution of others of 2 Dec. 1949 [Electronic resource]. URL: https://treaties.un.org/doc/Treaties/1951/07/19510725%2010-37%20PM/Ch_VII_11_a_bp.pdf (date of access: 18.03.2020).

[7]European convention on mutual assistance in criminal matters of 20 Apr. 1959 [Electronic resource]. URL: https://www.coe.int/ru/web/conventions/full-list/-/conventions/rms/09000016800656ce (date of access: 18.03.2020) ; Additional protocol to the European convention on mutual assistance in criminal matters of 17 March 1978 [Electronic resource]. URL: https://www.coe.int/ru/web/conventions/full-list/-/conventions/rms/0900001680077975 (date of access: 18.03.2020) ; Convention on legal assistance and legal relations in civil, family, criminal matters of 22 Jan. 1993 // ETALON. Internatl. Agreements. Minsk, 2020.

consequences of trafficking in women[8], including the prevention and eradication of forced labor[9], taking into account the special protection of children[10]. It should be noted that, despite the large number of accepted international agreements, acts of international organizations and international conferences[11], there is no single complex international multilateral agreement of a universal nature containing substantive and procedural criminal law in the field of combating trafficking in women, as well as its prevention, assistance and protection of victims.

The fourth period (2000 – present) is characterized by the adoption of the Trafficking in persons protocol, Optional protocol to the convention on the rights of the child on the sale of children, child prostitution and child pornography[12], etc. These international instruments have made a significant impact on the modern criminal law assessment of the crime of trafficking in women and children at international (global and regional) and national levels. The definition of trafficking in persons set up in the Trafficking in persons protocol has been reproduced by regional legal instruments of the Association of Southeast Asian Nations (ASEAN)[13], Council of Europe (CoE)[14] and CIS[15]. This period is marked by the active codification of regional international intergovernmental organizations, the ASEAN, CIS, CoE and South Asian Association for Regional Cooperation (SAARC)[16]. It should be emphasized that the codification process to prevent and combat trafficking in women continues.

Specific gender-based legal issues in combating trafficking in women

According to Recommended principles on human rights and human trafficking states have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons (para 1)[17]. A. Kartusch also mentions the obligation under international human rights law to act with due diligence [9, p.14]. The concept of due diligence is of primary importance in the area of international gender-sensitive legal action against trafficking in women. As the special rapporteur on violence against women has noted in his report, under the due diligence obligation, states have a duty to take positive action to prevent and protect women from violence, punish perpetuators of violent acts and compensate victims of violence[18].

A fundamental principle connected to the application of the due diligence standard is that of non-discrimination, it implies that states are required to use the same level of commitment in relation to prevention, investigation, punishment and provision of remedies for violence against women as they do with regards to the other forms of violence[19]. The obligations to take respective measures are found in treaties at global and regional levels.

It is crucial to consider the international measures meant to combat trafficking in women from a human rights and gender perspective. International agree

[8]International covenant on civil and political rights of 19 Dec. 1966 [Electronic resource]. URL: https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf (date of access: 18.03.2020) ; Convention on the elimination of all forms of discrimination against women of 18 Dec. 1979 [Electronic resource]. URL: https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm (date of access: 18.03.2020).

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[10]Convention on the rights of the child of 20 Nov. 1989 [Electronic resource]. URL: https://treaties.un.org/doc/Treaties/1990/09/19900902%2003-14%20AM/Ch_IV_11p.pdf (date of access: 18.03.2020).

[11]Beijing declaration and platform for action of 15 Sept. 1995 [Electronic resource]. URL: https://www.un.org/en/events/pastevents/pdfs/Beijing_Declaration_and_Platform_for_Action.pdf (date of access: 18.03.2020).

[12]Optional protocol to the convention on the rights of the child on the sale of children, child prostitution and child pornography of 25 May 2000 [Electronic resource]. URL: https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx (date of access: 18.03.2020).

[13]ASEAN convention against trafficking in persons, especially women and children of 21 Nov. 2015 [Electronic resource]. URL: http://agreement.asean.org/media/download/20160303122945.pdf (date of access: 18.03.2020).

[14]Council of Europe convention on action against trafficking in human beings of 16 May 2005 [Electronic resource]. URL: https://www.refworld.org/docid/43fded544.html (date of access: 18.03.2020).

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[18]Integration of the human rights of women and the gender perspective: violence against women. The due diligence standard as a tool for the elimination of violence against women [Electronic resource]. URL: https://undocs.org/E/CN.4/2006/61 (date of access: 18.03.2020).

[19]*Ibid*. Para 35.

ments on combating trafficking in women envisage the following obligations of states to act with due diligence.

An obligation to criminalize trafficking in women (Art. 1 of the International convention for the suppression of the white slave traffic of 1910 (Convention of 1910), Art. 3 of the International convention for the suppression of the traffic in women and children of 1921 (Convention of 1921), Art. 1, 2 of the International convention for the suppression of the traffic in women of full age of 1933 (Convention of 1933), Art. 1 of the Convention for the suppression of the traffic in persons and of the exploitation of the prostitution of others of 1949 (Convention of 1949), para 1 of Art. 5 of the Trafficking in persons protocol, Art. 18 of the Council of Europe convention on action against trafficking in human beings (CoE convention of 2005 No. 197), para 1 of Art. 3 of the SAARC convention on preventing and combating trafficking in women and children for prostitution (SAARC convention of 2002), Art. 5 of the Convention against trafficking in persons, especially women and children of 2015 (ASEAN convention of 2015).

An obligation to properly investigate and prosecute crimes of trafficking in women and hold perpetrators accountable. It is envisaged that appropriate jurisdiction will be established with respect to criminal offenses of trafficking (Art. 31 of CoE convention of 2005 No. 197, Art. 10 of ASEAN convention of 2015). In the case L. E. v. Greece the European Court of Human Rights stated, that this is an obligation not of result, but of means (para 68). A requirement of promptness and due diligence is implicit in all cases, but when it is possible to remove the individual concerned from a harmful situation, the investigation must be carried out as a matter of urgency[20].

An obligation to identify victims, provide protection and assistance to victims. International agreements stipulate that participating states should take into account the age, gender and special needs of victims when providing assistance and providing protection to victims (para 4 of Art. 6 of Trafficking in persons protocol, para 12 of Art. 14 of ASEAN convention of 2015). The Art. 17 of CoE convention of 2005 No. 197 indicates that each party shall in applying measures referred to victims' protection and other measures, aim to promote gender equality and use gender mainstreaming in the development, implementation and assessment of the measures.The norms of these international treaties have a universal and regional level focus on gender-based approach to the provision of assistance and protection of victims of trafficking.

The obligation of states to provide protection and assistance to victims includes ensuring confidential nature of criminal proceedings on trafficking in women and children (para 1 of Art. 6 of Trafficking in persons protocol; compensation for the damage caused (para 6 of Art. 6 of Trafficking in persons protocol, para 3 of Art. 15 of CoE Convention of 2005 No. 197); appropriate consideration to humanitarian and compassionate factors (para 2 of Art. 7 of Trafficking in persons protocol), provision of a recovery and reflection period for rehabilitation and decision-making (Art. 13 of CoE convention of 2005 No. 197).

Special attention should be paid to human rights and gender-based approaches to protection and assistance of persons who claim to be victims of trafficking in women. It is about non-discrimination of victims. Due to Trafficking in persons protocol, the measures set forth in the protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination (para 2 of Art. 14). The implementation of the provisions of CoE convention of 2005 No. 197, in particular the enjoyment of measures to protect and promote the rights of victims, shall be secured without discrimination on any ground such as sex or other status (Art. 3). In other words, ensuring the principle of non-discrimination and taking into account the special needs of victims are the main requirements of international agreements in identifying, providing assistance and providing protection to victims. These requirements are the core specificity of international combating trafficking in women from gender perspective and human rights protection.

The integration of human rights and gender-based approach in identification of victims, provision of assistance and protection of their rights implies involvement of non-governmental organizations. In this regard, the following standards are of interest: according to para 3 of Art. 6 of Trafficking in persons protocol, each state party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, cooperation with non-governmental organizations, other relevant organizations. Following para 5 of Art. 12 of CoE convention of 2005 No. 197, each party shall take measures, where appropriate and under the conditions provided for by its internal law, to co-operate with non-governmental organizations or other elements of civil society engaged in assistance to victims. In accordance with para 10 of Art. 14 of ASEAN convention of 2015, each party shall provide care and support to victims of trafficking in cooperation with relevant non-governmental organizations. Hence, according to the Trafficking in persons

[20]L. E. c. Grèce. Requête No. 71545/12. Arrêt, 21 Sept. 2016. La Cour Europeenne des Droits de l'Homme [Electronic resource]. URL: http://hudoc.echr.coe.int/eng?i=001-160218 (date of access: 18.03.2020).

protocol, CoE convention of 2005 No. 197, and ASEAN convention of 2015, non-governmental organizations should be involved in the prevention of trafficking and the assistance of victims of trafficking.

The obligation to take appropriate measures to prevent trafficking in women with *due diligence* is an integral part of international legal combating women trafficking. Trafficking in persons protocol declares that states parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, *especially women and children*, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity (para 4 of Art. 9). The same requirement is envisaged by the para 4 of Art. 11 of ASEAN convention of 2015. According to para 8 of Art. 8 of the SAARC convention of 2002, state parties to the convention shall promote awareness, inter-alia, through the use of the media, of the problem of trafficking in women and children and its underlying causes including the projection of negative images of women. The listed provisions of international agreements focus on the eradication of factors contributing to the vulnerability of women and girls, including stereotypes about them. This implies the human rights and gender-based prevention of trafficking in women.

Taking into account all the above considerations a definition of international legal measures aimed at combating trafficking in women is proposed; namely, as *a system of measures* to prevent, suppress, investigate trafficking in women, prosecute and punish traffickers, identify victims, provide assistance and protection with due human rights-based approach and gender perspective.

The gender specifics of international legal combating trafficking in women extends to *cooperation* in this area. The international legal *cooperation* in combating trafficking in women is a *joint activity* of states and other actors regulated by international instruments and national legislation to coordinate efforts and foster partnership against trafficking with due human rights and gender-based approach. It's worth mentioning that non-governmental organizations both at international and national levels contribute significantly to anti-trafficking activities (for more information see [7]).

Specific UN, OSCE and CIS efforts in combating trafficking in women

The acts adopted by the main UN bodies (General Assembly, Security Council, ECOSOC) are aimed at *integrating human rights and gender-based approach and determining the priorities* of international legal combating trafficking in women, *clarifying areas of cooperation* thereby contributing to its development in this area and improving coordination of multilateral cooperation to combat trafficking in women. Regarding the international legal fight against trafficking in women, special representatives of the UN Secretary General and special rapporteurs of the UN Human Rights Council perform their functions by collecting and analyzing country-specific information, taking into account gender perspectives and human rights (for more information see [7]).

At the regional level, the acts of the OSCE bodies to combat trafficking in women are practice-oriented and have the following characteristics: they create OSCE "internal law" to prevent and combat trafficking in women; determine the priorities of international legal combating and contribute to the development of new areas of cooperation in this area integrating gender perspectives, taking into account the specifics of the OSCE region (for more information see [7]).

The problem of trafficking in women is especially relevant for the CIS region since the CIS member states are countries of origin, transit and destination. There is need to establish a post of the CIS coordinator for combating trafficking in the structure of the Bureau for the coordination of combating organized crime and other dangerous crimes on the territory of the CIS member states [10]. Constant monitoring of the situation in the states, carried out by the CIS coordinator for combating trafficking, will make it possible to monitor trends in trafficking in women, respond to them in a timely manner, strengthen international legal cooperation in this area, in particular, coordinate the exchange of experience, organize interaction between competent state bodies, and monitor practical implementation of the obligations undertaken by the CIS member states to combat trafficking in women from gender perspective. The analysis of activities of the OSCE special representative and coordinator for combating *trafficking* in human beings[21] and EU anti-trafficking coordinator[22] highlights the effectiveness of their anti-trafficking work carried out throughout the OSCE and EU.

Belarusian efforts to combat trafficking in women

Belarus has significantly contributed to the international combating trafficking within UN and regional organizations which are the CIS, OSCE (for more information see [7]). Belarus is a party to the Trafficking in persons protocol, Convention on the rights of the child of 1989, Optional protocol to the convention

[21]Annual reports of the OSCE office of the special representative and co-ordinator for combating THB [Electronic resource]. URL: https://www.osce.org/secretariat/107391 (date of access: 18.03.2020).

[22]EU anti-trafficking coordinator [Electronic resource]. URL: https://ec.europa.eu/anti-trafficking/institutions/eu-anti-trafficking-coordinator_en (date of access: 18.03.2020).

on the rights of the child on the sale of children, child prostitution and child pornography of 2000, etc. At regional level Belarus participates in the Agreement on cooperation of CIS states in combating human trafficking, organs and tissues of 2005, CoE convention of 2005 No. 197 (for more information about the CoE convention of 2005 No. 197 and its monitoring mechanism of the Group of experts on action against trafficking in human beings (GRETA) see [7; 11]), etc. Also, national legislation has been amended according to international anti-trafficking standards. To improve interstate collaboration the possibility of joining the two following international agreements may be considered:

1) in the field of combating trafficking and providing legal assistance in criminal matters within CoE: the European convention on mutual assistance in criminal matters of 1959, Additional protocol to the European convention on mutual assistance in criminal matters of 1978, Second additional protocol to the European convention on mutual assistance in criminal matters of 2001[23]. The accession to these international agreements will increase the efficiency of activities coordination of competent authorities with foreign partners in matters of data and information exchange in criminal matters, but also in providing protection and assistance to victims and witnesses, preventing criminal acts;

2) International Labour Organization Domestic workers convention of 2011[24] and Protocol of 2014 to the Forced labour convention of 1930[25]. These treaties are of great interest for states that support socially oriented policies. By accepting obligations under these international agreements, the state confirms the human rights oriented approach and commitment to eradicate forced labor, both children and adults, also to eliminate the conditions causing trafficking of women as domestic workers.

For effective trafficking in women prevention the Law of the Republic of Belarus of 7 January 2012 No. 350-З "On combating trafficking in human beings", the Law of the Republic of Belarus of 19 November 1993 No. 2570-XII "On the rights of the child", the Law of the Republic of Belarus of 25 November 1999 No. 326-З "On tourism" (for more information [7]) need for amerdments. Amendments are aimed at considering gender perspectives and rights-based approach to preventive anti-trafficking measures.

Conclusion

The evolution of the legal framework shows the complex regulation of combating trafficking in women at global, regional and national levels. The human rights and gender-based approach to international legal combating the trafficking in women implies focus on vulnerable position of women in the development and adoption of measures to prevent trafficking in women and to identify victims and provide assistance. The gender specificity and human rights-based approach to international legal cooperation in combating trafficking in women needs the involvement of non-governmental organizations in identifying victims, assisting them, as well as preventive activities. Multiple international instruments indicate that best practices in preventing and combating trafficking in women rely on the partnership between states, non-governmental organizations. The acts adopted by the main UN bodies (General Assembly, Security Council, ECOSOC) express the attitude of states to the problem of trafficking, and contribute to development and fostering of international cooperation in said field. Regional organizations such as the OSCE and CIS take anti-trafficking actions within their competence with due attention to the specifics of the regions. Establishment of the CIS coordinator for combating trafficking will foster cooperation of the CIS member states in combating trafficking. Belarus accession to the above international agreements will enhance the effectiveness of national efforts in combating trafficking in women, its investigation and prevention.

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THE RIGHT OF CITIZENS TO APPEAL TO STATE AUTHORITIES IN THE INFORMATION SOCIETY: EXPERIENCE OF THE REPUBLIC OF BELARUS AND FOREIGN STATES[1]

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We consider that new digital solutions used to improve the mechanism for ensuring the right of citizens to appeal to state organs. Based on the analysis of legal acts and law application practice of a number of foreign states, the authors propose to consolidate in national legislation such form of appeal as an electronic petition. The article shows the problematic points that arise in connection with the introduction of modern technologies in working with citizens' appeals, affecting the protection of personal data, abuse of law, etc. A set of organizational and legal measures to overcome such problems, including creation and successful operation of a unified information system for recording and processing applications from citizens and legal entities are proposed by authors.

Keywords: the right to appeal; human rights; e-petition; e-government; public administration.

ПРАВО ГРАЖДАН НА ОБРАЩЕНИЕ В ГОСУДАРСТВЕННЫЕ ОРГАНЫ В УСЛОВИЯХ ИНФОРМАЦИОННОГО ОБЩЕСТВА: ОПЫТ РЕСПУБЛИКИ БЕЛАРУСЬ И ЗАРУБЕЖНЫХ ГОСУДАРСТВ

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Рассматриваются новые цифровые решения, применяемые для совершенствования механизма обеспечения права граждан на обращение в государственные органы. Опираясь на анализ правовых актов и правоприменительной практики ряда зарубежных государств, авторы предлагают закрепить в национальном законодательстве такую форму обращения, как электронная петиция. Показаны проблемные моменты, возникающие в связи с внедрением современных технологий в работу с обращениями граждан, которые затрагивают вопросы защиты персональных данных, злоупотребления правом и др. Предлагается комплекс организационно-правовых мер, направленных на преодоление подобных проблем, в том числе посредством создания и успешного функционирования единой информационной системы учета и обработки обращений граждан и юридических лиц.

Ключевые слова: право на обращение; права человека; электронная петиция; электронное правительство; государственное управление.

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Human rights which are developed throughout human history and currently enshrined at the international, regional and national levels are rightly considered one of the greatest achievements of world civilization. Despite the difficulties with their compliance in many countries of the world, the ongoing discussions regarding the recognition of individual rights as universally, other problematic issues, the list of fundamental human rights, which is contained in the relevant international legal documents, remains fundamental issue.

However, the fact of recognition by one or another state of international legal documents in the field of human rights is an important but insufficient condition for their implementation in practice. In this regard, the consolidation of the relevant mechanisms for the protection of human rights in the legislation is an equally important goal.

Currently, the most important and effective means of protection of human rights is traditionally the right of citizens to appeal to public authorities. At the same time, the rapid development of modern technologies, primarily in the information sphere, has a significant impact on the practice of implementation of this particular right. There is a point of view that the rapid introduction of information technology in various spheres of society, including public administration, is able to give rise to new threats of violation of human rights, for example, in the field of personal data protection. This statement is partly true. However, on the other side, there are opportunities for improving the mechanisms for human rights protection that new technologies provide.

So, with the development of the concept of an electronic government, the problem of communication between the state and citizens, in particular, such new form of appeal to government as an electronic appeal, is becoming increasingly important.

In general the problem of ensuring of the right of citizens to appeal to state authorities is among those that sufficiently developed in modern legal science.

The problematic issues of the implementation of the right to appeal to state organs, questions of modern digital solutions were considered in the works of such foreign scientists as L. Mosca [1], L. Dahlberg [2], A. Michels [3], L. Hoffman [4], etc.

Among the Belarusian researchers on this subject the works of G. A. Vasilevich [5], I. V. Vegera [6, p. 151–153], O. I. Chupris [7] are highly considered.

This topic is of interest to Russian researchers such as E. D. Solomatina, N. V. Shabutskaya [8], A. V. Savoskin [9] and others.

First, let's start with the examination of relevant foreign experience on the discussed problems.

In Art. 17 of Chapter I of the Basic Law (Grundgesetz) of the Federal Republic of Germany, the right to submit a petition is provided. It guarantees that "each person has the right individually or jointly with other persons to apply in writing with requests or complaints to the competent authorities or to the legislative authorities"[2].

In 2005, the version of the electronic filing system, which was developed in Scotland, was first introduced to the German National Parliament, as part of a joint project between the Scottish Parliament and the Bundestag – "The online services division". This new system also was introduced to the Bundestag and the parliaments of all 16 separate German lands, including cities with special status [10, p. 505]. Among the various complaints organs, the German Bundestag Appeals Committee is the most famous. Today in Germany both on national and at the subnational level appeals to government organs can be submitted electronically via electronic circulation.

This innovative method is largely the result of using the practices of Scotland, an experience to be discussed below. The development of the institution of appeals in Germany has created new ways that are intended to improve the system, taking into account the opinions of the population, such as the possibility of holding hearings and public discussions in the Committee on Appeals, which should receive 50 000 signatures in their support [11, p. 30]. While most of these electronic ways are publicly available, "traditional" applications are still possible.

The percentage of appeals which are filed electronically in the German Bundestag, in comparison with the total mass of all appeals, including traditional appeals, has increased, for example, from 34 % in 2010 to 39 % in 2016 [11, p. 19]. From September 2005 to the end of 2010, there were more than 3 million signatures for support approximately 2100 electronic communications and more than 100 000 comments were formulated in the discussion on the corresponding forum [12, p. 12]. Electronic communications is subject to verification before they will be published in Internet. The process of admissibility of electronic communications is governed by special rules, including eligibility criteria.

Within six weeks after the publication of the text of the appeal in Internet, signatures can be made in support of it, and the possibility of online discussion is also available. It should be noted that various electronic communications received various support in the community. Therefore, only 9 requests (0.4 %) received more than 50 000 Internet signatures within six weeks [11, p. 20]. According to the examination carried out by state organs, there is no evidence of significant abuses

[2]Grundgesetz für die Bundesrepublik Deutschland : vom 23 Mai 1949 (BGBl. S. 1), zuletzt geändert durch Artikel 1 des Gesetzes vom 13 Juli 2017 (BGBl. I S. 2347) [Electronic resource]. URL: https://www.bundestag.de/parlament/aufgaben/rechtsgrundlagen/grundgesetz/gg_01-245122 (date of access: 18.02.2020).

of the function of signing appeals, which made it possible to formulate a recommendation that there is no need to establish higher requirements for verifying the identity of applicants and signatures for electronic appeals in comparison with traditional ones [13, p. 639].

An innovative component of the platform for electronic submission of applications is the possibility of online discussion of public initiatives. Such forums are moderated by the appeals authorities, which has the right to warnings and delete messages in cases of violation of the rules, which in practice is quite rare. For participation in the discussion on the forum, users must go through the registration procedure. According to the surveys of participants taking part in the online discussion, the vast majority of users find the forums useful and informative [13, p. 644]. Also according to a user survey conducted in 2015, approximately two-thirds of them would like to establish contacts with members of Parliament through forums. They also expressed the opinion that the forums should support the Appeals Committee in its work on the assessment of substantive appeals [14, p. 135].

The United Kingdom's experience introducing an innovative method in working with citizens is no less interesting.

The UK system of appeal's submission has been the focus of attention in recent years. At all levels of the political system, the reform of the appeals system was implemented. Despite the significant differences between individual legal and organizational transformations, the use of the Internet is a general characteristic of the ongoing transformations.

An electronic system for applying to government agencies, including the Prime Minister's office, was created in 2006, but was stopped shortly before the election of the new British Parliament in May 2010 [15, p. 377]. Subsequently, D. Cameron's office returned the institute of electronic petitions [16]. Its function made it possible to achieve interesting results. Therefore, in 2007, an electronic appeal against the introduction of toll roads and car tracking attracted more than 1.8 million electronic signatures, which was unexpected to ministries and the government who considered it to be the most successful and numerous electronic petitions [17].

In order to submit electronic petition, a citizen needs to go through the registration procedure on the site with verification via email address, and also indicate the name and zip code. Any new petition undergoes pre-moderation. As in other similar systems, users have the opportunity to submit and publish their requirements and collect signatures on the platform for submitting electronic applications. For example, to receive a response from the government, the appeal should have reached a quorum of in the amount of at least 500 online signatures. For example, from 2006 to 2010, more than 67 000 electronic communications were submitted. Among these appeals, applications accepted for consideration received a total of 11.8 million electronic signatures [18]. Currently, in order to receive a response from the government, the appeal must reach at least 10 000 signatures online, and with a quorum of more than 100 000 electronic signatures, the appeal will be considered in Parliament.

The experience of Scotland is also of interest, where in 1999 the Parliament became the first elected assembly in the world, which introduced an electronic petition system called the "e-petitioner". This allows citizens to initiate and sign appeals, receive reference information related to the issue, and also add their comments on the Internet forum provided for each appeal.

These groups of parties are involved in the electronic filing system: 1) persons submitting appeals; 2) persons supporting individual appeals; 3) the organs to which the appeals are directed, specifically they are government, Parliament and local authorities. Appeals, which are submitted by e-mail or regular mail, are posted in Internet and on the Scottish Parliament website, which allows users to track and control the process of their consideration and decision-making. The applicant has the right to submit his thoughts and comments in support of the appeal, which is published on the website. In addition to instructions for submitting appeals in Internet, information on the process for submission and consideration of appeals is also available on the corresponding website, including the minutes of the meeting at which the appeal was considered. In addition, Online Forum allows the applicants to draw public attention to participate in discussions [19].

Scotland's government websites also contain the variety of information materials, texts, brochures, and animations, available in several languages (including Arabic, Bengali, Punjabi, Simplified Chinese or Mandarin, or Urdu) that explain how the appeal system works, from the moment of its submission to the final decision. Debates and hearings about complaints submitted can be monitored in Internet.

The Scottish system is also characterized by an emphasis on the participation of candidates in the application process of submission and consideration of applications, as well as a high degree of transparency and publicity. As opposed to Great Britain the Scottish system has no restrictions regarding the necessary quorum of signatures. In addition to written and electronic appeals (by e-mail), they also can be submitted in person, by telephone, in the form of a video, and, as reported, in the future even with the help of short text messages (SMS) [20, p.155].

As in other countries, in the United States, the development of information technology has significantly expanded the ability to send appeals to government agencies. Therefore, in 2011, on the website of the US Presidential Administration, the section "We people" began to function. The abovementioned section provided the opportunity to send appeals to the political experts of the administration. Appeals can be created, posted and signed by persons supporting them. Only applications that have reached a certain threshold or quorum of signatures (for example, 100 000 signatures within 30 days) should be considered by the officials of the Administration, followed by an official response, although this rule is not always respected [21, p. 328]. This mechanism is not intended to file complaints regarding criminal proceedings. However, an analysis of the functioning of this mechanism and the fact that a number of petitions with the required number of signatures were never given official answers allow us to conclude that the "We people" system is nothing more than a method that allows citizens to express their opinion.

As it can be seen from the analysis, different countries of the world whose governments use modern digital solutions to more effective exercise the right to appeal, demonstrate different approaches to the implementation of these instruments. However, general tendencies in this area can be distinguished, for example, the increasing role of electronic petitions and appeals, the development of the institution of public discussion, the determination of a specific threshold number of applicants necessary for an official response, the use of the share of such ways as SMS, video communication, etc. Much of these innovations are of interest to the Belarusian legislator and law enforcer.

After the examination of the experience of foreign countries, it is necessary to analyze the system of working with citizens' appeals that has developed in Belarus and identify areas for improving, taking into account the development of modern technologies, in order to guarantee the exercise of the relevant rights.

It should be noted that now in the Republic of Belarus there are a number of legislative acts that enshrine the right of citizens to appeal to state organs, as well as guarantees for its realization. Among them the most significant are the Constitution of the Republic of Belarus[3], the Law of the Republic of Belarus of 18 July 2011 No. 300-3 "On appeals of citizens and legal entities"[4] (Law of the Republic of Belarus No. 300-3), the Directive of the President of the Republic of Belarus of 27 December 2006 No. 2 "On debureaucratization of the state apparatus and improving the quality of life support of the population"[5], Edict of the President of the Republic of Belarus of 15 October 2007 No. 498 "On additional measures for work with appeals of citizens and legal entities"[6], Resolution of the Council of Ministers of the Republic of Belarus of 16 March 2005 No. 285 "On some issues of organizing work with the book of comments and proposals and amendments and additions to some decisions of the Council of Ministers of the Republic of Belarus"[7] and others.

Some of these legislative acts contain rules governing issues related to electronic appeals from citizens and legal entities. For instance, the Law of the Republic of Belarus No. 300-3 contains a number of such norms, including separate art. 25 "Consideration of electronic appeals", which defines the features of working with such appeals.

An analysis of law application practice indicates that the electronic form of appeals is becoming increasingly popular among citizens. This is due to its characteristics, which are simplicity, accessibility and gratuitousness for the population. At the same time, if we talk about the technical aspect, in comparison with various state organs, the possibility of submission of electronic appeals was implemented quite differently. An attempt to unify the technical side of this issue resulted in the appearance of paragraph 71 of the Regulation on the functioning of Internet sites of state organs and organizations, approved by the Decree of the Council of Ministers of the Republic of Belarus on 29 April 2010 No. 645 "On certain issues of the websites of state organs and organizations and the recognition of the decision of the Council of Ministers of the Republic of Belarus of 11 February 2006 No. 192 as invalid"[8]. This paragraph has fixed certain technical and substantive requirements for the special section "Electronic appeals", which should be posted on the official website of the state organs.

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[3]Constitution the Republic of Belarus of 1994 : with amendments adopt. by repub. referendum on 24 Nov. 1996 and 17 Oct. 2004 // Natl. register of legal acts of the Repub. of Belarus. 1999. No. 1. 1/0; Constitution the Republic of Belarus of 1994 : with amendments adopt. by repub. referendum on 24 Nov. 1996 and 17 Oct. 2004 // Natl. register of legal acts of the Repub. of Belarus. 2004. No. 188. 1/6032.

[4]On appeals of citizens and legal entities : Law of the Republic of Belarus of 18 July 2011 No. 300-3 // Natl. register of legal acts of the Repub. of Belarus. 2011. No. 83. 2/1852.

[5]On debureaucratization state apparatus and improving the quality of life support of the population : Directive of the President of the Rep. of Belarus of 27 Dec. 2006 No. 2 // Natl. register of legal acts of the Repub. of Belarus. 2007. No. 2. 1/8173.

[6]On additional measures for work with appeals of citizens and legal entities : Edict of the President of the Repub. of Belarus of 15 Oct. 2007 No. 498 // Natl. register of legal acts of the Repub. of Belarus. 2007. No. 250. 1/8997.

[7]On some issues of organizing work with the book of comments and proposals and amendments and additions to some decisions of the Council of Ministers of the Republic of Belarus : Resolution of the Council of Ministries of the Repub. of Belarus of 16 March 2015 No. 285 // Natl. register of legal acts of the Repub. of Belarus. 2005. No. 52. 5/15728.

[8]On certain issues of the websites of government bodies and organizations and the recognition of the decision of the Council of Ministers of the Republic of Belarus of 11 Feb. 2006 No. 192 as invalid : Resolution of the Council of Ministries of 29 Apr. 2010 No. 645 (with amendments) // Natl. register of legal acts of the Repub. of Belarus. 2010. No. 108. 5/31751 ; On certain issues of the websites of government bodies and organizations and the recognition of the decision of the Council of Ministers of the Republic of Belarus of 11 Feb. 2006 No. 192 as invalid : Resolution of the Council of Ministries of 29 Apr. 2010 No. 645 (with amendments) // Natl. legal Internet Portal of the Repub. of Belarus. 16 Nov. 2019. 5/47329.

Despite the adoption of these legislative measures, a number of practical problems arising in connection with the use of electronic communications by citizens remain unresolved.

The growing popularity of the format of electronic appeals has led to the emergence of sites that offered the opportunity to prepare and submit collective petitions. In 2017, the death of a serviceman A. Korzhich caused a great public outcry. A number of collective electronic communications were prepared on one of the sites, containing various requirements for the Ministry of Defense of the Republic of Belarus. Separate appeals were supported by several thousand citizens [22]. However, the state organs, faced with such number of requests, instead of preparing a response, sent out requests to the applicants with a message to confirm the fact of sending your own appeals, and also initiated the blocking of this site, because analysis of individual complaints showed that they contained inaccurate registration data [23].

It should be noted that the practice of sending of requests containing a requirement to confirm the fact of appeal to state authorities is not provided by law.

At the same time, this situation has revealed a problem that seems to remain relevant to the present. The current legislation on citizens' appeals contains the minimum requirements for electronic communications, the reliability of which is practically impossible to establish without additional verification measures, some of which can only be carried out by specially authorized military organs. While the current legislation remains in this form, it is possible that one citizen or a group of people with relevant technical skills will be able to create the imitation of widespread support in the society for arbitrarily controversial or even destructive ideas, by sending collective appeals from non-existent applicants.

This problem seems to have another side. At the moment, there are no barriers to the preparation and submission of the appeal on behalf of an entity or persons without their permission. After all, nothing prevents the person, who knows, for example, the registration data of a citizen create an electronic mail box and send an appeal on behalf of someone else.

In theory, since Art. 151 of the Civil Code of the Republic of Belarus[9] recognizes the right to a name to intangible benefits; in a similar situation a citizen may apply to the court for the protection of his rights. At the same time, taking into account that relations in the sphere of citizens' appeals are regulated by administrative law, the issue of the advisability of introducing administrative responsibility for this kind of torts should be considered.

However, the development of the mechanism of legal liability for such violations does not seem to be able to completely resolve the identified problem. It should agree with the opinion of the Russian lawyer A. V. Savoskin, who notes that the period of "acquaintance" of citizens and state organs with the Internet has passed and it's time to streamline existing relations, which contributes to the advisability of introducing an electronic signature as a prerequisite for electronic communication, especially since such rules are already contained in the legislation of several CIS countries [9, p. 8].

Another vulnerable form of citizens' appeals, which is gaining popularity in the post-Soviet space, is a petition. As mentioned earlier, the concept of "petition" itself was formed in the framework of the foreign legal doctrine [24, p. 434–435] and in fact has a lot in common with the appeal of citizens. At the same time, in the legislation of the CIS countries, this term is used mainly to refer to a certain collective form of citizens' appeals, and is realized mainly in electronic format.

It should be noted that the format of electronic petitions is mainly used for raising a wide range of political, social and economic problems before government agencies that affect the interests of large groups of the population. Subsequently, the process of creating appropriate organizational, legal and technical conditions for the functioning of such instrument as electronic petitions is closely related to the realization of the right of citizens to participate in state affairs. The guarantee that the requirements contained in electronic petitions reflect the interests of a wide range of citizens is the need to collect a significant number of signatories (from 25 000 to 100 000 or more) [8, p. 140–141].

In the post-Soviet area, the possibility of preparation and submission of electronic petitions is already enshrined in the legislation of the Russian Federation and Ukraine [9, p. 8].

It seems that the including in the Law of the Republic of Belarus No. 300-3 such form of appeal as an electronic petition fully complies with both global and regional trends in lawmaking process. At the same time, taking into account the total population of the Republic of Belarus, there is a need to introduce a significant, but not an excessive number of signatories necessary for preparing a petition. Also, keeping in mind the fact that in accordance with the Constitution of the Republic of Belarus the right of legislative initiative can be exercised to citizens with the right to vote in the amount of at least 50 000 people, we tentatively consider that it will be permissible to apply from 1 000 to 10 000 signatories in relation to electronic petitions. At the same time, the Law of the Republic of Belarus No. 300-3 should provide for a specific mechanism for the consideration of such petitions by the competent state authorities, for example, the creation of interagency commissions to review the content of petitions.

Another problematic point related to the use of the electronic format of communication between citizens

[9]Civil Code of the Republic of Belarus of 7 Dec. 1999 No. 218-3 // Vedomosti Natsional'noi palaty predstavitelei. 1999. No. 7–9. Art. 101.

and state organs is the lack of obligation on the part of the state organs to notify the applicant that his electronic appeal has been received and accepted for work. Currently, various state organs use different technical solutions to this issue. Some of the organs implement the practice of sending notifications of receipt of electronic communications, including in automatic mode. Other organs are sending a request form to the applicant's email address, after which notifications are not sent to the applicant. Consequently, the applicant is not fully sure whether his appeal was sent to the state organ, and also, in the event of a dispute on this issue, he cannot confirm the fact of sending of appeal. The solution to this problem can be seen in the obligation to send a notification to the applicant about the receipt of his electronic appeal which should be mentioned in the legislation. From an organizational and practical point of view, an automated technical solution to this issue seems preferable.

For further improvement of this format of communication, the experience of Kazakhstan is interesting, where the innovative project "Aikin" is implemented, which involves the operation of a unified system for recording citizens' appeals. This project allows citizens to look into the course of its consideration, obtain registration information and results of the review, and also read the answer before receiving it by mail [25]. This activity is provided by the Committee on Legal Statistics and Special Accounts of the General Prosecutor's Office of the Republic of Kazakhstan since it is closely related to ensuring the rule of law in the field of public administration and the fight against corruption. Earlier, in the Republic of Belarus, in a Resolution of the Council of Ministers of the Republic of Belarus of 9 April 2018 No. 269 "On the introduction of a unified classifier of appeals of citizens and legal entities"[10] the creation of a unified republican automated system for recording and processing appeals of citizens and legal entities was announced. However, at this moment, there is no information on the successful implementation of this system. We consider it appropriate to take the relevant experience of Kazakhstan in creating and ensuring the function of this system with the mandatory involvement of prosecution authorities in this process, which will simultaneously improve the quality of work with citizens' appeals and ensure the appropriate level of protection of their rights.

Another direction of improving the legislation on citizens' appeals in the digital society is the desire to provide a real opportunity for the realization of the right to appeal for all categories of citizens. So, Art. 40 of the Constitution of the Republic of Belarus contains an indication of the right of everyone to send personal or collective appeals to state organs. However, for certain categories of citizens the enforcement of this right is difficult due to physiological reasons. It is, in particular, about the visually impaired. Moreover, the Presidential Edict of 24 September 2015 No. 401[11], formalized the signing by the Republic of Belarus of the Convention on the Rights of Persons with Disabilities, adopted by the UN General Assembly in New York on 13 December 2006.

To implement the norms of this convention, a number of legislative acts have been adopted, including the Decree of the Council of Ministers of the Republic of Belarus of 13 June 2017 No. 451 "On approval of the National plan of action for the implementation in the Republic of Belarus of the provisions of the Convention on the Rights of Persons with Disabilities for 2017–2025"[12]. Among the activities of this plan is duplication of visual information in Braille (for the visually impaired) in organizations and institutions providing services to the population during the period of 2017–2025. The responsibility on the implementation rests with state authorities, regional executive committees, Minsk City Executive Committee and the public association "Belarusian Association of the visually impaired". This initiative deserves support, but it seems that it can be further developed. So, the issue of securing in the Law of the Republic of Belarus No. 300-З the citizen's right to receive an answer prepared using Braille should be considered. It should be noted that earlier in Russian legal literature such innovations were supported [26, p. 33].

Thus, according to the results of the examination of foreign and national experience in realization of modern information technologies in working process with citizens' applications in order to increase the effectiveness of protection of their rights, the following trends can be identified:

- with the development of the information society electronic forms of communication between people and the state are becoming more and more popular;
- in addition to the electronic form, the legislation of certain foreign states enshrines the form of appeal through video communication;
- in the legislation and law-making practice of foreign countries, an important place is given to working with the right to petition, which is a collective appeal to state organs on the most important political, economic and social issues;
- the use of modern digital solutions to ensure the implementation of the right to a petition allows take

[10]On the introduction of a unified classifier of appeals of citizens and legal entities : Resolution of the Council of Ministries of the Repub. of Belarus of 9 Apr. 2018 No. 269 // Natl. legal Internet portal of the Repub. of Belarus. 13 April 2018. 5/45036.

[11]On the signing by the Republic of Belarus of the Convention on the rights of persons with disabilities : Edict of the President of the Repub. of Belarus of 24 Sept. 2015 No. 401 // Natl. legal Internet Portal of the Repub. of Belarus. 26 September 2015. 1/16030.

[12]On approval of the National plan of action for the implementation in the Republic of Belarus of the provisions of the Convention on the rights of persons with disabilities for 2017–2025 : Decree of the Council of Ministries of the Repub. of Belarus of 13 June 2017 No. 451 // Natl. legal Internet portal of the Repub. of Belarus. 17 June 2017. 5/43835.

into account the opinions of the general public on relevant issues, as well as the organization of public discussions on relevant Internet forums, for which state organs create specialized sites or other information resources;

• the use of information technology to improve work with citizens' appeals mediates the importance of protecting personal data, ensuring identification of users in a digital environment, eliminating the possibility of abuse of the right to appeal, manipulating public opinion, etc .;

• the introduction of modern technologies allows us to offer new opportunities for the realization of their rights to vulnerable categories of citizens, for example, people with disabilities.

Based on the identified trends, we offer the following organizational and legal measures which are intended to introduction digital solutions to work with citizens' appeals in the Republic of Belarus:

• to continue work on creating a unified information system for recording and processing applications from citizens and legal entities, while addressing the issues of ensuring reliable identification of applicants, protecting personal data, automating the process of sending notifications of acceptance of applications for work;

• take into account the positive experience of foreign countries in the creation of this system, as well as ensure the involvement of prosecutors to solve this problem, taking into account the relevant practice of the Republic of Kazakhstan;

• consolidate in the national legislation on citizens' appeals such form of petitions as an electronic petition, determine the number of signatures upon receipt of which the petition receives a similar status, and also provide for the special nature of the consideration of such collective petitions;

• provide for the possibility of filing appeals using video communication instruments, as well as consolidate the right of citizens to receive an answer prepared using Braille.

The realization of these proposals will contribute to more effective protection of the right of citizens to appeal in the digital era, increase the efficiency of work with citizens and legal appeals in state and non-state structures, and ensure law in various spheres of public life, including in public administration.

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THE IMAGE OF HUMAN RIGHTS IN E-STATE[1]

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The article applies the non-coherence theory of digital human rights to e-statehood and identifies five caveats. The emerging image is characterized by the absence of human rights rhetoric from e-state goals and strategy, absence of conclusive justification of e-state success in social context, relatively lower protection of human rights through e-state solutions in comparison with solutions in the private digital domain, dichotomy of the meaning of privacy in the digital domain, and the theoretical threat of e-state transforming into a police-state. The article argues that since human rights are not generic to e-state, their inclusion into the rhetoric about e-state is the result of public pressure. The author proposes the thesis about negative correlation between the e-state and human rights: the expansion of e-state solutions in a given society leads to decrease in fundamental rights protection.

Keywords: human rights and e-state; non-coherence theory of digital human rights; caveats of human rights; e-state narratives.

ПРЕДСТАВЛЕНИЕ О ПРАВАХ ЧЕЛОВЕКА В ЦИФРОВОМ ГОСУДАРСТВЕ

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Применяется теория несогласованности цифровых прав человека с электронным государственным устройством и определены пять предостережений в этой области. Возникающий образ характеризуется отсутствием прав человека в целях и стратегии цифрового государства, неубедительным обоснованием успеха последнего в социальном контексте, относительно более слабой защитой прав человека посредством решений цифрового государства по сравнению с решениями в частном цифровом домене, дихотомией значения понятия "частная жизнь" в цифровом домене, теоретической угрозой преобразования цифрового государства в государство полицейское. Утверждается, что, поскольку права человека не являются общими для цифрового государства, их включение в обсуждение данного вопроса является результатом общественного давления. Автор выдвигает тезис о негативной корреляции между правами человека и государством: экспансия технологий цифрового государства в обществе приводит к снижению уровня защиты фундаментальных прав.

Ключевые слова: права человека и цифровое государство; теория несогласованности цифровых прав человека; предостережения о правах человека; описания цифрового государства.

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Background of the article

Within a relatively short time period in the autumn of 2019 I was invited to speak about the Estonian "achievements" related to e-statehood in Brasilia (Brazil), and Minsk (Belarus). Despite the difference in the composition of audiences – primarily government officials in the first occasions and students in the second, my assumption regarding their expectations was one and the same. The audiences expected an uncritical presentation about Estonia's practical achievements in fostering the image of a technology-oriented society, where the population at large is gladly accepting proposed e-state solutions and lining behind the government. Preparation to these presentations led me to formulate caveats on human rights in e-state. Discussions with the audiences convinced that the magnitude of e-state uncritical narrative needs balancing from the side of human rights academic viewpoint.

Image and theoretical framework

The image. The image of human rights in the context of e-state suggests obscurity and distrust, both rooted in perception of human rights as practice. The obscurity aspect of this image is related to knowledge development and in common language is usually expressed as "the people not understanding how the e-state works". To give a few examples, this aspect has led to the rejection of e-elections, an application of e-statehood capable of affecting the whole society, by the German Constitutional Court, where the court stressed the need for transparency in the electoral process without specialist technical knowledge[2]. M. Solvak and K. Vassil identified in a study of how the Estonian population has accepted the instrument of e-elections as the main challenge the replacement of the "simple trust" towards the public power with better understanding how the systems work and human rights are safeguarded [1]. The epistemic nature of the obscurity aspect of this image prevents the objection to the possibility of safeguarding human rights in e-statehood from becoming absolute. Figuratively speaking, if the principle objection to human rights protection in e-statehood is because of the scarcity of knowledge (like a fog covering some object of interest), then in ideal conditions of knowledge transfer this objection is easily rejected. Because there are no such ideal conditions, the obscurity aspect of this image may constitute a *sine qua non,* ongoing condition of human rights role and position in the sphere of e-statehood or public e-services.

This is because of two justifiable narratives. The first says that technological developments are always a step ahead of conceptualization in social sciences. The second reveals the condition of dichotomy between IT-developers and human rights scholars and activists – that it, IT-developers do not understand human rights potential infringement argument, and the human rights community does not understand what exactly are the IT-solutions capable of doing. In the other words, human rights scholars and activists do not comprehend the full magnitude of how deep and into what details e-state developments can intrude from human rights perspective. Mireille Hildebrandt is pursuing a EC funded advanced research grant to team lawyers and computer scientist with the goal of cross-translation of narratives[3] – this is just an example of the importance of bridging the two communities.

The second aspect of this image is distrust. It originates from blockchain technology and visible or invisible surveillance and analytical capabilities achievable through modern technical solutions. The common argument warns against the possible abuse by the government or public entities from the ground of private information which individuals have been compelled to surrender through various e-state solutions. The objection to trade-off, that is, to obtaining the benefit of living in a modern society claims, that the cost of yielding private and family data is not too high. This objection in principle can be rejected by legal and non-legal arguments.

The legal argument is related to checks and balances and remedies in positive law, that is, whether e-state solutions include sufficient legal mechanisms to minimize the concern that private data obtained is used un-purposefully[4]. Thus, according to the legal argument, it may be possible to set up a system of positive law, including effective remedies, which secures to human rights in the context of e-state solutions comparable protection with the protection against the arbitrary interference by the state in offline situations.

The non-legal argument is about trust towards the public power. In the other words, in an ideal world the process and results of yielding private information to the democratically established government is subject to constitutional restraints, the government enjoys the trust of the civil society and abuses of information surrendered can be occasional, but not systemic.

[2]German Constitutional Court judgment of 25 March 2009 in cases BvC 3/07 and BvC 4/07.
[3]See: About COHUBICOL [Electronic resource]. URL: www.cohubicol.com/about (date of access: 23.04.2020).
[4]Some short references may be in order. See: European Court of Human Rights jurisprudence about the matters of big data, for example Big Brother Watch et al v. The United Kingdom of 13 September 2018 No. 58170/13 or the annual reports of the European data protection supervisor, assessing how efficiently the legislation for privacy protection is realized.

The image of human rights protection in the e-state context leads at the first and non-holistic glance to a development exercise. The goal of such exercise is to move ever closer to conditions of perfect knowledge transfer and perfect trust towards the government. The further fully this goal is realized, the more this image turns immune to objections arguing incompatibility of e-state practical solutions and principles with human rights. In further glance and when placing this development exercise into theoretical framework one easily notices its roots in practice-dependency as opposed to human rights as a normative idea[5]. This approach runs counter the proposition of human rights universality and idealism. The practice-dependent aspect is not sufficient to conclude principle compatibility or incompatibility of e-state with human rights promise.

Non-coherence theory of digital human rights. Elsewhere I have proposed the non-coherence theory of digital human rights, which is paradigmatically different from the practice-dependency-independence framework [2]. The digital dimension of human rights can be described via a novel principle that I term the variance principle, which says that this dimension is characterised by a consistent condition of unpredictability and lack of clarity on whether human rights norms, their realisation, related obligations, and remedies against violations as established in the offline world continue to exist online undistorted or, if distorted, what are the degree and consequences of such distortion, or whether they are replaced by online-specific elements. The variance principle claims that ontic and epistemic aspects of human rights from the offline domain may be at variance with these aspects in the online sphere. It is perhaps more accurate to state that offline rules and principles may apply sporadically, but there exists no predictability about the circumstances under which they apply and exactly how. In some instances, they may apply, such as in relation to some concrete online service providers, or in some countries, or regarding some specific rights – and in other instances they may not. See for example similar propositions. S. Schaumburg-Müller writes: "I am not arguing that life online and offline is always completely the same and ought to be regulated in precisely the same manner in all details. What I am arguing is that they are not fundamentally different either" [3]. Or J. Kulesza writes: "Does the Internet's transboundary nature, scale, speed of communication, automation, interconnectivity and invisibility change the way in which we view and protect fundamental rights (privacy, data protection, non-discrimination, due process, presumption of innocence and free speech)? Are human rights online exactly the same as offline or are they modified by the Internet-specific circumstances, possibly impacting their very core?" [4]. The variance principle leads to the non-coherence theory of digital human rights, which claims that human rights law and its application online is characterised by a decrease in transparency, legal certainty and foreseeability. An extreme decrease in these principles means that the online sphere of human rights is characterised by non-transparency instead of transparency, legal uncertainty instead of certainty, non-foreseeability instead of foreseeability and secrecy instead of accessibility. Human rights exist online in a non-coherent system characterised by the fragmentation of human rights normative sources and interpretation through discursive practice, a multitude of actors with changing roles, novel compliance mechanisms or their overall absence, and the systemic dependence on the capabilities of online stakeholders for the protection of human rights, and the systemic susceptibility to utilitarian considerations which are non-resilient to time; that is, considerations which may change swiftly in time at will, like the goals related to the protection of national security or economic interests.

Five caveats

Application of the non-coherence theory of digital human rights leads to the formulation of five caveats.

The first caveat. The first is related to almost complete absence of human rights rhetoric from e-state goals' and strategic commitments. This observation is subjectively cognitive and is based on reading Estonia's strategy documents, observing administrative practices and political rhetoric when Estonia's success story as an e-governed state is presented either domestically or internationally[6].Comparative analysis to justify or reject this observation in principle, and assess its scope and variances may be in order for

[5] For comprehensive discussion about the matter of practice-dependency and practice-independency of human rights, see: *Coutinho L. P.* The practice-dependency of human rights // *La Torre M., Niglia L., Susi M.* (eds). The quest for rights. Ideal and normative dimensions. Cheltenham : Edward Elgar Publishing, 2019. P. 49–64.

[6]Some examples may be in order from Estonia's national strategy documents. Estonia's information society development plan 2020 (in the Estonian language accessible via: https://www.mkm.ee/sites/default/files/elfinder/article_files/eesti_infouhiskonna_arengukava.pdf) is a strategy document in 45 pages emphasizing that information technology is a crucial tool to raise competitiveness of any economic or social sphere. This document does not contain a single reference to human rights. Strategy "Estonia 2035" is a long-term development strategy to enhance the well-being of the population in the conditions of modern society. The strategy is on 22 pages and contains no reference to human rights.

future purposes. The author's hypothesis claims that the countries which rely on higher amount of e-solutions for the purpose of public administration resort primarily on rhetorical arguments when the issue of safeguarding human rights in through these solutions is raised. This safeguarding is theoretical and illusory. The countries which have quickly and on large scale resorted to e-state solutions demonstrate at a relatively lower degree how exactly these solutions are in line with the obligation to protect human rights.

The aspect of absence is addressed through various practical initiatives and advocacy tasks. The concept of smart cities or human rights cities is built partly on the understanding that human rights need to be fostered at the local levels. For example, L. van Zoonen has suggested a framework for including people's privacy concerns in research, policy and design of smart cities. The work shows that individual citizens or collective citizen groups are ofteh ignored as partners in the development of smart city technologies or innovations [5]. Others have addressed how smart city environment affects people's privacy [6]. More examples could be given about this approach. The author's observations and discussions with researchers and practitioners in the field reveal endemic absence of human rights goals from e-state strategy and practice. The new concepts of human rights by design and human rights by default, when applied to human rights protection mechanisms in digital vertical relations, are indicative that human rights are engrafted into e-state strategy and solutions, that is, they were not part of the e-state philosophy in the first place.

We are trained to think that human rights are connected to social development [7]. Many examples could be given, well known to readers about human rights, how the interests of vulnerable groups were enhanced because of the human rights argument. One can find examples about business success being related to social responsibility of modern corporations. Contemporary human rights discourse seems to accept the proposition that social development and human rights work in tandem. The non-coherence theory of digital human rights suggests that something must be at variance from this picture from offline dimension when reflected into online dimension. I claim that this variance concerns the transformation of the development and tandem argument. In offline world social and perhaps economic development is enhanced or accelerated when taking into account human rights component. In the online world's e-state development, to the contrary, human rights transform from enhancing factor into impediment. Instead of pushing forward with more and new e-state solutions and expanding the e-statehood into new public administration areas, the developers now need to add an element which is not functionally indispensable. Another way to formulate the first caveat is to say, that human rights factor has not yet been integrated into e-state to the extent that it becomes a functional part of the e-state organism. There is no specific vulnerable group who would gain some competitive advantage if pressure upon e-state design would be channelled into e-state solutions taking into account human rights concerns. This is because of the notion of internet vulnerability – we are all vulnerable in front of the internet, this is the notion of collective vulnerability.

The problem originating from this caveat is the strong possibility that, when making further choices about the development of e-state principles and practical solutions, regard towards human rights simply is not a relevant criterion for assessing the justifiability of proposed measures.

The second caveat. The second caveat is related to the absence of conclusive justification about e-state success in social context. It claims that there exists little or no evidence to comprehensively assess the benefits or failure of the e-state project. This can be a continuous condition, at least as long as data emerges to either support or reject the social impact of the e-state project. While the e-state doctrine remains subject to scientific and practical contestations, I will explore whether any relationship exists between happiness and high development of e-state, that is, whether there is some causal relationship between happiness and (or) unhappiness and e-state development in a given country.

The 2019 World happiness report refrains from presenting correlational conclusions between unhappiness and the time spent on digital media, yet it refers to studies that people who limit their time on social media improve their well-being [8]. In short, the report concludes that adolescents who spend more time on electronic devices are less happy, and adolescents who spend more time on most other activities are happier. The 2020 World happiness report explores why people in the Nordic countries seem to be happier than in other countries [9]. Among other observations it refers to a cross-sectional study over 2005–2012 which links improvements in government quality to improvements in well-being. When government quality is divided into democratic and delivery quality, it is the latter which is more strongly related to citizen happiness. These short brushstrokes, while not establishing that more e-state means less happiness, do not establish the contrary either. Yet it remains a question why Estonia as the "most advanced digital society in the world"[7] is ranked only at the 51st place in the 2020 World happiness report. When to view usage of e-state solutions as part of individual digital habits, and comprehend that more digital time usage means less happiness, then digital

[7]A rhetorical statement often used in reference to Estonia's digitalization and e-governance, see for example: We can built a digital society and we can show you how [Electronic resource]. URL: https://e-estonia.com/ (date of access: 23.04.2020).

public services can be viewed as part of the more general behaviour from the individual's perspective. If the former is correct, then more e-state means less happiness.

Another aspect of e-governance which seems worrying to the human rights and IT scholars is the matter of algorithmic prisons – algorithmic "gatekeepers" influence access to various social services and may lead to insurmountable barriers on behalf of the state power [10]. When in face-to-face situations administrative misunderstandings or issues often can be resolved, there is nobody to talk to in many e-state solutions. This second caveat means that the economic or rhetorical "success" of e-statehood easily can overshadow reliable data how e-state affects people's daily lives and well-being.

The third caveat. The third caveat claims that in the digital sphere fundamental rights protection is more comprehensively expected and realized under horizontal than under traditional vertical governance model. The non-coherence theory posits that several core fundamental rights principles change once transposed from the offline domain into the online domain. For justifying or rejecting the third caveat our interest turns to the question, whether there are any significant differences between public and private digital domains vis-à-vis human rights meaning and mechanisms for protection? This question can be explored from the normative perspective, through practice and the capabilities approach.

From the normative side, one notices the growth of soft law instruments calling upon the private internet service providers to respect fundamental rights[8]. Private entities themselves are developing and publishing *modus operandi,* or original terms of service[9].The terms of service of the public sector, a contrario, originate from the off-line environment and appear transposed for providing in the online domain the "same services" as in the offline realm. The variance therefore lies in the origin of the operation models for protecting fundamental rights in the digital domain: the private online service providers rely on original design, whereas the public service providers, e.g. the e-state uses a model which is necessary to manage the offline public domain. Despite contestations against the foreseeability of the terms of service used by the online service providers [11], the fact remains that generically they are meant for the digital environment and thereby strengthen the online service providers per se, whereas the goal of the e-state is not to strengthen e-state applications, but concrete real-world political and power-oriented processes.

The main epistemic question related to the practice of online private companies' and e-state applications is what exactly these two realms are set to accomplish. I see here a wide discrepancy. The private online portals have their whole business model focusing on increasing the economic efficiency of digital solutions, whereas the e-state solutions have the clear target to make public administration more effective, including in the economic aspect. The difference in goals leads to difference in expectations. The private online domain's goal is focusing on accomplishments in the same domain, whereas the public online domain's goal is focusing on accomplishments in the offline domain. I claim that private online companies and portals are expected to protect fundamental rights at a much higher degree than e-state solutions. The matter of capabilities, that is what exactly are different online solutions capable of doing – is therefore much more relevant for private online dimension than for the public dimension (the e-state). Elsewhere I have shown that although private online enterprises are capable of balancing fundamental rights, the balancing entails high degree of arbitrariness due to the incapability of these portals to attach reasons for the balancing decisions [12]. This is evident from the so-called community standards of major internet companies, as well as from individual notification to portal users, where the decision to block or delete information posted by the user is explained by mere reference to non-compliance with the community standards[10]. E-state on the other hand has no requirement to balance conflicting rights, since the collusions of conflicting rights of individual rights-holders having the same weight is excluded. This is because the e-state is not

[8]At the European level, the primary efforts are undertaken by the Council of Europe and the EU. Various instruments exist at the Council of Europe level, such as the Internet governance strategy 2016–2019, or the Recommendation CM/Rec(2018)2 of the Committee of Ministers to member states on the roles and responsibilities of internet intermediaries. The European Commission has adopted the EU Human rights guidelines on freedom of expression online and offline. At the global level the UN Guiding principles on business and human rights and the "Protect, respect and remedy" framework are pertinent.

[9]In recent years, the main global social media actors have published community standards regarding their anticipated actions towards online content. The focus of these standards is against hate speech and (or) clearly illegal content, but there are also guidelines for when legal content affecting someone's privacy can be removed or blocked. These standards neither refer to the international normative human rights architecture, nor do they address the matter of the sameness of online and offline rights. When YouTube writes in its standards that it "reserves the right to make the final determination of whether a violation of its privacy guidelines has occurred", this reflects the doctrine of law as practice. We may use terms like *lex Facebook, lex Twitter*, etc., which means that the origin of digital human rights law has, strictly speaking, a private character.

[10]Consider the recommendation of the Google Advisory Council, which was set up after the Goolge judgment of the CJEU – Case C-131/12Google Spain SL and Google Inc. v. Agencia Española de Protección de Datos (AEPD) and Mario Costeja González (13 May 2014). The council suggested in its report para 19, that Google should not attach reasons to individual decisions of blocking or deletion, but should rather publish statistics.

a place where private individuals and (or) companies can advance their rights claims towards one another, it is the platform for exercising state vertical power. When various private stakeholder groups' fragmentation can be categorized through focus to process-driven (the Global network initiative), substance-oriented (Manila principles) and issue-oriented (Google Advisory Council) initiatives, such fragmentation does not emerge in the e-state context. The matter of capabilities does not emerge for public online domain from the aspect of fundamental rights protection, since the e-state has no specific goals related to the protection of fundamental rights other than the ones originating from the offline domain. The main fundamental rights concern for e-statehood is whether the e-state solutions by themselves have secret doors enabling the arbitrary usage of data, which is a matter concerning the following two caveats. The previous leads me to advance the hypothesis that fundamental rights are non-essential for justifying nor realization of e-state solutions. Another way to formulate the same idea is to suggest that e-state does not need fundamental rights, or even more bluntly – fundamental rights disturb the development of e-state.

The fourth caveat. The fourth caveat is related to the dichotomy of the meaning of privacy in the digital domain, and to the perpetual digital memory. The non-coherence theory is based on the recognition that the meaning of human rights norms changes once transposed into the digital domain. The following can be said about the change of the meaning of privacy through digital transposition. The doctrine of privacy fatalism is advanced as a persistent contemporary phenomenon to characterize the distortion of the traditional meaning of privacy online [13–16]. Privacy online has been declared "dead" or "dying" [17], or as the founder of Facebook Mark Zuckerberg says, "privacy is no longer a social norm" [18]. The concerns related to intrusions into privacy by contemporary media, traced to the seminal article by S. D. Warren and L. D. Brandeis introducing the modern concept of privacy (S. D. Warren and L. D. Brandeis [19] for example they lamented and critiqued "the press" which was "overstepping in every direction" beyond common decency and engaging in "vicious" and "unseemly" gossip [20]), have possibly reached an extreme in modern internet-driven technology. It is suggested that the internet has given birth to modern privacy rights, as proposed by several scholars focusing on new technology and associated data practices and threats and challenges to privacy, particularly the development of new computing and data-based technologies [21–24]. The result of this process is that defining and conceptualizing privacy has become an increasingly complex and complicated task [25], which has led to the notion of privacy being divided up and segmented into numerous categories; for example, physical or spatial, decisional, and informational privacy [26]. It has been argued that today nobody appears "to have any very clear idea what privacy is" [27]. The difficulties associated with defining privacy online may have the "chilling effect" of deterring people from exercising their rights and freedoms on the internet [28]. These brushstrokes have to suffice here when painting privacy in the digital domain. Even superficial glance upon the painting notices that this non-coherence between the digital or non-digital domains concerns primarily private online aspect. For e-state the meaning of privacy has not changed at all, or it has changed considerably to a smaller degree, since e-state is mainly concerned with citizens and their privacy phenomenon in the offline realm. Therefore, this fourth caveat leads to the conclusion that the notion of privacy is considerably more complex and many-faceted in private digital domain in comparison with the public digital domain, including e-state.

Private online digital domain is influenced by time and forgetting, whereas the e-state is not and Blockchain never forgets. There is no corresponding entitlement in the public sphere to the right to be forgotten which obligates private online search engines [29] under certain conditions to block access to information which is not relevant for the public. A well-known statement – which is part of popular and scientific folklore – that the Internet knows you better than you yourself can be proven both for private online sphere and for blockchain technology. Only when the private internet companies may be compelled to forget, the blockchain by design is unable to yield to this command.

Against this background we can put forward the caveat about dichotomy in the meaning of privacy in the digital domain. This dichotomy may also exist regarding other human rights norms.

The fifth caveat. Fifth and finally, there is a threat – even if it remains primarily theoretical, of e-state transforming into a police-state. The threat is because blochchain and internet generate many tools which enable such transformation, remaining unnoticed and disguised under the veil of economic and technological efficiency. Such transformation would be accompanied by the rhetoric of trading protection of privacy for increased international and national security[11]. It is sufficient to claim under this fifth caveat that with the expansion of e-state the possibility of police-statehood measures increases. These measures may not become implemented simultaneously. Much more could be written about this threat, but it has to suffice.

[11]For discussion about this matter, see: *Waldron J.* Security and liberty: the image of balance // Journ. Political Philos. 2003. No. 11. P. 191.

Conclusion

The five caveats in conjunction lead me to formulate a thesis about negative correlation between e-statehood and fundamental rights. The spread of e-state usage to more and more public administration areas and by more and more public offices invigorates the development aspect without the need to consider how the new developments coincide with human rights related obligations. The stronger the e-state, the more the human rights factor is withering. Slower development and spread of e-state solutions may signal contestations related to the human rights factor. This thesis will have to be examined in more depth and detail in future writings.

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HUMAN RIGHTS PERSPECTIVES ON LAW AND TECHNOLOGY – A PRACTICAL EXAMPLE: E-GOVERNANCE IN ESTONIA[1]

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Changes in society caused by technology also lead to legal changes. Through history, there has quite often been concern about whether law should prevent or restrict new technologies or instead encourage innovation. This is nothing new. Changes are however increasingly rapid and potential effects on protection of rights more frequent. Technology can also help protect rights and for example assist effective governance, as is shown with the example of Estonia.

Keywords: human rights; e-governance; technology; Estonia.

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ПРАВО И ТЕХНОЛОГИЯ С ТОЧКИ ЗРЕНИЯ ПРАВ ЧЕЛОВЕКА НА ПРИМЕРЕ ЭЛЕКТРОННОГО ПРАВИТЕЛЬСТВА В ЭСТОНИИ

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Изменения в обществе, вызванные развитием технологий, приводят к изменениям в законодательстве. В процессе исторического развития поднимается вопрос о том, должно ли законодательство препятствовать новым технологиям, ограничивать их или же, наоборот, поощрять инновации. В этом нет ничего нового. Однако изменения происходят все более стремительно, а их возможное воздействие на защиту прав ощущается все чаще. Технологии могут также способствовать защите прав и, например, эффективному управлению, как это показано на примере Эстонии.

Ключевые слова: права человека; электронное правительство; технологии; Эстония.

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Introduction

Changes in society caused by technology also lead to legal changes. Through history, there has quite often been concern about whether law should prevent or restrict new technologies or instead encourage innovation. This is nothing new. There are well known and amusing examples, often quoted by authors, about how English law of the 1860s required a man to walk ahead any motor vehicle with a red flag, warning people on the road [1], or how in 1899 it was (allegedly) written that the US Patent Office could be closed as anything that could be invented was already invented[2]. These examples show how difficult it is to understand what the effects of technology may be, as well as illustrate the anxiety about how to fit technological advances into the legal system. Technological change has been a lot more rapid in the past decades than in previous centuries and technologies now form a greater part of our daily lives. Thus, it is not surprising that the questions of how law and technology fit together and if technology may affect human rights have achieved prominence in the debate in recent years.

The more technology becomes a part of our everyday world, the more ethical issues arise. Whether technology should be limited is not only a question of what it actually can do in practice or even of whether the law sets certain limits: it is also a question of whether policy decisions should be taken to limit technology for ethical or other reasons. Maybe not everything than *can* be done *should* necessarily be done. Reasons to limit technological advancement may be that it would present unforeseeable risks to humans or the environment or that it would dehumanise society. The role of law is to consider these "soft" aspects in addition to the more practical ones of liability, standards and similar. Legal obstacles to technical progress fall into two quite distinct categories: the obstacles caused by specific provisions in laws, which are temporary obstacles as legislation can be changed; and legal obstacles due to something being against fundamental human rights or ethics. The latter kind of obstacles can mean that certain technological progress should be limited or at least adjusted through regulation and laws.

Quite often, the legal discussion about the interrelationship between law and technology focuses on the possibilities or difficulties of the legal system to mitigate risks connected with technology. However important this is, it should not be forgotten that technology can also support the legal system, support the implementation of human rights and the rule of law. This can be seen for example in the context of "privacy by design" to implement data protection standards or by "automatic" transparency. As more and more countries get interested in introducing or increasing their use of e-governance, ways of applying technology to improve protection of rights provide an interesting area of study. Estonia is a world leader in e-governance, both as it started very early and thus already has considerable experience, and as its e-governance solutions are widely used by the population. In this article we look at the Estonian e-governance to see a practical example of what positive and proactive relations between law and technology can look like.

First, we touch upon general considerations of the interrelationship between law and technology, looking at risks as well as opportunities. In particular, we focus on principled issued such as human rights and rule of law (rather than on very essential but more practical legal questions of liability, intellectual property or details of data protection). The theoretical discussion is put in a practical context by presenting some examples of a digital society in practice, more specifically the very advanced e-governance applied in Estonia. It may be said already here in the introduction that this article raises more questions than it answers: this is inevitable for the fast-moving topic and it should not be a problem, provided that the questions raised give a better understanding of how to approach the issue, what questions to ask and whom to involve in the debate. The contribution we seek to make with this article is to highlight what issues we should think about, how and why.

An era of conflict and contradiction?

There are many examples of how modern technology creates situations in which different rights conflict with one-another – or even the technology as such appears to provide challenges to rights. We see many discussions on whether security or privacy should be given greater weight, for example in connection with facial recognition technology, CCTV or other surveillance systems. The possibility to sacrifice some privacy for convenience or efficiency adds another aspect to this balance. There are various systems for being able to pass quicker through airport security by giving information in advance for example. As security procedures get more and more inefficient and slow, we are many who are tempted by such possibilities. It is a le-

[2]Attributed to Charles H. Duell, commissioner of the US Patent Office. The quote is widely repeated in books or on-line, even if there is no actual evidence it was said or any credible original source. It is quoted as 1889 or 1899 in different places. These examples are mentioned by T. Kerikmäe and K. Nyman Metcalf (2020) in "The rule of law and the protection of fundamental human rights in an era of automation" (forthcoming) in the book "Smart technologies and fundamental rights" edited by J. S. Gordon.

gitimate question if everybody understands the possible drawbacks and whether the consent we may give is really informed as well as truly voluntary.

It is important to be aware of the fact that there is not one clear and correct answer to what should be given greater weight: privacy or security. It has to be seen case-by-case, situations change over time, there are fundamental political differences between viewpoints and so on. Consequently, it is a debate that should be ongoing with as many different interests as possible represented in the discussions. It is not something that one day will be solved. If the questions of today would be finally settled, technology will most likely entail new questions in the near future.

Another apparent conflict, which is not necessarily caused by technology but exacerbated by new means of communication, is the conflict between freedom of expression and reasons to restrict certain expressions. Privacy or data protection restricts access to information and transparency and may thus restrict freedom of expression. All these rights and freedoms are well worth protecting and it is inevitable that a careful balancing must be made. Data is not only protected in electronic form, also paper-based data should be protected, but given the many ways in which people can communicate directly even with a large, undetermined audience while at the same time more and more data about people is gathered and kept, there will be an increasing number of such potentially conflicting cases. The ease of communicating without going through "gatekeepers" in the form of editors, broadcasting station management or similar furthermore leads to new situations of conflict between freedom of expression and hate speech. Data protection rules – first via European Court of Justice (CJEU) case law [2], and later codified in the EU General data protection regulation (GDPR) [3], have added conflicts of their own, like between the right to be forgotten (right of erasure, Art. 17 of GDPR) versus transparency and historical truth.

In addition to an era of apparent conflict and contradiction, we are also in a situation in which many borders that have been very important for the legal system lose importance or at least change fundamentally. In cyberspace, there are no physical national borders, which makes the question of jurisdiction challenging. However, this is not the only border that changes its importance. There are no (clear) borders between public and private or between civilian and military legal issues [4, p. 70]. We have private companies that are more powerful than many states and that in fact set ethical and other standards for the most important communication spaces. As for the military-civilian question, it is possible to launch attacks by mobile phone, so old established questions of humanitarian law like attribution of hostile acts to decide who is a combatant or designation of what is regarded as a weapon take on a different meaning.

For the specific sphere of communications law, the distinction between transmission and content has more or less lost its meaning. For as long as telecommunications and broadcasting have existed, the distinction between point-to-point or point-to-multipoint communication has been important for regulation. Point-to-point means that the entities that communicate with one-another are known entities[3], you know who you call. This means that the state has no legitimate interest to intervene regarding the content of the communication. It is possible that the content is illegal, like when people make a phone call to plan a crime, but it would not be the telecommunications company that would be liable for this illegality. Laws and regulation primarily deal with technical aspects of the communication, its transmission. As for point-to-multipoint, this means that anyone with a certain equipment can receive the content. In such case, even in societies with freedom of expression, there are legitimate reasons for authorities to take an interest in the content. Such interest should not amount to prior control and censorship, but it can mean specific rules and monitoring regarding incitement to hatred and violence, requirements about not showing violence or pornography on television before a certain time and similar. Broadcasters often need a licence or authorisation, which establishes a certain amount of control over what goes on in the sector. Internet upturned this distinction between types of communication and consequently types of regulation: internet can be point-to-point or point-to-multipoint, a mixture of the two, multipoint-to-multipoint and maybe even something else entirely. Communications law is still grappling with how to deal with internet. If the early days of internet saw a lot of romantic notions of cyberspace being an area of cooperation and no restrictions, more recent attempts focus on how to implement at least some regulation. Internet quickly became too important to be left totally unregulated. However, to regulate something that is not only very fast-moving but that furthermore developed for some time already without many rules is indeed like trying to put a reluctant genie back into the bottle! The huge benefits that internet has brought for freedom to communicate as well as to access information – two sides of the human right of freedom of expression – should not suffer, but regulation should only deal with the negative sides.

Technology does not only pose challenges: it can also help to enforce rules and to make the world safer in different ways. For example, requirements of pro-

[3]The possibilities of group calls or of people calling numbers without knowing to whom they belong do not change the basic definition of what is a point-to-point communication, as the basic truth that the parties can be identified and are not an undetermined part of the general public still applies.

tecting data can be met with technology that more or less automatically applies requisite rules. There are many ideas of how to use technology for enforcing contracts or other types of commitments. This is what is referred to self-executing commitments or sometimes smart contracts. As artificial intelligence (AI) develops, there are likely to be more and more ways of using this in legal situations: machines "deciding" themselves and not just carrying out the exact commands of humans. It is possible to imagine that rights can be strengthened if they are "built in" to the systems, but it is natural that there are also anxieties about what will happen when decisions do not rely on discretion of human beings but rather on the very different way in which AI works. For many legal issues – those where there is a need to weigh things, like the situations mentioned above with conflict between different rights – it is difficult to imagine that AI will be able to do this. It may be one of the last situations in which the different nature of humans will be needed, with our ability to decide also in atypical situations, to take things into consideration that are not clearly delineated and so on.

There are fundamental questions of whether machines can do anything and should be allowed to do anything, which will need to be addressed, but on a more day-to-day level, there are things to do even with the kinds of AI that already exists. The European Union (EU) in its White paper on AI [5] has called on EU member states to build "ecosystems of trust". These should be based on the key principles that the EU has enumerated on responsible and trustworthy AI as well as strengthened by using systems of impact assessment of AI. Fundamental rights as well as consumer rights need to be protected. The Council of Europe has elaborated principles of AI and human rights [6]. Such measures aim to mitigate the apparent conflicts and contradictions.

The new reality

The spread of technology in society, with more and more areas in which it is deployed and has an essential role brings with it challenges for lawmakers as well as for those applying law. A big mistake would be to expect there to be clear answers to the points made above, about possible contradictions. For lawmakers, it may appear tempting to pass laws that are as complex as the technologies they seek to regulate. This is however often not the best approach – indeed, it may even be counterproductive. There are different reasons for this. First, there is a temptation when something is complicated to find an easy solution to point to, to be able to say that the issue has been dealt with – tick the appropriate box and regard the matter as closed. However, technology permeates so many levels of society and in so many different ways that it is highly unlikely that all of this can be taken into consideration in one law. What may happen is that instead of finding the one easy solution, many issues are in fact left without attention – the legislator thinks that if there is a "digital law", why worry about things anymore!

Second, having special legislation for digital issues risks creating a parallel structure – for governance, commerce or whatever it is. Laws should focus on the *content*, the *substance*; what transaction is being made, what kind of data is being dealt with and so on. The method of performing a transaction or the form in which data is held should not be a decisive issue. Of course, there are some issues that are different in the digital or cyber world, like the way to identify oneself [7]. Such issues tend to be horizontal in nature, meaning that they can be dealt with in the same way for different contexts – suitably by the same law. Thus, a special law on digital identity and signature is needed and this law – and the digital identity system – should be the same for all various contexts, whether it is a signature to submit a tax declaration or a request for planning permission, whether its is a contract between two companies, signed by company executives, or a request from a citizens to access certain data from a public body. As far as the actual laws governing these various transactions are concerned, these should be separate and relate to the transaction: the tax law, the law on planning permissions, contract law and so on. There is no need to say anything about the form of the transactions in such laws. It is enough that we know that if the law mentions a signature or a document, this can also be a digital one – following the requirements in the specific digital signature law. To sum up: make sure the sector-specific legislation is suitable but for new legislation, focus only on the horizontal issues.

This approach means that most legislation does not have to be changed even if the way of doing certain transactions changes a lot, due to technology. The legal work involved is largely that of going through existing legislation in almost any field to see if there is anything in the laws that is not possible to do or that is unclear in a digital world. This can range from simple form requirements (that a document has to be on blue paper, that a line needs to be underlined with red, etc.) to procedures that appear to require physical presence. Such provisions need to be changed. If they serve no purpose, they can perhaps be eliminated or otherwise some special digital system can be created to replicate what was special in the analogue world. This is another reason why special "digital laws" can be a bad idea, as this may mean that not enough attention is paid to such a comprehensive overview. That may mean that unclear provisions are left undetected until when some transaction is already undertaken. Rule of law includes the requirement of legal certainty. Parties to a transaction need to know what applies, so if there is a new technical way to do something, the law must be clear about what exactly is required for the transaction to be recognised in all relevant contexts, including as evidence in court if needed.

There are also other issues than those directly related to new technical ways of doing things that we can observe in our modern, high technology, digital world. In some instances, such matters may be even more significant for the legal system and rule of law than the actual new technology. One such issue is the role of private companies as *de facto* regulators of many essential things. It is difficult to find examples in history of companies having the kind of power that the internet platforms of today have. Google and Facebook make ethical rules and enforce them, deciding what kind of content that people in hundreds of countries can see or hear. They may take such tasks seriously, as can be seen by Facebook's new ideas on an ethical panel, but the fact remains that they do so because they feel an interest in doing it and not because they can be forced to. Today, the companies show willingness to comply with calls on them by authorities and politicians in different countries and they also respond to customer anxieties and demands. They do this because they feel it is useful for them (and perhaps because it meets the ethical principles of the owners and executives), rather than because any democratically elected authority can compel them to do so. Internet platforms keep increasing the impact they can have in many different aspects of life, so this situation where key decisions are taken outside of the power of the legislative or executive authorities of states will be even more directly felt in different circumstances.

The fact that something is different does not have to mean that it is worse. Perhaps private companies will be more responsive to what people want than political systems, which face challenges of reduced interest in politics by citizens, feelings of alienation that lead to election of irresponsible populists and so on. Through ideas of "multistakeholderism" – decision-making by organs composed of governments, companies, civil society, academia, normally on an international level – it may be possible to achieve rules that are suitable to daily reality, closer to the people, flexible and through all this more likely to be implemented than regular legislation [8]. The way that internet permits to ignore traditional borders means that different actors may be able to have a say about rules, instead of the traditional structure with a legislator, executive, judiciary and civil society and business all with their own specific roles. Multistakeholderism can be more or less complex and is usually not hierarchical, using a hybrid range of techniques for making and enforcing rules [9]. However, positive or not, the fact that the rulemaking as well as rule-implementation is different needs to be understood. Until now, the debate on law and technology has not paid very much attention to this aspect as a fundamental shift but rather focuses on isolated questions of just how much attention Facebook pays to requests made by the US Congress or the EU Commission for example – thus implicitly still presuming that these organs actually have power over Facebook. [10; 11, p. 286–287]

Estonian e-governance

In order to move be more concrete regarding considerations of whether technology is a threat to rule of law or how it may instead support implementation of rights, we shall briefly look at the Estonian e-governance system. This is a public system, a system of governance, which does not change the dynamic of what the formal roles are of authorities or of citizens [12, p. 201–203]. However, by giving citizens a complete and accessible overview over what data the authorities hold on them, how it is used, and by furthermore allowing people to decide when and where they perform administrative tasks, the Estonian e-governance system does show what may well be the future of governance: a citizen centred state.

Estonia is a world leader in e-governance[4]. This status of being the leader used to be largely due to the fact that Estonia was earlier than others in implementing technical solutions of different kinds – for example, the government went paperless in the year 2000, doing transactions immediately on-line, with ministers bringing their own computers and accessing all data electronically. Later, other countries have in some respects caught up with Estonia and there are now many different electronic governance solutions around the world, some which are more modern than what Estonia uses. It is however still possible to speak about Estonia as a world leader, partly as there are still solutions that are (almost) only used in Estonia (like being able to vote online in all forms of elections) [13; 14], partly as the Estonian e-governance is actually used to a very large extent. The digital way really is *the* way Estonian people communicate with authorities as well as perform many private transactions. On any given year, Estonians make almost as many digital signatures as the whole of the rest of the EU together.

[4]The terms "e-governance" and "e-government" are often used interchangeably. E-governance is broader, as it includes not just government. There is no generally accepted definition of the term, even if some national legislations or other instruments may include definitions. Normally, it means using information and communication technologies (ICT) to support administration in different ways – from accessing information to making different transactions on-line.

How come a small country, that only in 1991 became independent again after the Soviet period could achieve this status of a world leader? That is a question Estonians are often asked and there is not one unique answer. It was a lucky chance that there were the right people in the right places at the right time, who made the most of the fact that there was nothing to lose. Once this attitude had been adopted, thought was put into how to make the most of the fact that there were no legacy administrative solutions, neither in the form of technology, nor working methods, that prevented experimenting with new things. At the same time, efforts were made to get people to adopt the new solutions. This was done in different ways. One important factor was the close cooperation between the public and private sector, which meant that the digital identification system – a crucial backbone of any e-governance – was developed as a public-private-partnership between the (private) banks and the government, with each side agreeing to accept the same identification and signature system. In practice, this meant that at first people accessed also public services with their bank identity, developed by the private banks but accepted also by the public sector. Gradually, as most people got the ID-card with the digital signature possibility linked to it, people started using this – public – ID [15] also for banking transactions. Not only is it efficient from a technology viewpoint to pool resources to develop and maintain a secure identity but having one multi-purpose identity also helps to make people familiar with it and more comfortable using it. This is essential, not only as a service to be nice to people and make their life easier (which of course is a nice aim in itself!) but also as there is often a vicious circle when it comes to developing e-services: few people use them as they find it complicated – this means that there is less interest in developing new service as so few people use them – this means that few people bother to find out how to use the services as there are only so few – and so on.

Another way, in addition to facilitating the use of one universal digital identity, that Estonia showed concern for the actual possibility for people to use digital governance solutions was a legal provision that still exists but now gets little attention in Estonia: namely a provision that there must be free access to internet for all residents, meaning a computer with free-of-charge internet access in different locations, wherever people live, both in villages and in towns. The provision is found in the Public libraries act [16], and that is also where such computers are normally found: in the library. The provision is still there but as most Estonians now have other means of accessing internet, it is less relevant. The provision reflects regard for the fact that in the 1990s, when e-governance in Estonia was developed, very many people lacked the means to get their own internet access, at their own cost. Nevertheless, the state wanted to show that this new way to govern and administer the country was not just something for an elite in the cities, but something everyone should be able to profit from. Such a measure – even if nowadays more symbolic – can still have an important signal effect, for showing concern for inclusiveness of governance.

These mentioned factors illustrate one of the core aspects of e-governance: interactivity – the way to actually "do something" on-line and not just access public information. The other important component of e-governance is interoperability – that databases and authorities can communicate seamlessly. This is something enabled by technology in ways which are not possible with traditional paper-based data. It is technically possible for anyone who needs to access certain information to do so directly from one source, without the need to somehow send information between authorities or other organs. If such a system is well designed, it can support not only greater efficiency (as it considerably reduces time of transactions) but also greater security, as data is accessed from one place, directly, with no additional needs to transfer it between people and institutions. Each such transfer – regardless of whether by sending data electronically, on paper, giving information over the telephone or in person – means that there is a risk it may get somehow corrupted, altered, not updated and so on. These risks are reduced or eliminated totally if everyone who has a legitimate right to have access to the data in question can get this access from the original database. It is prohibited in Estonia to make a database with data that already exists in another database – the "once only" principle actually works [17]. Technically, such a system is possible thanks to technology that allows databases to communicate, that allows different organisations to access databases. This idea is what is called X-road in Estonia. The name was given to illustrate that the system means creating a connection between databases (a road – although nowadays more often illustrated as a cloud) and not a gigantic, centralised database.

An important term in the description of the X-road above is that the access to data is given to those who have a *legitimate* right to access it. The technology should not mean that more people can access personal data. In fact, as the data access can be made more specific, it is possible to reduce the number of persons with access. There are no "ministry computers" or similar, where anyone who gets access to the device can access certain data, but any data access is based on the person identifying him- or herself before they get to the data. The identification is made with the same digital identity that is used by citizens to perform public services, as various levels of access can be linked to the card. Ordinary citizens can only see data about themselves, while persons working in authorities may after they have identified themselves also access personal data of others – if there is a legitimate need for them to do so, based on their work tasks and the fundamental rules of data protection. Personal data should be used for a specific purpose and in proportion to that purpose. Who gets what access is set out in agreements between those authorities who have data and those who need to use it, so called service level agreements. These are specific, meaning that the access is given to individuals, based on their work positions, and not by giving the same access to anyone in an organisation. Private companies can also join the X-road system and through this get for example information about addresses of their clients or other relevant information. However, it is important to recall that according to data protection rules, access to personal data by private organisations is given almost only based on consent of the data subject. Thus, private firms cannot get access to personal data through any "back door" via X-road, but this is just a technical tool to facilitate the access if the data subjects' consent to their data being used [18].

One of the very important elements of the X-road system that helps to protect rights is that every access of personal data leaves a "footprint" – it can be seen who it was who at a certain moment accessed a certain amount of personal data [19, p. 77–80]. As mentioned, all data access has to be preceded by identification of the person who is doing the accessing so it is possible to see not just which authority but even which individual who did this. Individuals can easily see on-line[5] if and when their data has been used. Authorities must always be prepared to answer what the purpose of the data use was. Within the authority, it is possible to see which individual it was who looked at the data, so it is pretty much impossible that people out of carelessness or curiosity access personal data without a proper reason. This is a very practical way to use technology to support a principle of rule of law and good governance.

Concluding remarks

Technology has become an integral part of most aspects of our everyday life. Most probably, there will be more and more uses of technology that are not even invented yet, that may affect different aspects of our lives. This has consequences for the legal system, with new questions of liability when a complex machine, perhaps including artificial intelligence, performs various functions, and with different considerations for communication when electronic channels are used for public services. Technology is not good or bad – it depends on how it is used. In this article we have not discussed the many different practical legal questions that arise, but instead focused on the more fundamental question of whether technology affects basic ethical and legal principles, including protection of human rights and fundamental freedoms. In response to the question of whether there is an influence or not, it can clearly be stated that technology indeed does affect the legal situation at all levels: from the fundamental to the mundane. When we look at what these effects are and whether they are positive or negative the picture is less clear. We see again how it is the way technology is used that is decisive. This may appear to indicate that technology use should be clearly regulated, to ensure that the use and its consequences are positive. However, in a fast-moving reality, trying to spell out rules for how something should be done is not easy: the rules may become obsolete quickly, be easy to bypass or act as obstacles to development and innovation.

So how to deal with the question of human rights perspectives of law and technology? First, it can be admitted that this article raises more questions than it answers. This is not by accident, but because one of the ways to deal with the complex and ever-changing issues is to discuss them, involving people from different backgrounds. Many of the changes to society that need to be reflected also by changes to the legal system have to do with organisational matters, the changing role of different actors, the elimination of borders in different context and so on – not so much with the actual technology. New and more flexible means of rulemaking can be an important step to realistic regulation. Sometimes technology itself can be used to implement rights, like by making transparency automatic or access to information realistic. For sure, we do not need to be afraid of technology as something that only presents risks.

In order to move from the fundamental and principled level to a more practical one, showing how technology can support goals of good governance and implementation of rights, we looked at the e-governance system of Estonia. This is one of the most advanced such systems in the world and it uses means by which good aims of transparency for example are directly supported by the technical solutions. It cannot solve all questions, not has it basically altered the traditional structure of the state, but it has meant that a citizen-centric government is practically possible. As one young Estonian, not herself involved neither in the governmental, nor in the technology sphere, so clearly put it: the Estonian e-governance system shows that government works for the people and not the other way around – it is not people who need to go to a time and place that suit the authorities, but the authorities come to you, at a time and place that suits you.

[5]At the same portal where it is possible to see all data the public sector holds on individuals plus access various services (www.eesti.ee).

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DIGITAL EXPERIENCES IN CREATING DIGITAL SERVICES: CASE WORK FOR THE RIGHTS OF THE CHILD[1]

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The digitalization process in the public sector has brought different benefits to states and their citizens, but it has also brought several challenges. In particular, digitalization processes require close collaboration with legal practitioners, managers and IT professionals, and failure to engage all participants means to come up with digital systems that do not comply with requirements, especially those related to laws. Currently, compliance is done in an after-the-fact fashion: a digital system is implemented, and legislators audit whether it abides legal constraints. The problem with this approach is the cost: in case of non-compliance, systems need to be re-implemented, and this will be most likely the case since laws are always changing. In this work we report experiences in *compliant-by-design case work* (CbDCW). In CbDCW, legal considerations are involved before the system is implemented, making compliance checking a task that can be automated. Moreover, the impact of a law change in implementation can be identified without needing to program a new solution. This paper reports our experiences in the application of CbDCW in the Danish public sector, as well as to propose a research agenda derived from these experiences. Overall we identified that there are key socio-technical differences between legal practitioners and process or IT developers, and that ensuring compliance requires these types of stakeholders to have a common understanding, which can be supported by hybrid-modeling techniques proper from business process management.

Keywords: rights-by-design; digitalization of the public sector; regulatory compliance; compliant-by-design case work.

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ОПЫТ СОЗДАНИЯ ЦИФРОВЫХ УСЛУГ: ПРАКТИКА В ОБЛАСТИ ЗАЩИТЫ ПРАВ РЕБЕНКА

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Процесс цифровизации в государственном секторе приносит как различные выгоды, так и проблемы для государств и их граждан. В частности, цифровизация требует тесного сотрудничества юристов, менеджеров и IT-специалистов, а неспособность привлечь всех участников влечет создание цифровых систем, которые не соответствуют требованиям, особенно в части законодательства. В настоящее время проверка на соответствие осуществляется постфактум: сначала

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внедряется цифровая система, а затем законодатели проверяют, соответствует ли она правовым требованиям. Проблемой подобного подхода являются возникающие издержки: в случае несоответствия системы внедряются повторно. Чаще всего происходит именно так, поскольку законы постоянно меняются. В данном исследовании описывается опыт работы именно с проектами, соответствующими нормам по умолчанию. В таких проектах перед внедрением цифровой системы учитываются правовые аспекты, что делает проверку соответствия автоматизированным процессом. Более того, влияние изменений в законодательстве может быть выявлено без необходимости программирования нового решения. Рассматривается опыт применения исследуемых проектов в государственном секторе Дании, а также приводится программа исследований, основанная на этом опыте. По итогам работы определены ключевые социально-технические различия между юристами и разработчиками процессов или IT-разработчиками. Также выявлено, что для обеспечения соответствия необходимо взаимное понимание причастных сторон, которое можно поддерживать методами гибридного моделирования, соответствующими выбранным схемам управления бизнес-процессами.

Ключевые слова: безусловные права; цифровизация в государственном секторе; нормативно-правовое соответствие; соответствие нормам по умолчанию.

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Introduction

The emergence of information technologies, big data and machine learning has brought a revolution on the way we conceive, operate and take decisions, as well as on to how processes are automated. In particular, the move from paper-based cases to digital ones allows caseworkers to identify trends, and base their decisions in historic data. Not surprisingly, such an interest has spawned questions regarding the transparency in decision making based on digital systems. How are decisions considering the legal framework for each case, and how can we ensure that citizens are guaranteed the rights given in legislation, when processes move from paper to digital?

This paper reports experiences in the digitalization of administrative processes in municipal administration situated in Denmark. Such processes are governed by a reference framework that defines rights, duties and responsibilities between citizens and municipal governments. The aim is to provide a process-aware information system (PAIS) where municipalities process and monitor citizen cases. The implementation of governmental processes needs to preserve the intent of the law, and allow caseworkers for flexibility and discretion in their decision making. The last aspect is important as each case is different, and the information required in order to take a decision in each case varies according to their context. Such systems are not uncommon in public administration [1]. However, the question about transparency still remains: legal practitioners are normally not trained in IT and IT specialists are not trained in the law, and lack of understanding between each group poses at risk the compliance in the implementation of a case management system. Currently, legal compliance is performed in an after-the-fact fashion: a prototypical implementation is released, and auditors confirm whether the system lives up to the rights inscribed in the law. Such an approach is extremely expensive: first, the mapping between legal rights and code is not straightforward. Second, the impact of regulations and their changes in an implementation is unknown.

This work aims at building the capability of public workers to develop novel socio-technical solutions for the public sector (for instance, citizen portals and case-management processes in local governments), paying considerations for the respect of the legal framework in the design of digital solutions in which such solutions operate. Ultimately, we would aim at providing a compliance-by-design framework that allows public workers and computer scientists to speak a common language, which will improve the understandability of case-management implementations, validate compliance earlier, and adapt changes in the regulations in an easier way than existing systems.

The paper is structured as follows: in the following section we describe our application case: the distribution of social benefits in the municipality of Syddjurs, in Denmark. Section 3 describes the intended compliance framework, as well as the technology stack developed for this project. Section 4 describes the adoption considerations report on lessons learned so far, proposing a research agenda derived from these experiences. Finally, section 5 concludes. To the most extent, this paper represents a compilation of several research works in the "Effective co-created and compliant adaptive case management systems for knowledge workers" (Ecoknow) project[2], and focuses on the parts that where the first author has been involved.

Case: social benefit case work in Danish municipalities

Denmark ranks 4th out of 29 EU member states in the digital economy and society index (DESI) in 2019, being the lead member in dimensions such as connectivity, use of internet services, digital public services for

[2]Effective co-created & compliant adaptive case management for knowledge workers [Electronic resource]. URL: https://ecoknow.org/ (date of access: 23.04.2020).

business and medical data exchange [2]. A common agreement between central and local governments has been instrumental in these positions. In March 2019, the central, regional and the local governments released a novel "Digitisation pact" to enable a seamless digital delivery and service collaboration across administrations in the public sector [3]. The goal is to accelerate public sector digitalisation efforts and to contribute to a better and more coherent welfare state by making sure that more people benefit from new digital possibilities and technology. The goal is to be achieved via three main objectives.

First, improved the usability, speed and overall quality of the digital services and digital welfare solutions. Second, to reduce the administrative burden on the business community by providing automatic business reporting solutions. Finally, the pact will build digital competences of citizens and of businesses, and improve information security in the public sector.

Digital services offered by municipalities are regulated by a set of laws, and quality considerations need also to consider compliance considerations. How are digital services observing the rights framed by the law? Moreover, compliance is rarely a one-shot activity, as laws constantly change: in April 2020, the Danish legal think tank "Justitia" examined the scope and change frequency of the Consolidation act of social services (CASS) [4]. CASS is a complex law with strong consequences for the life of families (e. g.: separation and reintegration of families, and monetary benefits among others). In its most recent revision, the 84 pages of the CASS contains 198 articles defining the circumstances under which local and national institutions are obligated to provide assistance to citizens, as well as the duties of citizens towards the state. The size and complexity of the law is not the only consideration: "Justitia's" report showed that CASS adopted 725 changes between 1 January 2007 and 1 July 2019. This corresponds to a rough estimate of more than two changes per each of the articles in the law, with some of the sections having a top of 13 changes per year [5]. Both the size of the laws and the number of changes affect compliance: digital services need to be in constant update according to the last legislation, and sometimes the changes of an article span across different components of the digital service. Complexity and change frequency make provision of compliant service a difficult task. Caseworkers need to get constantly updated as to how to identify the relevant legislation. In addition, citizens are less certain about whether their cases have been processed correctly. Each Danish municipality processed on average 9 337.33 cases related to CASS in the last three years [6]. Many of these cases were later revisited (e.g., on appeal): just in the first semester of 2018, 9.5% of the cases were revised, and 5.1% of the decisions needed to be reversed [7].

Technological and human challenges in process compliance

The quest for automated models for process compliance is not new to the digitalization era, with the first works dating back to the 1980's when Sergot attempted to make a digital representation of the British naturalization act [8]. However, while a great body of work has been developed since then, there are certain major challenges, both human and technological. At its core, the notion of compliance can be reduced to a question of alignment between processes and the intent of the laws. This alignment is continuous and it must be repeated when regulations or processes change. Moreover, such an alignment needs to consider the fundamental differences between laws and processes. These are, according to [9]:

• goal: business processes are designed and optimised for the achievement of a business goal, in contrast to regulations that are formulated by legal authorities to protect societal interests, ensure social welfare, and regulate citizen's lives;

• scope: business processes describe the interactions between one or multiple organisations, while laws typically regulate activities at a national, regional or local level;

• granularity: typically laws are high level documents that abstract from implementation details, while business processes describe in great detail the different flows of activities in an organization;

• focus: the main focus of business processes is to describe the sequences of actions that lead to the achievement of a goal, in contrast to laws, that has a focus on the effects of such actions.

The differences do not stop there: cognitive and educational aspects play a big role. Humans only have a very limited working memory and this can easily be pushed to the limits of their cognitive processing capacity when analysing complex information, such as the contents of law or the flows in an administrative process. Moreover, legislators and computer scientists are trained with diametrically different backgrounds, each of them extremely complex to understand for the other. That means that the methods and artifacts used for making sense and understanding communicate information between one discipline (laws and other legislative provision process models or programs in computer science) differ across disciplines [10]. Even using natural language (such as English) as a communication artifact becomes trickier: legal texts can be written at different levels of complexity [11], and legal information, primarily written in a prescriptive manner, not always match process representations, that are closer to imperative writing styles [12].

Making case work compliant with laws

A collaboration between the municipal government of Syddjurs, universities and software vendors was created with the objective of improving the municipality capability to manage and process cases involving services and benefits offered to young persons with special needs, as part of the Ecoknow project. In this section we will describe the problem of regulatory compliance of casework, pose forward some of the main challenges, and mention some of the most notable approaches in the literature.

What is digital regulatory compliance?

We take regulatory compliance as the "act/process to ensure that business operations, processes, and practices are in accordance with prescriptive (often legal) documents" [13]. While regulatory compliance can be applied to public organisations, private individuals, and private companies alike, it is in the former that compliance is crucially important. The latter two might decide to risk the non-compliance of a given law (risking fines and other punishments). Public sector institutions do not have the same possibility, as the impact of noncompliance will have repercussions in the restrictions of rights by their citizens.

We discuss our contributions in three steps: first, the formalisation of fragments of laws for digital processing. Second, the definition of a methodology that reconciles laws and processes in the public sector, and third, the empirical evaluation of the approach.

A formal account of laws

Our first premise was that if a digital process needs to comply with regulation, then there should be a link between the activities that the process does, and what is permitted or required in the law. Such a link must be formal, maintainable and understandable. On formality: it is not sufficient to determine that a given part of the process corresponds to a legal text, but it should be possible to demonstrate that the semantics of the legal text is preserved by the actions in the process. A typical example is an interplay between rights and obligations. A legal paragraph might prescribe that if a citizen fulfils criteria for the distribution of social benefits, then the municipality shall disburse such benefits to the patient. A formal interpretation allows us to encode the above paragraph in a mathematical formula, and prove that for all executions of the administrative process, such benefits will eventually be disbursed. On maintainability: the alignments between laws and text need to be editable every time either laws or processes change. On understandability: the notations used should be amenable for comprehension for both the legal practitioner (not versed in IT jargon) and the computer scientist. Improving this factor is key in order to benefit from the legal practitioner's domain knowledge, and increase its confidence in the implemented solution.

The three principles outlined above were integrated in the construction of a dual-coding tool. First, laws describing organizational processes in the municipal government are described in terms of process models. They are graphical representations of the activities, roles and constraints present in the achievement of a goal. Such constraints allow the descriptions of the dynamic nature of permissions, obligations and defeasible conditions that might occur in a law. Process models are not only a graphical notation that is amenable for domain specialists, but also a formal notation with a rigorous semantics that describes the multiple ways different activities can be arranged in the achievement of a goal [14]. The notation needs to be able to describe a flexible orchestration of activities, representing in this way the discretionary nature of case work. As an example, consider an excerpt of section 42 in CASS (SASS 42):

"§*1. The municipal council shall pay compensation for loss of earnings to persons maintaining a child under 18 in the home whose physical or mental function is substantially and permanently impaired, or who is suffering from a serious, chronic or long-term illness. Compensation shall be subject to the condition that the child is cared for at home as a necessary consequence of the impaired function, and that it is most expedient for the mother or father to care for the child.*

§*2. The requirement in* §*1 above that the child shall be cared for at home shall not apply to any child mentioned in paragraph* §*1 who has been placed in care under section 52(3)(vii) in connection with the child's hospital visit. It is a condition that the presence of the mother or father at the hospital is a necessary consequence of the child's functional impairment and that such presence is most expedient for the child".*

Figure 1 represents the law paragraphs in CASS 42 using the core graphical notation of DCR graphs [15]. The notation has distinctions on events (think of activities in the process, or the achievement of a right in law) and constraint between events. With a condition constraint we describe permissions: an event will not be enabled unless its conditions are fulfilled. In the mentioned figure, the payment of compensation is only enabled once all the other events linked with condition arrows are either achieved or excluded. A response constraint describes a duty: once an event has been executed, then it spans an obligation for an action that must happen. In this case, if the person documents a child's physical or mental function, then this set an obligation to the municipal council to pay compensation of benefits. Defeasible conditions are described by exclusion relations. Exclusions take events out of the active context (e. g.: if the person documents that the child is care at home, there is no need to document that he is cared in the hospital, and viceversa). Finally, the inclusion constraint acts as the converse of the defeasible constraint: it includes events for possible execution (e.g.: there will be an additional set of documents that the municipal council needs to collect if the children is cared at a hospital). Finally, these relations can be composed, allowing for a dynamic interplay between events, rights and obligations.

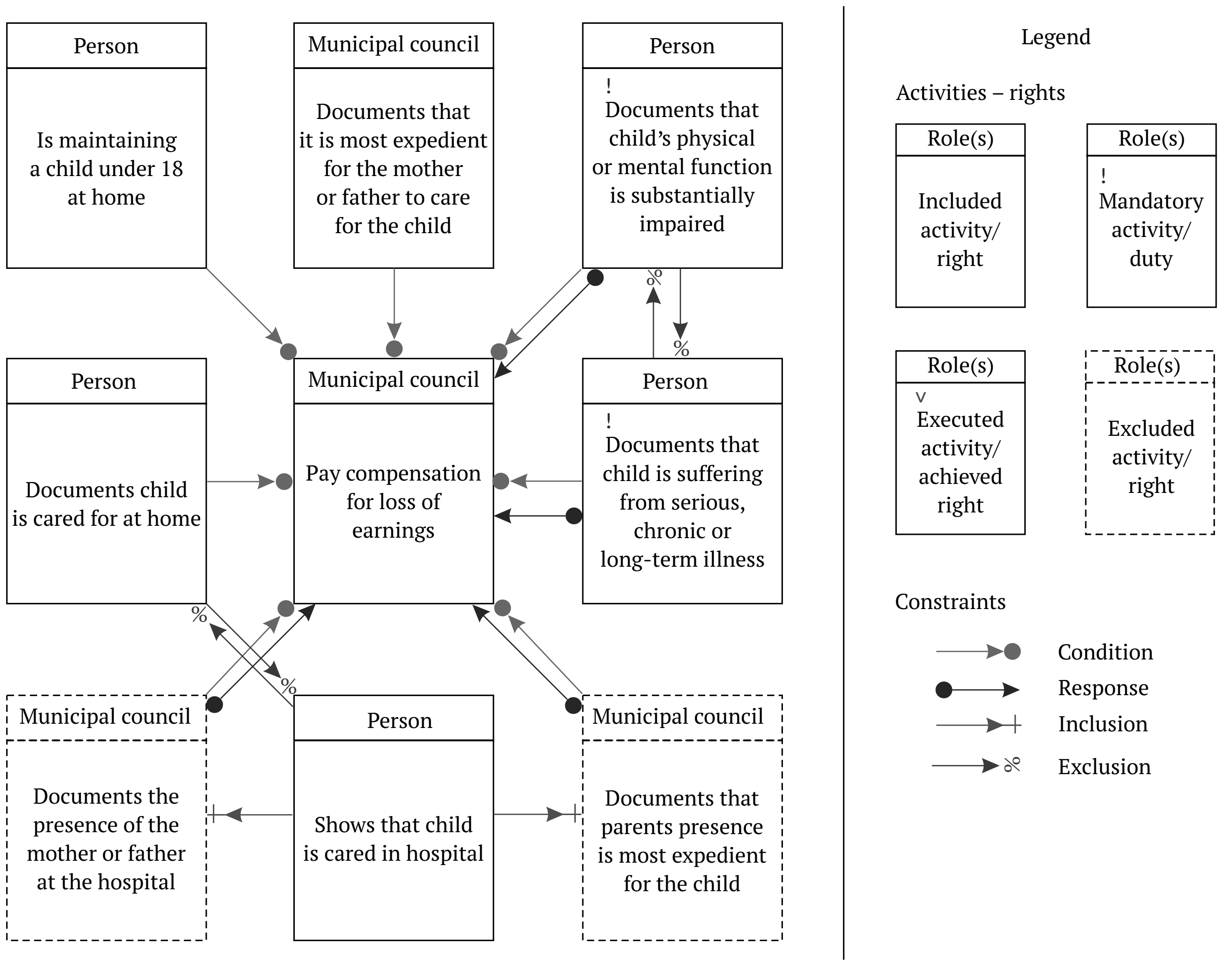

Fig. 1. Process model of CASS 42

Figure 1 illustrates how legal paragraphs can be represented via a declarative process notation such as DCR graphs, yet the notation is far from standard understanding of legal personnel, that are more used to legal documents. In a second phase, we built a tool that reconciles laws and digital processes. The process highlighter [16] implements Paivio's dual code theory [17]: while process models are visual representations with a defined execution semantics, they lack in many ways the context (e. g.: why is this task needed?) and are not natural to the law practitioner. Adding the legal information in its original form (legal text) information allows to include the context on why certain activities are necessary. Moreover, visual and verbal information are linked together: elements in the process model can be traced back to their requirements in the law by looking at their highlights. The process highlighter is used to generate process models representing laws, as well as for auditing whether existing processes in a municipality are compliant with laws. Figure 2 shows the alignments between laws and processes for the example above.

Creating a process of law requires us to process an entire law: identify its main actors, events, rights, obligations, and constraints between them. This is a major task, and its manual processing might introduce ambiguities and further errors. To help caseworkers streamlining their model elicitation activities, the original process highlighter was extended with AI techniques based on natural language processing (NLP) [18]. Here a rule-based approach was explored: most information required in the models of law corresponds to a specific

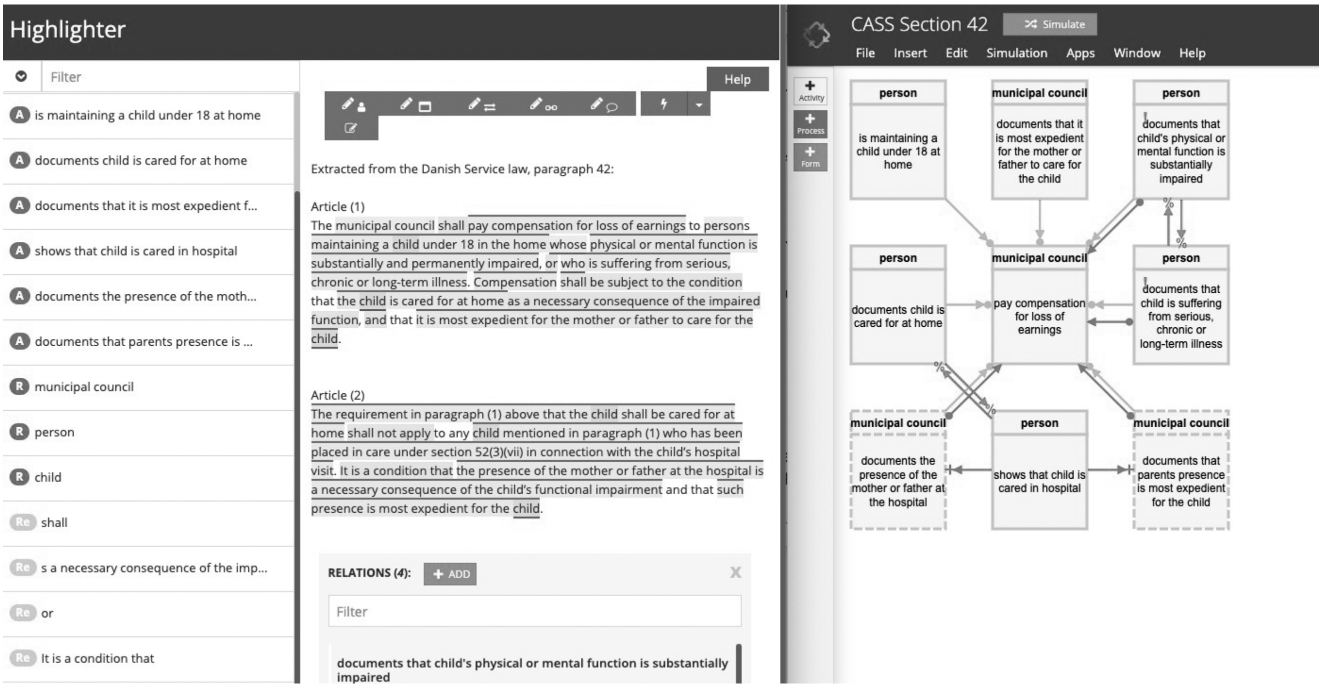

Fig. 2. Law-process alignments: excerpts of the process highlighter

set of grammatical patterns that occur in the legal text, and standard natural language processing (NLP) techniques such as named-entity recognition and part-of-speech tagging help retrieving candidates to the caseworker, that can use them to complete the model, or filter them out in case of ambiguity.

Efficient compliance checking

While a graphical notation is useful for understanding of the implications in the law, the real benefit of such representation comes on the flexibility that the model allows. The process to achieve a right might differ from person to person, in the same way that a caseworker will be autonomous to execute one or other activity depending on the case. The formal semantics of DCR graphs permits to link the notation with a set of simulations. The simulation engine implements the formal semantics of the notation, allowing caseworkers to create scenarios from existing cases that are desirable, or that should be violated. The scenarios can map legal precedents or caseworker's best practice. Figure 3 represents some of the scenarios derived from the model of CASS 42.

Furthermore, the validation stage mentioned above needs to be complemented with a verification step. This stage will filter out logical errors derived from the composition of activities. Such errors might lead to models that are not executable, or where dependencies between activities and decisions it is impossible to attain a right or fulfil an obligation. Such terms are known as deadlocks (e. g. "nobody can take a decision, since everyone is waiting from someone else to do something") and livelocks (e. g.: "you can do only useless work, and not the work that solves the problem"). Both deadlock and livelock properties need to be taken into consideration before using models of law to compliance checking real processes. As models of law might involve multiple a large number of decisions, it is recommended that such analysis is done via automated tools for deadlock and livelock analysis, including those presented in [19].

Recalling the technological and human challenges described in the previous section, it is important to be able to merge process and legal information. We consider a clear separation on models of laws, and process models describing administrative work. Process models represent the work carried out in an organization, and that might differ from place to place. This variability is not found in laws: the implementation of the same digital service in different municipalities should be compliant to the same law. In [14], we proposed a compliance framework that allow caseworkers to reuse of formal models of laws, and check whether the implementation in each municipality is behaving in accordance to the legal model. The second advantage is modularity: changes in a law might impact the compliance against the existing process. Such an impact can be analysed at design level, allowing possible modifications of the process model before implementation. An important aspect in this step is the computational complexity: by aligning models of laws and administrative processes that are both specified in DCR graphs, we can consider process models as a refinement of models of law. In short, refinement allows us to say that all the ways activities in can be composed in the administrative processes are a subset

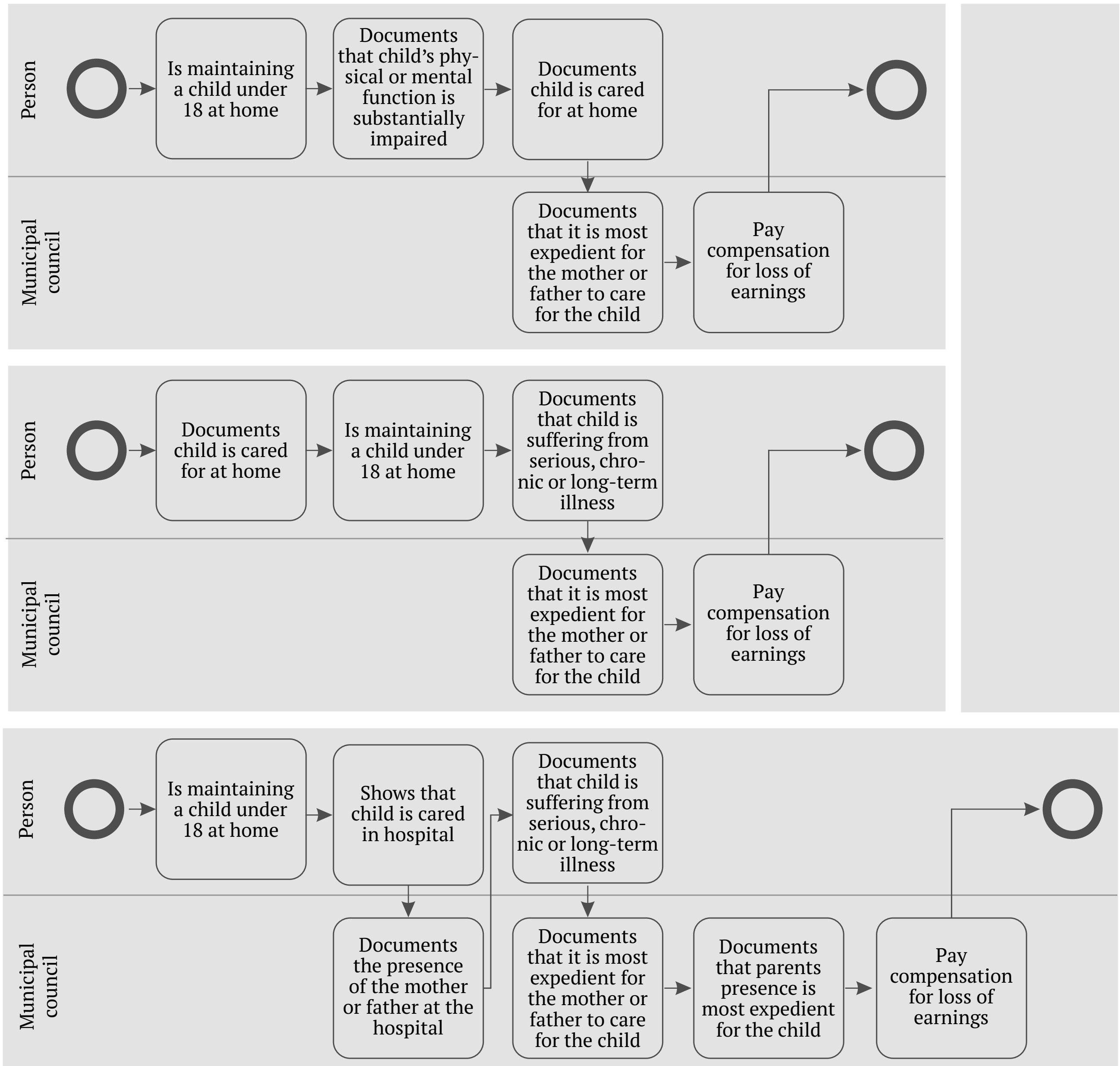

Fig. 3. Some scenarios derived from the model of CASS 42

of the possibilities considered in the process model representing a law, and that only compositions that fulfil the obligations according to the law will be accepted. These considerations are key, as they allow us to us efficient algorithms such as those described in sources [20].

Making sense of the approach

The theory and tooling developed has become part of the commercial offering of DCR Solutions process portal (www.dcrgraphs.net). The portal and technologies here presented are available for free for non-commercial users, and they are regularly used by a multi-sector user base, including caseworkers, process consultants and university students. To test whether the technologies developed have served its purpose, the approach has been used in different municipalities, including Syddjurs, Aalborg and Gentofte municipalities in Denmark. In particular, our collaboration with Syddjurs municipality has been instrumental in the development and improvement of different versions of the process highlighter. In order to validate whether the approach here supported caseworkers in creation and maintenance of graphs, we analysed their interaction in the process of creation of compliance models of laws. In [21] we followed a qualitative research approach addressing two main research questions:

1. How do users engage with the modelling tasks using legal and process dimensions?

2. How does the reconciliation between dimensions improve the quality of the generated models?

The results of the analysis showed that most participants used the highlighter in the identification of events, activities and roles coming from the texts, moving to the graphical modelling framework to manually ensure that models behave according to the intent of the laws or processes. The justifications for this sort of workflow are associated with the facility to identify events from the text and the implied cognitive support obtained when doing so. The alignment between relations coming from the text and the semantic rules in DCR graphs was preferred to be done via the graphical framework, and participants justified this choice arguing an implicit complexity in the interpretation of some the constraints in the process or legal text, which made the automatic mapping to DCR relations not straightforward activity. Regarding the quality of the generated process models, the insights gathered from the participants showed the potential benefits associated with the use of the highlighter. According to them, the highlighter can support transparency in the implementations of laws. The traceability that linking processes to laws provides gives a justification of the activities in an administrative process. Moreover, the linking mechanism provided by the highlighter gives a better alignment between the process model and the corresponding process description. Finally, the use of the highlighter can help to document process models which in turn facilitate their coverage and maintainability.

Executable laws

As mentioned in the previous section, the alignment between laws and processes can help to understand laws, and to verify how compliant are administrative processes with respect to the laws. An equally important use pertains to the generation of executable, compliant processes. Process models are not only graphical abstractions that serve to communicate ideas; supported by its formal semantics, a DCR process model can be executed by a process engine, that will use the model to create an instance per each case in the municipality.

This process ensures transparency as laws are not obfuscated by low-level code implementations. To complete the setup, a presentation layer that allows the interaction between the caseworker and the engine needs to be built. In the case of DCR graphs, an open-source tool[3] has been released so municipalities can configure the presentation layer to their needs. This presentation layer can be changed, or interoperate with other case management systems, for instance, KMD Workzone.

Lesson learned and future work

The major outcome of this project has been a successful collaboration between academia, industry and the municipal sector, which has brought theoretical research to be adapted by software vendors, producing tools that are operated by the municipalities. These interactions have brought several research directions where further development is necessary. I proceed to list some of them.

AI support to case work. Our interactions with municipal governments have evidenced that, while it is important to provide ways to speed up decision making activities for caseworkers, such activities should be properly justified and explained. The digitalization of administrative processes is one of them. As we mentioned earlier, creating a digital model of laws is a complex task and represents a significant time investment for caseworkers. An opportunity that emerged was the application of AI techniques in order to speed up processing times. The set of techniques known as natural NLP can help identifying key information in the law, lower the ambiguity in some of the terms, and filter out information that is not supposed to be part of the digital process. In [18] we started embedding such techniques by adding to the process highlighter NLP capabilities that help on the identification of roles, events or activities and relations. NLP approaches can be divided into rule-based approaches (learn from a set of heuristics, written by experts), and machine learning approaches (learn the rules using an annotated data set). In the case of legal documents, mixing together both approaches seem to both help generalization and accuracy: a rule-based system pattern-matches fragments in the law to rules describing what type of words and sentence structures correspond to elements in the digital model. Such an approach provides a quick-start, it is domain-independent and does not depend on existing data (the rules are defined in terms of grammatical structures in the language of the regulation). The tradeoff is accuracy: the lack of domain information allows ambiguities to appear, and the NLP module will not detect rules not matching the set of heuristics. Extending original rules to cover more specialised cases is also difficult: as the amount of rules increases, the sets of heuristics become more complex.

Each rule has to fit in together with the entire ruleset, and as the matches get more situational, it requires more and more rules to distinctively sort the patterns from each other. In contrast, a machine-learning approach does not depends on the patterns, but on the breadth of the dataset trained on. Law paragraphs and

[3]DCRGraphsNet [Electronic resource]. URL: https://github.com/DCRGraphsNet/DCROpenCaseManager (date of access: 23.04.2020).

their constituents are classified. These annotations provide semantic information. For instance, an annotation can define that the word "shall" represents a constraint, that the "municipality" is an actor in the process, rather than a location, or that a given paragraph describes obligations in the law. Using a machine-learning approach has the potential of providing more accurate suggestions, as it embeds domain information, and when having enough data, the ML approach might require less effort to extend than rule-based matching, not having to engineer the ruleset by hand. The trade-off is generalizability (changing the domain in laws will require new training). In future work, we expect to be able to combine both rule-based and ML approaches: the existing rule-based approach provides human annotators with a quick-start set of suggestions that can be confirmed, rejected, or extended. Curated suggestions can then be included in the annotated dataset, that can then be used for training the ML module.

The second challenge comes with the modularization of digital models of laws. While graphical models tend to decrease the complexity in the perception of information, having a digital model of the law normally requires us to have models of multiple law paragraphs, with connections between them. For example, figure 4 shows a dependency graph between articles in excerpts of the GDPR. In order to evaluate Art. 32 (security of processing) considerations regarding three other articles (Art. 28, 30, 40) need to be considered, which in turn need to consider other articles (for instance, the other 10 dependencies for Art. 40, including Art. 32 itself). In order to have a fully compliant model, all such dependencies need to be resolved, leading to models of great size that are difficult to understand. This is an area that could benefit from modular design, one of the pillars of modern software engineering. A complex system is decomposed into different modules, each of them with their own responsibility, and with the possibility to interact in various ways with other modules. The same modularity principles can be applied to laws. We can interpret each article in law as a module (a node in the graph) that has its specific behaviour and implicit dependencies with other articles. The assembly between different articles obeys a compositional semantics, that propagates the effects in one article to its dependencies.

Runtime monitoring. We have discussed the use of models of law as artifacts to ensure compliance in the administrative process in municipalities, with the aim to perform a verification before processes are implemented. However, both the complexity of the rules and their verification processes has limitations: rules in laws might consider different dimensions such as control, data, temporal and organisational flows, as well as combinations between them [22]. Verifying all these dimensions at compilation time is computationally expensive, and in some dimensions, even impossible. For example, the temporal dimension might describe a policy with a deadline for manual casework, but the way it has been implemented allows a caseworker to pass such a deadline. As an alternative, process models can be used as a yardstick to monitor the state of each case, suggesting a mechanism of governance and compensation for cases violating the policies.

Human aspects of process modelling

Both legal interpretation and process modelling have humans in the loop, and the successful adoption of technologies for digital rights depends on whether humans can understand the artifacts that represent laws: process models. The work of [23] showed that hybrid representations of processes combining laws and digital process models are perceived differently depending on the background of the subject. Legal practitioners will focus more on legal texts than process models, while process specialists will understand processes mostly from the models, disregarding legal text. In order to foster understandability of process models by practitioners, it is suggested that models are explained using artifacts known and understood by law personal, that is, using natural language. For this, it is suggested to embed techniques of process summarization [24] that simplify the complexity of the visual notation using jargon used by lawyers, for instance, by describing the process in terms of rights and obligations. Moreover, in order to consolidate a single coherent view it is necessary to understand what are the factors that affect the understandability of process models for non-experts. These factors range from syntactic, semantic and pragmatic aspects [25], and the impact of each aspect (in isolation as well as in composition) might elucidate guidelines that, in turn, make models more understandable, thus simpler to use and communicate. Finally, these set of guidelines might identify areas that can be supported computationally, with the introduction of layout algorithms, syntax checker, or semantic verifiers.

Conclusions

This paper has reported on our experiences in the introduction of supportive technologies to support study, analysis and implementation of digital rights, and their alignment with case-management processes in municipalities in Denmark. The process has involved a close interaction between legal practitioners and computer scientists, and it has generated a set of tools that now are supporting the administrative work of caseworkers in municipalities. Such interactions have brought theoretical and practical

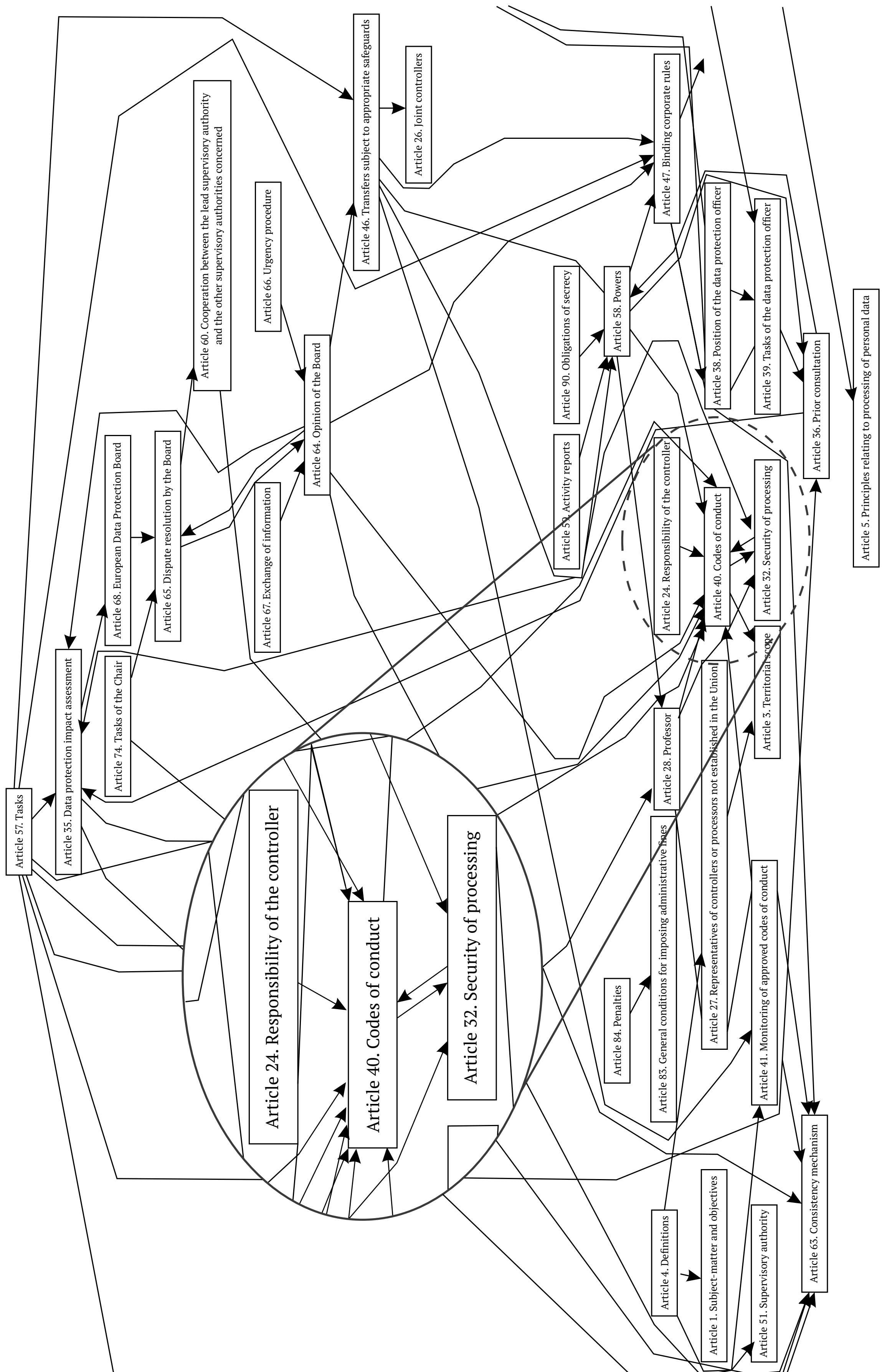

Fig. 4. Article dependencies in excerpts of GDPR, shortened for space considerations

considerations, that require a combination of multiple disciplines in computer science, such as formal methods, empirical software engineering and natural language processing. Our experiences in this project have pointed out that providing support, in the long run, will require significant research efforts in supportive technologies that foster the processing of large amounts of legal texts, while at the same time decreasing the ambiguity of human-centered aspects in process modelling.

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INTERNET OF THINGS AS A COMPLEMENT TO INCREASE SAFETY[1]

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Safety evaluations made in the city Helsingborg indicate a decreased risk of being exposed to crime, but an increased feeling of unsafe. Damage in the form of scribbling (graffiti) is one of several indicators contributing to feeling unsafe. In this paper we investigate whether the use of Internet-of-things technology, where a sensor monitors a walking and cycling tunnel, makes it possible to reduce scribbling. The study shows a number of interesting results. When the sensor was installed, the public showed a great and positive interest. A short time after installation, the sensor was subjected to a qualified attack where heavy shocks were followed by an initiated way to determine if the sensor was damaged. A setting and tuning phase was used to empirically test different settings of the sensor to detect scribbling behavior. However, it became evident during the approximately 6-month long measurement period that we received many false alarms, which were, for example, that people took shelter in the tunnel in the rain and stood or walked slowly when using their mobile phone. During the measurement period, two scribbles occurred where the sensor detected one of them. We observe that the amount of scribbling has decreased significantly. The number of error reports on scribbling dropped from an average of 3.33 per month before the sensor was in place to 0.75 cases per month after the sensor was in place.

Keywords: smart cities; internet-of-things; safety; privacy.

[1]Preparation of the article is organized by Raoul Wallenberg Institute of Human Rights and Humanitarian Law in the context of academic cooperation with the Belarusian State University and other Belarusian universities. This academic cooperation has been supported by the Government of Sweden represented by the Swedish International Development Cooperation Agency (Sida). Opinion of the authors expressed in this article may not coincide with the viewpoint of the Institute or Sida.

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ИНТЕРНЕТ ВЕЩЕЙ: ТЕХНОЛОГИИ ИНТЕРНЕТА ДЛЯ УСИЛЕНИЯ БЕЗОПАСНОСТИ

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Результаты исследований в г. Хельсингборге свидетельствуют о низком уровне угрозы преступлений, но вместе с тем данные говорят об отсутствии чувства безопасности у населения. Причиняемый ущерб в виде надписей (граффити) является одним из факторов, усиливающих ощущение опасности. В исследовании выясняется, позволяет ли использование технологий интернета вещей (IoT) уменьшить число случаев причинения ущерба. С этой целью применялись интернет-технологии и датчик контроля пешеходного и велосипедного туннеля. Приведен ряд интересных результатов. Камера подвергалась атакам вандалов, выяснявших, работают ли датчики. Этапы установки и настройки были необходимы для эмпирического тестирования различных режимов камеры, чтобы обнаруживать авторов граффити. Однако по истечении примерно шестимесячного периода измерений стало очевидно множество ложных срабатываний, например, когда люди укрывались в туннеле от дождя и стояли или медленно шли, пользуясь мобильными телефонами. За период измерений появилось два граффити. Датчик обнаружил одно из этих изображений. Можно констатировать, что количество граффити значительно сократилось. Число сообщений об ошибках снизилось в среднем с 3.33 случаев в месяц без датчика до 0.75 после его установки.

Ключевые слова: умные города; интернет вещей; безопасность; конфиденциальность.

Background

According to the Art. 3 of the Universal declaration of human rights everyone has the right to live, to be free and to feel safe. However, our society needs to become safer (goal 16 of the 2030 Agenda[2]). The goal of the city of Helsingborg is that the city is perceived as safe and secure. This goal can be met if the city of Helsingborg, together with business, academia, residents and associations, can understand what make people feel unsafe and then develop solutions for a safer city, both in the short and long term.

The city of Helsingborg systematically collects information from activities within the city and from collaborating partners such as the police, housing and security companies. This information is compiled to create a common snapshot of what is happening in the City. The common snapshot is based on the method of “effektiv samordning för trygghet (EST)”[3]. EST is based on theory formation and research that, among other things, point out a number of indicators that affect safety. One of the indicators includes, for example, broken glass panes on buildings and cars, littering and scribbles. The common snapshot forms the basis for business planning and choice of measures to increase safety and is an important tool for the joint work by the city and the police.

Another important factor in charting the unsafety is to ask the residents what they think about their safety and vulnerability. The police security survey is sent annually to 3000 residents in the city of Helsingborg. The security survey for 2019 shows a marginal improvement in the residents’ overall assessment of safety in the city. Figure 1 shows that the overall problem index for Helsingborg decreased to 2.37 in the 2019 survey compared to 2.40 in the 2018 survey. This means that the respondents collectively view the vulnerability and disorder in Helsingborg as a “not very obvious problem”, according to the police’s definitions. However, the improvement is marginal and efforts to increase the safety of local residents must continue to be one of the city’s most important priorities. The survey mainly indicates that the residents perceive the safety of a late night and disturbances in traffic as the most “tangible problems” according to the police’s definitions.

The city of Helsingborg has also conducted its own safety dialogues with residents. City-wide safety dialogues were conducted during 2017 and 2018 by the city’s administration, the city-owned companies and collaborative partners such as police, rescue services and security companies. The purpose of the safety dialogues is to understand the needs of the residents, so it will be possible to create trust, trust and a shared commitment.

In total, the city of Helsingborg talked to about 800 local residents per year. More about Helsingborg’s dialogue work can be read on the city’s website, where the problems raised and what the city has resolved

[2]Transforming our world: the 2030 Agenda for sustainable development [Electronic resource]. URL: https://www.sustainabledevelopment.un.org/post2015/transformingourworld (date of access: 16.04.2020).
[3]Örebro Universitet [Electronic resource]. URL: https://www.oru.se/forskning/forskningsprojekt/fp/?rdb=p1401 (date of access: 16.04.2020).

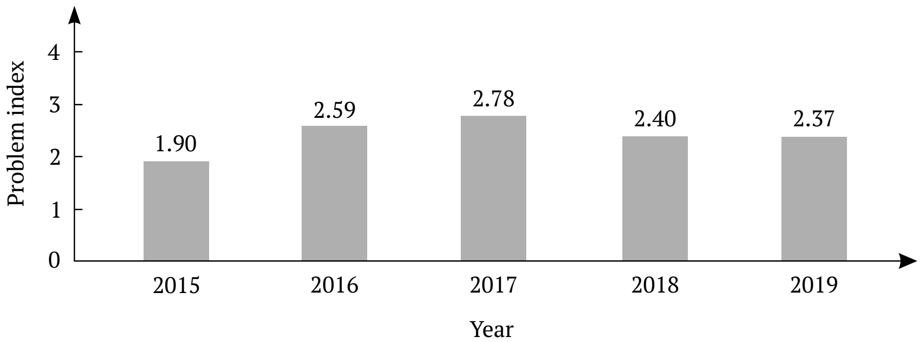

Fig. 1. Problem index in Helsingborg.
Source: Police

after the dialogue events have also been published. The city's dialogues, the police's survey and the city's work with location images form the basis for the joint crime prevention and safety-creating work in Helsingborg. Despite good efforts and analysis work as well as a reduced risk of being exposed to crime, the unsafety of the residents increases. Working with crime and disorder requires a definition of concepts such as safety, that is the risk of being exposed to crime and how the local resident perceives the risk. There is a connection between physical environment, crime and unsafety and it is about understanding the interaction between man and the physical environment. Thus, there is a need to investigate behaviors related to crime and in extension to the interaction between technology and man.

There have been previous works on making use of technology to detect graffiti. F. Tombari and others investigated the use of time-of-flight cameras for detecting graffiti, which is evaluated in a laboratory environment[4]. In Sydney, sensors have been tried to detect graffiti making in progress; however, the sensors do detect other smells but the vapor of graffiti[5]. Recently, Deutsche Bahn is exploring a combination of cameras and artificial intelligence to make it possible in the future to detect graffiti on trains automatically[6].

Goal

Our goal is to investigate if it is with the use of Citylab.com Internet-of-things (IoT) technology possible to detect damage in the form of scribbles and, by extension, be able to reduce the number of occasions a site in the city is subjected to damage and add information to Helsingborg city's work on joint mapping and causal analysis as a basis for a common situation snapshot.

Problem and method

We wanted to investigate whether IoT can be used as a complement to detecting scribbles. To conduct the survey, a sensor was installed that could use visual confirmation, filter out moving objects and classify them. The sensor was set up to detect if any object or objects were moving or standing still in groups or as single objects. By programming the sensor on the basis of this set of rules, a behavior resembling scribbling could be identified and recorded.

To evaluate the data from the sensor, there is a need to understand error reports, the choice of test site, the number of error reports at the selected test site and the selected technology are needed.

Error reports

A notification, error report, if scribbles are found is made, for example by residents, via a public application (app) "A better Helsingborg" or via the Helsingborg city website. An error report is sent to the city's Contact Center, which creates a case in a case management system, currently infracontrol online. The cases are then sent from infracontrol online to the contractor and the cases form the basis for the contractor's

[4]*Tombari F., Di Stefano L., Mattoccia S., Zanetti A.* Graffiti detection using a time-of-flight camera // Advanced concepts for intelligent vision systems. ACIVS 2008. Lecture Notes in computer science / Blanc-Talon J., Bourennane S., Philips W., Popescu D., Scheunders P. (eds). Berlin : Springer, 2008. P. 645–654.
[5]Gan V. A smell test for graffiti [Electronic resource]. URL: https://www.citylab.com/life/2015/05/a-smell-test-for-graffiti/393266/ (date of access: 16.04.2020).
[6]Hunting down graffiti with artificial intelligence, digital spirit [Electronic resource]. URL: https://digitalspirit.dbsystel.de/en/hunting-down-graffiti-with-artifical-intelligence/ (date of access: 16.04.2020).

remediation work. When the contractor is in place to clean, the contractor also removes scribbles discovered near the reported scribbles, these scribbles are not registered as new error notifications in the case management system.

The total number of error reports about scribbles reported in the city of Helsingborg during the period since 1 January 2017 to 31 December 2019 was 10159. Table 1 shows how the number of cases is distributed per year.

Table 1

Annual error reports in Helsingborg

Year	Number of cases
2017	4354
2018	3159
2019	2646
Sum	*10159*

Selection of test site

The chosen test site is the pedestrian and bicycle tunnel "Närlunda" located in the southern parts of Helsingborg. The tunnel has been subjected to repeated damage and scribbles which contribute to increased insecurity. The selected test site is identified by the Helsingborg citizens as a precarious place in security dialogues. The tunnel has previously been the subject of security initiatives implemented by the city of Helsingborg. However, despite these security efforts, several measures have been required to restore the tunnel to its original version.

Error reports at the test site

The number of error reports per day at the test site during the period since 1 January 2017 to 1 May 2019, before the installation of the sensor, is shown in the fig. 2.

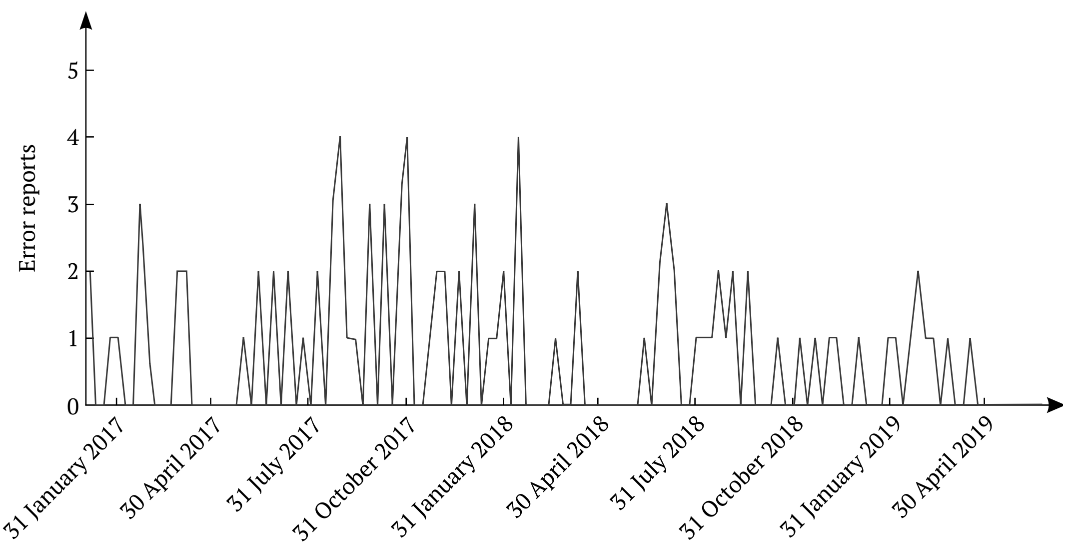

Fig. 2. Error reports at the test site during the period since 1 January 2017 to 1 May 2019

Selected technology – IoT

The selected IoT technology to detect if the tunnel is exposed to scribbles is connected sensor technology. To use this technology, access to electricity supply and network connection is required. The electricity supply was carried out by wiring in existing ducting in the tunnel roof and access to network access was carried out through a mobile router.

The sensor was programmed so to detect an object which remained within specific zones of the tunnel for a certain time. In order for the sensor to detect a behavior, it was required that an object is within these zones and had a behavior that corresponded to the settings, see fig. 3.

For a period of two weeks, the sensor was set and fine-tuned to detect a behavior similar to scribbling. The filtration was placed at a level where detection occurred when someone stayed in the tunnel for more than 90 seconds. The background for selecting a value for the time when one or more objects resides in the tunnel in it the order of magnitude was that during the period of the settings and the fine tuning we performed empirical tests where we saw that the mean value of time as classified objects stayed in the tunnel was less than 30 seconds. By setting a threshold higher than this, we were able to remove behavior that correctly met the conditions for an alarm but was not a scab incident.

The data generated by the sensor was stored locally in the sensor. In order to access saved data and thus be able to generate statistical data and confirm any detections, a secure login by an authorized person was required.

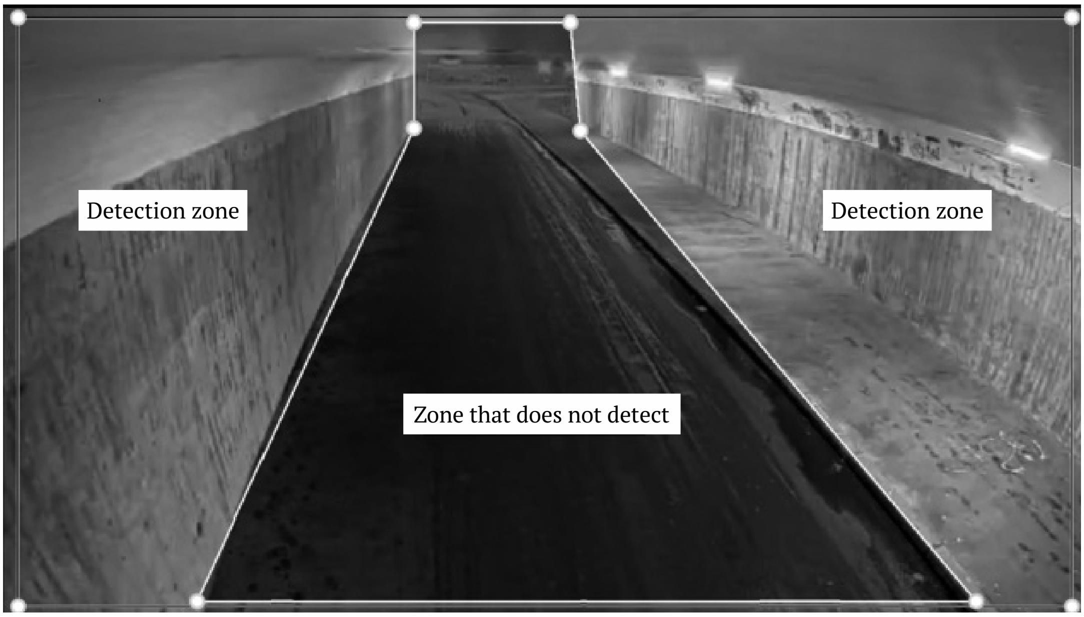

Fig. 3. Illustration of the sensors zones of detection and no-detection

Results

During the measurement period, since 11 June to 28 November 2019, an empirical study was conducted in which the sensor technology detected 307 cases of unwanted behavior. During the measurement period, 2 cases of scribbles occurred where one of the cases was not correctly detected.

The number of error reports from 1 January 2017 until 28 November 2019 was 103 for the test site. Of these 103 error reports, 97 occurred before the sensor technology was placed in tunnels, which is between 1 January 2017 and 1 May 2019, and 6 error reports occurred when the sensor technology was installed in the tunnel, that is between 1 May 2019 and 28 November 2019, see table 2. We compare the number of error reports before the sensor was installed with the number after installation. We note that the number of error reports has decreased from an average of 3.33 cases per month to an average of 0.75 cases per month.

Table 2

Number of error reports before the test period and after the test period

Time	Cases per month	All cases
1 January 2017 – 1 May 2019	3.33	97
1 May 2019 – 31 December 2019	0.75	6
Sum		*103*

Figure 4 shows the number of error reports at the test site per day from 1 January 2017 to the end of the measurement period 28 November 2019 (no error reports have been reported between 31 October 2019 and 28 November 2019). Figure 4 clearly shows how the number of error reports has drastically reduced after 1 May 2019, i. e. after the day when the sensor was installed. The high number of error reports around the time period 31 July 2019 in figure 4 can be correlated to the scribble that the sensor detected. Based on the study, we conclude that the installed sensor has had a good effect in reducing the amount of scribble in the tunnel. The sensor has also had an effect on the immediate area around the tunnel. After the sensor has been placed, only one error message has been received, around 31 October 2019.

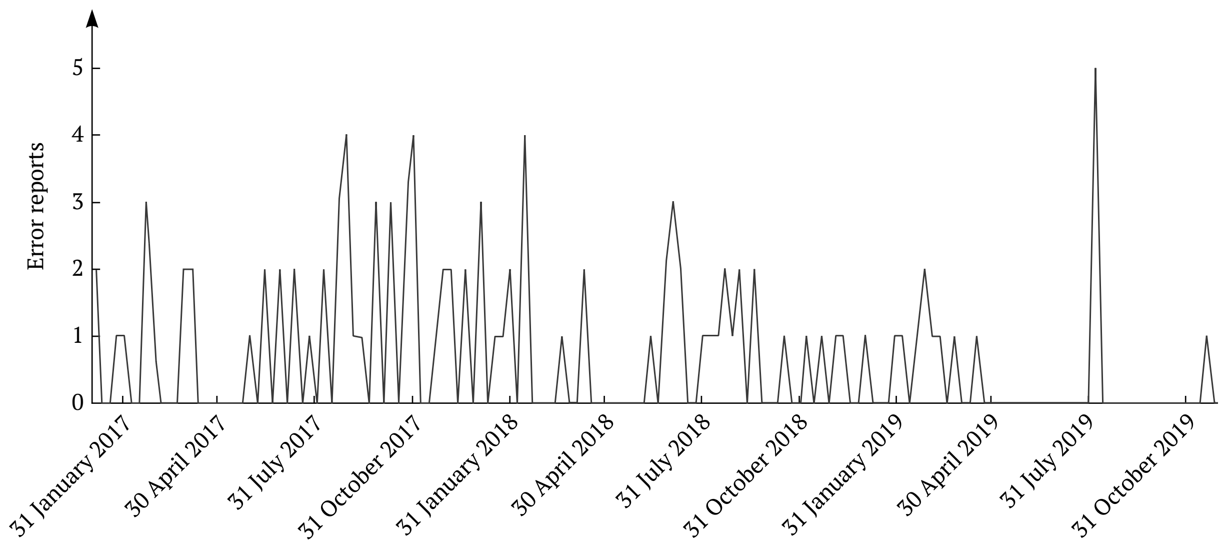

Fig. 4. Number of error reports at the test site from 1 January 2017 until 31 October 2019

Discussion

In the study IoT in the form of sensor technology was investigated as a complement to increase safety. The study shows that it is difficult to automatically detect a behavior like scribbling. The study shows many detections on behaviors that are not real scribbling, which may occur due to the cases when people seek protection for rain or people who walk slowly, such as people using a walker or who walk and look at their mobile phone.

During the installation of the sensor technology, many people stopped to discuss what was done and many expressed a positive opinion that something is being done to reduce scribbling. When the sensor was in place for about 2 weeks, it indicated a so-called shock detection. This means that the sensor has been subjected to severe violence or damage. When checking the sensor, it turned out that a group of 5 adolescents in the lower teens had struck the sensor. After repeatedly hitting the sensor, one of them produced a cell phone where it appeared that this person was filming the sensor for a short period of time after which the entire group quickly left the scene. In terms of experience, we have seen this before when people try to destroy monitoring equipment in some way and then find out if the sensors work or not. A functioning sensor leaks infrared light during darkness, which is invisible to the human eye. However, you can see it through another camera, for example, a mobile phone. In this case, we assume that the group saw that the sensor was still in operation, which is most likely the reason why they quickly moved away from the site. This incident was the only one that triggered a shock detection in the sensor. It is striking that young people of this age know that the systems work in this way.

The study shows that people change behavior when sensor technology is installed. The number of scribbling decreased dramatically from an average of 2 incidents and 3.3 error reports per month to 2 scribbling incidents in 6 months and 0.75 error reports per month.

We have seen a significant reduction in the number of scribbles and the number of error reports during the measurement period, but we cannot say for sure whether the reduction in scribbling will persist over a longer period. We have used error reports as a comparison, and it should be noted that since registration of the number of scribbling remedies is done through reports from the public, collaboration partners and the contractor, the actual number of scribes in Helsingborg is not necessarily the same as the number of registered scribes.

Future work could be to investigate:

1. Technology. The sensor technology used at the test site has limitations on both logic, hardware and reporting systems (ability to collect, filter and manage data). In order to be able to repeat the effort that has been evaluated, the system needs to be upgraded with another hardware that is able to handle filtering better but also supports artificial intelligence technology. This would enable, first and foremost, to refine the ability to detect unwanted behavior such as scribbling and other behavior such as people in groups staying in the tunnel during evenings and nights. The evaluation can also contribute to solutions for reducing graffiti in other places in the city.

2. Scale up. The study was conducted in a pedestrian and bicycle tunnel. It would be interesting to place sensor technology in several pedestrian and bicycle tunnels to obtain a larger data base.

3. Longer measurement period. The study showed a dramatic decrease in scribbles during the measurement period, but it would be interesting to investigate whether this decrease would persist over a longer period.

4. People's privace. A future study could investigate whether people feel that sensor technology is compromising their integrity.

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UDC 341

SYSTEMIC INTERPRETATION OF THE AMERICAN CONVENTION ON HUMAN RIGHTS[1, 2]

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This paper proposes a critical assessment of the jurisprudence of the Inter-American Court of Human Rights (IACRTHR) regarding the systemic integration of the provisions enshrined in the American convention on human rights (ACHR), under the light of the developments of the *corpus juris* of international human rights law. By incorporating the evolution in the interpretation of human rights law into the reading of ACHR, IACRTHR has expanded the scope of protection of the rights recognized within the ACHR, aiming at delivering more effective and comprehensive protection of them. This study will specifically focus its analysis on the interpretative method applied by IACRTHR. In particular, special attention will be given to the manner that the regional tribunal has applied the method of systemic integration of international human rights law, under the guiding light of the *pro homine* principle, which hermeneutically put the protection of individuals at the centre of the interpretative process of international human rights law.

Keywords: human rights; systemic interpretation; *corpus juris*; *pro homine* principle; Inter-American Court of Human Rights.

СИСТЕМНАЯ ИНТЕРПРЕТАЦИЯ АМЕРИКАНСКОЙ КОНВЕНЦИИ О ПРАВАХ ЧЕЛОВЕКА[3]

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Дается оценка решений Межамериканского суда по правам человека в отношении системной интеграции положений, закрепленных в Американской конвенции о правах человека, в свете изменений нормативно-правовой базы международного законодательства по правам человека. Для обеспечения более эффективной и всеобъемлющей защиты прав человека с учетом эволюции в толковании закона о правах человека в интерпретации данной конвенции

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[1]Preparation of the article is organized by Raoul Wallenberg Institute of Human Rights and Humanitarian Law in the context of academic cooperation with the Belarusian State University and other Belarusian universities. This academic cooperation has been supported by the Government of Sweden represented by the Swedish International Development Cooperation Agency (Sida). Opinion of the authors expressed in this article may not coincide with the viewpoint of the Institute or Sida.

[2]The content of this article consists in an updated extended version of the research brief published by the author in 2019 under the title "Systemic interpretation of international human rights law in the jurisprudence of the Inter-American Court of Human Rights" in the website of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI).

[3]Данная статья является обновленной и расширенной версией исследовательской записки, опубликованной автором в 2019 г. под названием "Системная интерпретация международного законодательства по правам человека в юриспруденции Межамериканского суда по правам человека" на веб-сайте Института прав человека и гуманитарного права имени Рауля Валленберга.

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Межамериканский суд по правам человека расширил сферу защиты прав, признанных в ней. В данной работе сделан акцент на интерпретационном подходе суда. В частности, особое внимание уделено применению региональным трибуналом системной интеграции международного законодательства по правам человека в свете руководящего принципа гуманизма, где защита частных лиц герменевтически ставится в центр внимания интерпретационного процесса международного законодательства в области прав человека.

Ключевые слова: права человека; системная интерпретация; корпоративное право; принцип гуманизма; Межамериканский суд по правам человека.

Introduction

The Inter-American Court of Human Rights (IACRTHR) has developed an innovative jurisprudence that has contributed to the strengthening of the notion of the *corpus juris* of international human rights law. By means of interpreting the provisions contained in the American convention on human rights (ACHR)[4], under the light of relevant regional or universal human rights instruments, the IACRTHR has paved the way for more effective protection of conventionally recognised human rights.

In other words, the regional tribunal has introduced a systemic integration of international human rights norms, which consists in interpreting the provision of the ACHR under the light of relevant human rights instruments that are part of the same system[5]. This systemic normative integration has strengthened the protection of human rights, not only facilitating the generation of all its appropriate effects (i. e. principle of effectiveness or *effet utile*), but also laying the foundation for their evolutive interpretation under the light of international human rights law developments[6].

Moreover, the interpretative prevalence of the principle of effectiveness has been reinforced in the jurisprudence of the IACRTHR with the incorporation of the *pro homine* principle. By introducing this additional hermeneutical tool, the IACRTHR has developed an interpretation of human rights norms based "on the principle of the rule most favourable to the human being"[7]. In addition, the effective protection of conventionally recognized rights has been further strengthened by means of a *non-restrictive* interpretation [1, p. 6]. In this sense, the regional tribunal used extensively the provisions enshrined in Art. 29 of the ACHR, which precluded any restrictive interpretation of the rights and freedoms recognized in this convention, either by virtue of domestic legislation or by the implementation of other conventional obligations[8].

Therefore, these hermeneutical developments have paved the way for the introduction of more robust human rights guarantees in the region. These guarantees have been reinforced by means of interpreting the ACHR in line with the *pro homine* principle, which is an interpretation that allocates the human person – and its effective protection – at the centre of the interpretation and implementation of human rights provisions.

However, it is important to note that this expansive interpretation of the ACHR risks being perceived as a *praetorian* introduction of rights and obligations not expressly mentioned in the text of this convention. In fact, as mentioned elsewhere, this development has generated some discomfort among states members of the ACHR. In this regard, it has been noted that the jurisprudence related to the recognition of the right of indigenous peoples to their traditional land and territories have had an enormous impact on different strategic sectors for the development of the states, in particular, in the exploitation of the natural resources present in the claimed traditional lands [2].

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[4]The American convention on human rights, also denominated Pact of San José, Costa Rica adopted by delegates of the member states of the Organization of the American States (OAS) in the Inter-American specialized conference on human rights, which was held in San José (Costa Rica) on 22 November 1969, and entered into force on 18 July 1978. Today, 22 countries – out of 35 states members of the OAS are parties to this convention.

[5]*Koskenniemi M.* Fragmentation of international law: difficulties arising from the diversification and expansion of international law // Report of the study group of the Int. Law Comm., A/cn.4/L.682 (Int. Law Comm., 1 May – 9 June and 3 July – 11 Aug. 2006, Geneva, Switzerland).

[6]The right to information on consular assistance in the framework of the guarantees of the due process of law. 1 Oct. 1999. IACRTHR. Advisory opinion OC-16/99. Series A. No. 16. Para 58 ; *Lixinski L.* Treaty interpretation by the Inter-American Court of Human Rights: expansionism at the service of the unity of international law // The Eur. Journ. of Int. Law. 2010. Vol. 21. No. 3.

[7]Baena-Ricardo et al. v. Panama. 2 Feb. 2001. IACRTHR. Judgment on merits, reparations and costs. Series C. No. 72. Para 189.

[8]Art. 29 of the ACHR reads as follow: "No provision of this convention shall be interpreted as: (a) permitting any state party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this convention or to restrict them to a greater extent than is provided for herein; (b) restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any state party or by virtue of another convention to which one of the said states is a party; (c) precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or (d) excluding or limiting the effect that the American declaration of the rights and duties of man and other international acts of the same nature may have".

To conclude, an analysis of the IACRTHR's interpretative methods will contribute to a better understanding of the steps taken by this regional tribunal towards the determination of the content and scope of the rights contained in the ACHR. This article will both clarify the legal grounds invoked by the IACRTHR, and shed light on the hermeneutical contribution of its jurisprudence that has integrated human rights provisions under the light of the developments of the *corpus juris* of international human rights law.

Human rights interpretation in the Americas

When interpreting the provisions of the ACHR, the IACRTHR relies on traditional interpretive canons[9]. In particular, it makes specific references to both general and supplementary rules of interpretation as incorporated in Art. 31[10] and Art. 32[11] of the 1969 Vienna convention on the law of the treaties (VCLT)[12].

As stated by Art. 31 of the VCLT, the primary guidance for interpretation of the provisions contained in a treaty is provided by its own *object* and *purpose*, which in the case of the ACHR is the "effective protection of human rights". For the IACRTHR, "[t]he safeguard of the individual in the face of the arbitrary exercise of the powers of the State is the primary purpose of the international protection of human rights"[13]. It is important to notice that this method of interpretation "respects the principle of the primacy of the text, that is, the application of objective criteria of interpretation"[14]. It also means that the terms and – therefore – the content of the rights recognized in the ACHR have autonomous and independent meanings, which are informed not only by the object and purpose of the same instrument, but also "interpreted by reference to their normative environment" in which the convention is integrated[15].

The hermeneutical relevance of the principle of effectiveness (effet utile). According to the IACRTHR, the ACHR – as a human rights treaty – must be interpreted "in such a way that the system for the protection of human rights has all its appropriate effects (*effet utile*)"[16]. Moreover, the interpretation should not reduce, restrict, or limit the recognition and effective protection of rights enshrined in the ACHR. In the wording of Judge García Ramírez, "the principle of interpretation that requires that the object and purpose of the treaties be considered (Article 31(1) of the Vienna Convention) <…> and the principle pro homine of the international law of human rights <…> which requires the interpretation that is conducive to the fullest protection of persons, all for the ultimate purpose of preserving human dignity, ensuring fundamental rights and encouraging their advancement"[17]. To put it differently, protected rights have to be interpreted in a manner that reinforces their effective implementation and avoids any potential interpretation that could make their enjoyment illusory or deprived of their essential content. According to the IACRTHR, "the efficacy of the mechanism of international protection, must be interpreted and applied in such a way that the guarantee that it establishes is truly practical and effective, given the special nature of human rights treaties"[18]. As expressed by the IACRTHR, "[a] provision of the Convention must be interpreted in good faith, according to the ordinary meaning to be given to the terms of the treaty and their context, and bearing in mind the object and purpose of the ACHR, which is the effective protection of the human person, as well as by an evolutive interpretation of international instruments for the protection of human rights"[19].

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[9]For a more detailed explanation of the interpretative methods applied by the Inter-American Court, see: *Fuentes A.* Expanding the boundaries of international human rights law. The systemic approach of the Inter-American Court of Human Rights [Electronic resource]. Available from: https://ssrn.com/abstract=3163088 (date of access: 07.04.2020).

[10]Art. 31 of the VCLT states – in its first paragraph – that "(a) treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose".

[11]Art. 32 of the VCLT recognizes the possibility of recourse to supplementary means of interpretation, such as "the preparatory work of the treaty and the circumstances of its conclusion".

[12]"Other treaties" subject to the consultative jurisdiction of the court (Art. 64 of ACHR). 24 Sept. 1982. IACRTHR. Advisory opinion oc-1/82. Series A. No.1. Para 33.

[13]Yatama v. Nicaragua. 23 June 2005. IACRTHR. Judgment on preliminary objections, merits, reparations and costs. Series C. No. 127. Para 167.

[14]The effect of reservations on the entry into force of the American convention on human rights (Art. 74 and Art. 75*)*. 24 Sept. 1982. IACRTHR. Advisory opinion oc-2/82. Series A. No. 2. Para 29.

[15]*Koskenniemi M.* Fragmentation of international law. Supra note 2. P. 209. Para 413–414. According to this study, "[a]ll treaty provisions receive their force and validity from general law, and set up rights and obligations that exist alongside rights and obligations established by other treaty provisions and rules of customary international law".

[16]The right to information on consular assistance. Supra note 3. Para 58.

[17]Mayagna (Sumo) Awas Tingi Community v. Nicaragua. 31 Aug. 2001. IACRTHR. Judgment on merits, reparations and costs. Series C. No. 79. Concurring opinion of Judge Sergio García Ramírez. Para 2.

[18]Constitutional Court v. Peru. Competence. 24 Sept. 1999. IACRTHR. Judgment. Series C. No. 55. Para 36. See also: Yatama v. Nicaragua. Supra note 12. Para 204.

[19]Artavia Murillo et al. ("In vitro fertilization") v. Costa Rica. 28 Nov. 2012. IACRTHR. Judgment on preliminary objections, merits, reparations and costs. Series C. No. 257. Para 173. For a comprehensive analysis of the main findings of the case, see: *Ligia M.* A pro-choice reading of a pro-life treaty: the Inter-American Court on Human Rights' distorted interpretation of the American Convention on human rights in Artavia v. Costa Rica // Wisconsin Int. Law Journ. 2014. Vol. 32. Issue 2. P. 223–266.

Therefore, in order to fulfil the requirements of the principle of effectiveness, which lies at the core of the scope of protection of the ACHR, the interpretation of its text cannot affect or interfere with the scope of protection of a given right to a point of depriving an individual of the effective guarantees and freedoms enshrined in it. As a complement of this principle, Art. 29 of the ACHR incorporates the principle of *non-restrictive* interpretation[20]. This principle precludes any restrictive interpretation of the rights and freedoms recognized in the ACHR, by virtue of domestic legislation or the implementation of other conventional obligations. In this regard, the IACRTHR has stressed that "[a]ny interpretation of the Convention that <…> would imply suppression of the exercise of the rights and freedoms recognized in the Convention, would be contrary to its object and purpose as a human rights treaty"[21].

Furthermore, *effective* protection of conventional rights also demands special attention to all circumstances and relevant contextual factors of the case under analysis. As Judge Sergio Garcia-Ramirez highlighted, "[i]t would be useless and lead to erroneous conclusions to extract the individual cases from the context in which they occur. Examining them in their own circumstances – in the broadest meaning of the expression: actual and historical – not only contributes factual information to understand the events, but also legal information through the cultural references – to establish their juridical nature and the corresponding implications"[22]. As expressly reaffirmed by the IACRTHR, "human rights treaties are living instruments whose interpretation must consider the changes over time and present-day conditions"[23]. For this reason, the regional tribunal "must adopt the proper approach to consider [the interpretation of a given right] in the context of the evolution of the fundamental rights of the human person in contemporary international law"[24].

Evolutive and systemic interpretation of the ACHR. In addition to the above-mentioned hermeneutical steps, the IACRTHR has introduced an evolutive interpretation of the ACHR, following the blueprints of the International Court of Justice (ICJ), which has stated: "an international instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation"[25].

Societal conditions change permanently as "culture takes diverse forms across time and space"[26]. International human rights law cannot be blind to those changes; it needs to follow the historical development of societies in order to remain meaningful as a normative parameter. That is why the continually evolving conditions in society influence the interpretation of a given right within a particular historical and geographical context.

According to the famous proposition of the Vienna declaration and programme of action (1993), human rights are universal, indivisible, interdependent and interrelated, but in their interpretation and implementation, "the significance of national and regional particularities and various historical, cultural and religious backgrounds must be born in mind"[27]. This means that human rights interpretation needs to take into consideration the evolving socio-cultural conditions in which human rights norms and standards need to be implemented[28].

It is precisely based on the above-mentioned considerations that the IACRTHR has stated, "human rights treaties are living instruments whose interpretation must consider the changes over time and present-day conditions"[29]. In other words, for the regional tribunal the interpretation of human rights provisions needs to follow the developments that take place in our societies and – therefore – needs to be *evolutive* too. That is, when interpreting a given right, the ACHR "must adopt the proper approach to consider it in the context of the evolution of the fundamental rights of the human person in contemporary international law"[30].

Moreover, the evolutive interpretation of human rights provisions is complemented by taking into

[20]See: supra note 6 ; *Fuentes A.* Expanding the boundaries of international human rights law. Supra note 8. P. 8.

[21]Ivcher Bronstein v. Peru. 24 Sept. 1999. IACRTHR. Competence. Series C. No. 54. Para 41. See also: *Fuentes A.* Judicial interpretation and indigenous peoples' rights to lands, participation and consultation. The Inter-American Court of Human Rights' approach // Int. Journ. on Minority and Group Rights. 2015. No 23. P. 58.

[22]Yatama v. Nicaragua. Supra note 13. Concurring opinion of Judge Sergio Garcia-Ramirez. Para 7.

[23]The right to information on consular assistance. Supra note 3. Para 192 ; Gómez-Paquiyauri Brothers v. Peru. 8 July 2004. IACRTHR. Judgment on merits, reparations and costs. Series C. No. 110. Para 165.

[24]The right to information on consular assistance. Supra note 3. Para 115.

[25]Legal consequences for states of the continued presence of South Africa in Namibia (South West Africa). Notwithstanding Security Council Resolution 276 (1970). 21 June 1971. ICJ Advisory opinion, ICJ reports. 1971. P. 16, 31.

[26]UNESCO universal declaration on cultural diversity : adopt. by the 31st session UNESCO General Conference. 2 Nov. 2001. Art. 1.

[27]Vienna declaration and programme of action of 12 July 1993. A/CONF.157/23. Section I. Para 5.

[28]*Fuentes A.* Expanding the boundaries of international human rights law. Supra note 8. P. 9 *et seq.*

[29]The right to information on consular assistance. Supra note 3. Para 114. See also: Case of the "Street children" (Villagrán-Morales et al.) v. Guatemala. 19 Nov. 1999. IACRTHR. Judgment on merits. Series C. No. 63. Para 192 ; Gómez-Paquiyauri Brothers v. Peru. Supra note 23. Para 165.

[30]The right to information on consular assistance. Supra note 3. Para 115.

account not only the instruments and agreements directly related to the provision under interpretation (Art. 31(2) (a), (b) of the VCLT), but also "any relevant rules of international law applicable in the relations between the parties" (Art. 31(3)(c) of the VCLT). The latter provision introduces the principle of *systemic* integration in general international law, which "points to a need to take into account the normative environment more widely"[31]. In the wording of the IACRTHR, "[a]ccording to the systematic argument, norms should be interpreted as a part of a whole, the meaning and scope of which must be defined based on the legal system to which they belong. Thus, the IACRTHR has considered that "the interpretation of a treaty should take into account not only the agreements and instruments formally related to it (Article 31(2) of the Vienna Convention), but also its context (Article 31(3))"; in other words, international human rights law"[32].

Therefore, for the IACRTHR the interpretation of the ACHR must take into account the legal system of which the ACHR is a part, namely, international human rights law[33]. This means that the IACRTHR would not limit itself to the text of the ACHR when it integrates the content of its provisions, but would rather scrutinize all other regional or universal human rights instruments that would provide support and would – eventually – complement its application in a given case. The IACRTHR has considered that it could "address the interpretation of a treaty provided it is directly related to the protection of human rights in a member state of the Inter-American system, even if that instrument does not belong to the same regional system of protection"[34].

The systemic interpretative approach is essentially grounded on the fact that international human rights law "is composed of a series of rules (conventions, treaties and other international documents), and also of a series of values that these rules seek to develop"[35]. Also, according to Justice Cançado Trindade: "Stemming from human conscience and the sentiment of justice enshrined therein, jus gentium is erected upon ethical foundations, incorporates basic human values, common to the whole of humankind, thus paving the way for the future evolution of the international legal order"[36]. This further indicates that norms "should also be interpreted based on a values-based model that the Inter-American System seeks to safeguard from the perspective of the "best approach" for the protection of the individual"[37].

Finally, it is important to note that the object and purpose of human rights treaties provide the criteria that inform the values-based model that permeates the entire interpretative process. In addition to the consideration of those values, the interpreter needs to take into consideration the principles and values that permeate the entire legal system, which the instrument under interpretation is a part of. Indeed, the systemic argument not only paves the way for normative cross-referencing but also for an axiological integration and value-based cross-fertilization across all human rights law instruments relevant to a given case under analysis.

The *corpus juris* of international human rights law

The notion of *corpus juris* of international human rights law has emerged in the last decades as a guiding interpretative principle that permeates the entire jurisprudence of the IACRTHR. As pedagogically explained by the IACRTHR, "the corpus juris of international human rights law comprises a set of international instruments of varied content and juridical effects (treaties, conventions, resolutions and declarations). Its dynamic evolution has had a positive impact on international law in affirming and building up the latter's faculty for regulating relations between States and the human beings within their respective jurisdictions. This Court, therefore, must adopt the proper approach to consider this question in the context of the evolution of the fundamental rights of the human person in contemporary international law"[38]. Finally, it is important to highlight the conceptual approach of the IACRTHR in one of its latest Advisory opinion, related to the rights and guarantees of children in the context of migration processes. In this Advisory opinion, the IACRTHR has referred to the corpus juris as "a series of rules expressly recognized in international treaties or established

[31] *Koskenniemi M.* Fragmentation of international law. Supra note 2. P. 209. Para 415. According to this study, "[w]ithout the principle of "systemic integration" it would be impossible to give expression to and to keep alive, any sense of the common good of humankind, not reducible to the good of any particular institution or "regime"". (P. 244. Para 480).

[32] Artavia Murillo et al. ("In vitro fertilization") v. Costa Rica. Supra note 18. Para 191. See also: González et al. ("Cotton field") v. Mexico. 16 Nov. 2009. IACRTHR. Judgment on preliminary objection, merits, reparations and costs. Series C. No. 205. Para 43.

[33] The right to information on consular assistance. Supra note 3. Para 113 ; Kichwa Indigenous People of Sarayaku v. Ecuador. 27 June 2012. IACRTHR. Judgment on merits and reparations. Series C. No. 245. Para 161.

[34] Sarayaku v. Ecuador. Supra note 32. Para 161.

[35] González et al. ("Cotton field"). Supra note 31. Para 33.

[36] *Cançado Trindade A. A.* International law for humankind: towards a new jus gentium. Leiden : Brill Nijhoff, 2013. P. 27.

[37] *Ibid*. P. 27.

[38] *Ibid*. Para 115. See also: Juridical condition and rights of undocumented migrants. 17 Sept. 2003. IACRTHR. Advisory opinion OC-18/03. Series A. No. 18. Para 120 ; Yakye Axa indigenous community v. Paraguay. 17 June 2005. IACRTHR. Judgment on preliminary objections, merits, reparations and costs. Series C. No. 172. Para 67 ; Ituango Massacres v. Colombia. 1 July 2006. IACRTHR. Judgment on preliminary objections, merits, reparations and costs. Series C. No. 148. Para 157.

in international customary law as evidence of a general practice accepted as law, as well as of the general principles of law and of a series of general norms or soft law, that serve as guidelines for the interpretation of the former, because they provide greater precision to the basic contents of the treaties"[39].

The IACRTHR views, that states are "bound by the corpus juris of the international protection of human rights, which protects every human person erga omnes, independently of her statute of citizenship, or of migration, or any other condition or circumstance" in order to deliver effective protection to the rights contained in the convention[40]. In this sense, it is important to highlight that the systemic protection provided by the corpus juris of human rights law is particularly relevant *vis-à-vis* individuals or groups in situations of vulnerability. As Justice Cançado Trindade said when referring to the relevance of the instruments that integrate the *corpus juris*, "[t]o attempt to withdraw their protection, rendering human beings, individually and in groups, extremely vulnerable, if not defenceless, would go against the letter and spirit of those Conventions"[41].

In integrating the *corpus juris* of international human rights law, the IACRTHR has referred to all kind of norms (binding or not, universal, regional or domestic) while dealing with different provisions of the ACHR in relation to a wide array of issues involving, for instance, the rights of indigenous peoples, undocumented migrant workers, children, etc. [3, p. 243]. Indeed, the IACRTHR has not only taken into account different sources of international law during its extensive interpretation of the ACHR, including *jus cogens* norms and *erga omnes* obligations[42], but has also made consistent references to domestic law[43].

Moreover, human rights treaties are not static documents, frozen in time. On the contrary, they are living instruments whose interpretation must consider the changes over time and present-day conditions[44]. Thus, the integrative references to international human rights instruments must also take into consideration the developments in their interpretation provided by authoritative human rights adjudicative bodies, such as regional human rights courts or UN treaty bodies, which have the conventional mandate to interpret those instruments under today's societal conditions.

In sum, references to the *corpus juris* of international human rights law have also paved the way to the allocation of the fate of the human person – and of humankind as a whole – as a central element of international law. According to Justice Cançado Trindade, this process of integration has led to a "greater justice" and "a higher level of humanity" in international law, where the subjects of international law are not only states and international organizations but also "human beings, either individually or collectively" and "humankind"[45]. The subjects of international law are not only states and international organizations but also human beings, either individually or collectively, and humankind. In this sense, it has been said that "[t]he corpus juris is therefore "essentially victim orientated" as it has been originally consolidated and developed in benefit of human beings "individually" or "in groups""[46].

In light of the above considerations, it is possible to conclude that the *pro homine* principle has also played a central hermeneutical role in the IACRTHR's jurisprudence by prioritizing the centrality of the individual's fate in the interpretative process of the ACHR. Consequently, some remarks regarding this principle are necessary to achieve a better understanding of the IACRTHR's systemic interpretation.

The interpretative centrality of the *pro homine* principle

The "effective protection of human rights" constitutes not only the object and purpose of the ACHR but also a guiding principle for its interpretation. Indeed, human rights treaties aim to establish a system for the protection of human dignity, which reinforces and provides content to the *pro homine* principle (also referred to as *pro persona* principle). For instance, according to the IACRTHR, "the right to due process must be considered in accordance with the object and purpose supra note of the American Convention, which is the effective protection of the human being; in other words, it should be interpreted in favor of the individual"[47].

The *pro persona* principle has permeated and influenced the jurisprudence of the IACRTHR, which has

[39] Rights and guarantees of children in the context of migration and/or in need of international protection. 19 Aug. 2014. IACRTHR. Advisory opinion OC- 21/14. Series A. No. 21. Para 60.

[40] Juridical condition and rights of the undocumented migrants. Supra note 36. Para 85.

[41] Application of the Convention on the prevention and punishment of the crime of genocide (Croatia v. Serbia). 3 Feb. 2015. ICJ. Merits, dissenting opinion of Judge Cançado Trindade. Para 61.

[42] *See:* Juridical condition and rights of the undocumented migrants. Supra note 36. Concurring opinion of Judge Cançado Trindade. Para 86–89.

[43] *Medina Quiroga C.* The American convention on human rights. Supra note 5.

[44] The right to information on consular assistance. Supra note 3. Para 114.

[45] *Cançado Trindade A. A.* International law for humankind. Supra note 34. P. 282.

[46] Application of the Convention on the prevention and punishment of the crime of genocide (Croatia v. Serbia). Supra note 38. Dissenting opinion of Judge Cançado Trindade. Para 59.

[47] *See: Medina Quiroga C.* The American convention on human rights. Supra note 5. P. 6 ; 19 merchants v. Colombia. 5 July 2004. IACRTHR. Judgment on merits, reparations and costs. Series C. No. 103. Para 173 (emphasis added).

elevated its interpretative relevance to the point of recognizing it as a constitutive part of the ACHR [4]. The IACRTHR has said in this regard that, "[t]he American Convention expressly establishes specific standards of interpretation in its Article 29, which includes the *pro persona* principle, which means that no provision of the Convention may be interpreted as restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said States is a party, or excluding or limiting the effect that the American declaration of the Rights and Duties of man and other international acts of the same nature may have"[48].

The *pro homine* principle emerges as an essential hermeneutical tool, which – combined with the evolutionary and systemic interpretation of the IACRTHR – enlarges human rights' protection. Regarding the importance of the pro-homine principle in the jurisprudence of the IACRTHR, see – among others – A. Fuentes, M. Vannelli [5]. This means that the references made by the IACRTHR to different human rights instruments could facilitate not only an interpretative expansion of the scope of protection of human rights but also the prioritization and centrality of the individual's fate in the process of interpretation [6].

The constant jurisprudence of the IACRTHR is permeated by references to instruments that are part of the *corpus juris* of international human rights law, interpreted (and applied) under the guiding light of the *pro homine* principle. For instance, by applying these interpretative guidelines, the IACRTHR has concluded that sexual orientation, gender identity and gender expression are categories protected by the ACHR, because included within the legal category of "any other social condition", contained in Art. 1(1) of the ACHR as prohibited grounds of discrimination. In line with these developments, it is important to highlight that the IACRTHR has recognized – in a newly adopted advisory opinion – not only the general prohibition of discrimination based on sexual orientation, but also that "the right of each person to define his or her sexual and gender identity autonomously and that the personal information in records and on identity documents should correspond to and coincide with their self-defined identity is protected by the American Convention under the provisions that ensure the free development of the personality (Articles 7 and 11(2)), the right to privacy (Article 11(2)), the recognition of juridical personality (Article 3), and the right to a name (Article 18)[49]." The same could be said in connection with children's rights, where the IACRTHR has expanded the scope of protection of their rights by stressing their particular needs and situation of vulnerability, such as could be the case of unaccompanied children in processes of migration[50]. Finally yet importantly, the innovative jurisprudence developed by the IACRTHR in connection with indigenous peoples' land and cultural rights is nothing but an additional example of the "humanization" of international law. As an example of the process of "humanization" of international law, it is important to highlight the systemic integration of the rights of indigenous peoples made by the IACRTHR. In this sense, IACRTHR has expressly stated that "[t]wo international instruments are particularly relevant to the recognition of the right to cultural identity of indigenous peoples: the International Labour Organization convention No. 169 on indigenous and tribal rights and the United Nations declaration on the rights of indigenous peoples"[51].

In fact, it is essential to highlight that the principle of humanity "permeates the whole corpus juris of the international protection of the rights of the human person (encompassing international humanitarian law, the international law of human rights and international refugee law), conventional as well as customary, at global (UN) and regional levels"[52]. Hence, the *pro homine* principle is not only a principle of interpretation but also "a rigorous principle for the elaboration of national and international norms" and – in this regard – a "principle of regulation"[53], which "gives expression to the *raison d'humanité* imposing limits to the *raison d'État*"[54].

[48]Rights and guarantees of children in the context of migration and/or in need of international protection. Supra note 36. Para 54.

[49]Atala Riffo and daughters v. Chile. 24 Feb. 2012. IACRTHR. Judgment on merits, reparations and costs. Series C. No. 254. Para 78–93 ; Gender identity, and equality and non-discrimination with regard to same-sex couples. State obligations in relation to change of name, gender identity, and rights deriving from a relationship between same-sex couples (interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to Article 1, of the American convention on human rights). 24 Nov. 2017. IACRTHR. Advisory opinion OC-24/17. Series A. No. 24. Para 115.

[50]See: *Fuentes A., Vannelli M.* Human rights of children in the context of migration processes. Supra note 48. P. 6 *et seq.* ; Rights and guarantees of children in the context of migration and/or in need of international protection. Supra note 36. Para 128 *et seq.*

[51]Sarayaku v. Ecuador. Supra note 32. Para 215. See also: *Cançado Trindade A. A.* International law for humankind. Supra note 34. P. 282; *Fuentes A.* Expanding the boundaries of international human rights law. Supra note 8. P. 12 *et seq.*

[52]Application of the Convention on the prevention and punishment of the crime of genocide (Croatia v. Serbia). Supra note 38. Judge Cançado Trindade dissenting opinion. Para 69.

[53]Claude Reyes et al. v. Chile. 19 September 2006. IACRTHR. Judgment on merits, reparations and costs. Series C. No. 151. Separate opinion of Judge S. Garcia Ramirez. Para 13. See also: Awas Tingi v. Nicaragua. Supra note 16. Concurring opinion of Judge Sergio Garcia Ramirez. Para 2.

[54]Application of the international Convention for the suppression of the financing of terrorism and of the international convention on the elimination of all forms of racial discrimination (Ukraine v. Russian Federation). Judgment of 8 Nov. 2019. ICJ. Separate opinion of Judge Cançado Trindade. Para 64 *et seq.*

Finally, it is important to keep in mind the transformative capacity, the interpretative relevance, that the *pro homine* principle has in relation to those cases when individuals or groups are "in a situation of vulnerability or great adversity, or even *defencelessness*"[55], such as in the case of children, women and indigenous peoples. In this sense, the court has often referred to the "exacerbated situation of vulnerability" in connection with the application of the pro homine principle[56]. In these cases, the *pro homine* principle has operated as reinforcing and highlighting the human dimension of the victims in the IACRTHR's decision making, creating the interpretative conditions for the effective recognition and reparation of their sufferings, and preventing the future repetition of the wrongdoings.

Conclusive remarks

This study has critically analysed how the IACRTHR has enlarged the conventional protection of the rights of individuals by implementing a systemic, evolutive and effective interpretation of the ACHR, in light of human rights instruments that are part of the *corpus juris* of international human rights law.

The systemic and evolutive integration of relevant international human rights standards has aimed at delivering targeted protection to human beings in a situation of vulnerability, i. e. the rights of indigenous peoples, undocumented migrant workers, children, etc., emphasizing the application of the *pro homine* principle. In other words, it has contributed to deliver an effective human rights protection centred on and prioritizing the human person within the process of interpretation of human rights norms[57].

References to international norms and principles that integrate the *corpus juris* of international human rights law could be seen as paving the way towards "the construction of a new jus gentium at the beginning of the 21st century, no longer state centric, but turned rather to the fulfilment of the needs of protection and aspirations of human beings and humankind as a whole"[58].

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RECOGNITION AND ENFORCEMENT OF THE AWARDS OF THE INTERNATIONAL ARBITRAL TRIBUNAL AT THE BELARUSIAN CHAMBER OF COMMERCE AND INDUSTRY PURSUANT TO THE NEW YORK CONVENTION OF 1958: THE CASE OF AUSTRIA

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The standards of enforcement of arbitral awards arising from the New York convention of 1958 are examined, drawing on the example of Austria. Specifically, we review the process of enforcing awards of the International Arbitral Tribunal under the Belarusian Chamber of Commerce and Industry by an Austrian court of first instance. The aim was to develop a protocol of action for Belarusian lawyers to secure recognition and enforcement in Austria of awards of the International Arbitral Tribunal under the Belarusian Chamber of Commerce and Industry. We provide recommendations grounded in the results of our study.

Keywords: international arbitration; New York convention of 1958; the Hague convention of 1961; recognition of foreign arbitral awards in Austria; arbitration practice in Austria; procedures of the International Court of Arbitration; collection of interest for late enforcement of an arbitral award.

ПРИЗНАНИЕ И ИСПОЛНЕНИЕ РЕШЕНИЙ МЕЖДУНАРОДНОГО АРБИТРАЖНОГО СУДА ПРИ БЕЛОРУССКОЙ ТОРГОВО-ПРОМЫШЛЕННОЙ ПАЛАТЕ В СООТВЕТСТВИИ С НЬЮ-ЙОРКСКОЙ КОНВЕНЦИЕЙ 1958 г.: ПРИМЕР ИЗ АВСТРИЙСКОЙ ПРАКТИКИ

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Рассматриваются требования, предъявляемые в соответствии с Нью-Йоркской конвенцией 1958 г., на примере австрийской практики. В основу была положена процедура признания конкретного решения Международного арбитражного суда при Белорусской торгово-промышленной палате в австрийском суде первой инстанции. Целью статьи является разработка конкретного алгоритма действий белорусского юриста в процессе признания и исполнения ре-

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Ключевые слова: международный арбитражный процесс; Нью-Йоркская конвенция 1958 г., Гаагская конвенция 1961 г.; признание иностранного арбитражного решения в Австрии; австрийская арбитражная практика; правила Международного арбитражного суда; взыскание процентов за задержку исполнения арбитражного решения.

Introduction

In Belarus, there are 92 registered companies with Austrian capital and 20 representative offices of Austrian companies. Likewise, three trading arms of Belarusian companies are active in Austria ("BELMET Handelsgesellschaft", "BMZ Vertriebsgesellschaft" and "SolTrade", the latter a joint venture with JSC "BelarusKaliy"), along with a representative office of Belavia, the national air carrier. Several institutional mechanisms are in place to facilitate the economic relationship between Belarus and Austria, of which the Belarusian Austrian Intergovernmental Commission for Trade and Economic Cooperation and the Belarusian Austrian Business Council is the most prominent.

The Republic of Austria is a country that is guided by the principles of neutrality in its foreign policy. Its capital Vienna is a traditional meeting point for parties interested in negotiating compromise solutions on matters of international politics and economy. Austria is also a recognized global leader in international arbitration, and has generated extensive case law on enforcement of foreign arbitral awards.

The legal framework for the recognition and enforcement of arbitral awards is provided by the Austrian arbitration act, which is a part of the Austrian Code of Civil Procedure (Zivilprozessordnung (ZPO), para 577–618). Pursuant to para 614 of ZPO, recognition and enforcement of foreign arbitral awards is performed in a manner prescribed by the Austrian enforcement act (Exekutionsordnung (EO)), unless international or EU law provides otherwise. Belarus and Austria are parties to two conventions governing mutual recognition and enforcement of arbitral awards – the European convention on international commercial arbitration and the New York convention on the recognition and enforcement of foreign arbitral awards of 1958 (New York convention). In a vast majority of cases, the New York convention is applied. In general, the order of enforcement proceedings in Austria conforms to the provisions of the New York convention, which are applied in all cases except when domestic law provides for a more simplified order of proceedings for recognition and enforcement of decisions of foreign courts [1, para 79 EO Rz. 563]. The statute of limitations provides a period of 30 years for recognition and enforcement of arbitral awards.

Recently, the International Arbitral Tribunal (Tribunal) under the Belarusian Chamber of Commerce and Industry made several arbitral awards against Austrian debtors. This has made it relevant to develop a protocol of legal action to secure recognition and enforcement in Austria of the awards of the Tribunal, given the absence of relevant case law and the fact that such recognition is being sought for the first time.

Application of the 1958 New York convention

The main benefit of the 1958 New York convention is that it is applicable to relations between parties even when the jurisdictions of the parties to the arbitration process have no arrangements for mutual recognition of the decisions of the national courts. For Austria, the New York convention entered into force on 31 July 1961, without reservations or exceptions. At present, 156 states are party to the said convention[1]. In addition, the Republic of Belarus (a party to the New York convention since 13 February 1961), similar to several other countries of the former Eastern Bloc (Bulgaria, Lithuania, Romania, Czech Republic, Slovakia, Russia, Ukraine and Vietnam) applies the provisions of this convention in respect of the arbitral awards made in the jurisdictions of non-contracting states to the extent to which they grant reciprocal treatment. This broadens the applicability of the New York convention, making it a truly universal instrument.

Another significant benefit of the New York convention is that it provides for a significantly faster process of enforcement of arbitral awards, as compared to a much more complex enforcement procedure for court decisions under the provisions of mutual legal assistance treaties. The New York convention is applied extensively to relationships among legal persons in the European Union, *despite a high degree of harmonisation of commercial law, the existence of a single judicial registry (based at Eurojust), and automatic recognition of decisions of all courts across the EU as valid and directly enforceable throughout the EU.*

[1] Convention on the recognition and enforcement of foreign arbitral awards (New York 1958) [Electronic resource]. URL: https://uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards (date of access: 28.05.2020).

Filing a motion for recognition and enforcement of a foreign arbitral award

In Austria, the proceedings in respect of a foreign arbitral award, including of the International Arbitral Tribunal under the Belarusian Chamber of Commerce and Industry, begin with the submission of a motion for recognition (*Antrag auf Vollstreckbarerklärung*) and a motion for enforcement (*Exekutionsantrag*). Austrian procedural law does not treat submission of these two motions as separate actions, and permits both to be submitted simultaneously. To simplify and speed up the proceedings, a court will make a single determination in regard to both motions. Austrian courts also accept motions for enforcement of foreign arbitral awards in respect of interim measures.

If deficiencies are found in one or both motions the court will, as a general rule, suspend examination of the motion and set a time limit for such deficiencies to be remedied. In real estate disputes, which are subject to more stringent formal requirements, deficiencies of form may be irremediable, resulting in the motion being rejected by the court. The motion may be resubmitted subject to payment of a new judicial stamp duty. Because of the high value of real estate properties, lawyers should pay careful attention to detail in the preparation of the motions to avoid unnecessary and significant legal costs.

For real estate cases, the jurisdictional court is the cadastral court (*Grundbuchsgericht*) at the location of the real estate object, and for all other cases the district court (*Bezirksgericht*) at the location of the debtor is the competent authority. In the latter case, the value of the claim is not of essence, and may amount to millions euros.

Multiple claims in respect of one debtor are satisfied, ceteris paribus, in the order of submission. Where recovery proceedings are instituted against an object of real estate, a number of details should be born in mind. Specifically, when filing for enforcement against a debtor who possesses movable and immovable property, the relevant motion may be submitted to a district court (*Bezirksgericht*) at the location of the debtor and or to the cadastral court (*Grundbuchsgericht*) at the location of the immovable property. However, because the jurisdiction of the cadastral court is governed by a special law, and courts will abide by the principle *lex specialis derogat lex generalis* (special law repeals general law), district courts will forward the motion for recovery against real estate to a cadastral court. In this event, the date of submission of the motion will be date of its transmission to the cadastral court, not the date of its original submission to the district court. The time between the two dates may be quite significant, which may affect the order of the satisfaction of the plaintiff's claim.

Formal criteria applicable to an award for which enforcement is sought

The 1958 New York convention puts forth a set of formal requirements for an award to be enforced. Despite the existence of over 50 years of practice in the application of the New York convention, it has thus far not been possible to agree on a uniform approach to the definition of a duly executed arbitral award. Specific approaches and interpretations vary depending on the established case law, and will be examined here in greater detail.

Authenticated arbitral award. Pursuant to subpara a of Art. 4 of the New York convention, the party applying for recognition and enforcement shall, at the time of the application supply a "duly authenticated arbitral award or a duly certified copy thereof". In accordance with part 2 of para 614 of the ZPO, the arbitral award and the arbitrage agreement are supplied only at the request of the court, which in practice is made in almost every case. In an overwhelming majority of proceedings, the signatures of arbitrators are authenticated by the arbitration court itself [2, p. 78]. All the other options referred to in subparagraph *a* of Art. 4 of the New York convention involve significant costs, and are rarely used in practice.

As a general principle, the signatures of the arbitrators are authenticated by the chairman of the court of arbitration, but his authority to do so should be clearly stated in the constituent documents of the arbitral tribunal, i. e. the statute or the rules of procedure. Provisions empowering the chairman to perform such authentication are contained in Art. 39 part I of the Regulations of the Tribunal. A decision of the Tribunal is authenticated by affixing a stamp thereto the official stamp of the court, which is equivalent to the authentication procedure and conforms to the criteria applied in practice in Austrian case law [3, p. 364].

Requirements in respect of authentication of the text of the arbitral award are not established exclusively by Austrian law; the law of the jurisdiction in which the original award was made is also taken into account. In practice, this requirement can be satisfied simply by following the domestic process of apostillation consistent with the Hague convention of 1961[2]; at the same time there is no specific requirement in Austrian law for notarization/apostillation of the signature of the officer who authenticated the signatures of the arbitrators [1, para 79 EO Rz. 574].

[2]Convention of 5 October 1961 abolishing the requirement of legalisation for foreign public documents [Electronic resource]. URL: https://www.hcch.net/en/instruments/conventions/full-text/?cid=41 (date of access: 28.05.2020).

Translation into German of the award or a certified copy thereof must be made by a sworn translator assigned to a specific court. A current roster of translators from Russian into German can be consulted at the website of the Austrian Union of Sworn and Certified Translators[3]. However, there is no requirement to use a sworn translator to translate a large body of other relevant documents, and have the translation notarized, enabling the claimant to avoid substantial judicial costs. The court may, at its discretion, permit the use of other providers of translation services with sufficient fluency in the German language and knowledge of legal terminology.

Grounds for refusal of recognition and enforcement (Art. V of New York convention)

Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that (Art. V part I New York convention):

(a) the parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(c) the award deals with a difference not contemplated by or not falling within the term of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement are sought finds that (Art. V Part II New York convention):

(a) the subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) the recognition or enforcement of the award would be contrary to the public policy (*ordre public*) of that country).

In summary, Art. V of New York convention provides for two types of reviews to which foreign arbitral awards are subject: post-hoc review within the jurisdiction where the award was made, and ex-ante review in the state of its enforcement. Because the court of the first instance uses a written procedure (that does not involve questioning the claimant or the defendant) and makes its decisions based on the case documents available to it, the presence of the grounds for refusal referred to in Art. V part I of New York Convention cannot be verified at this stage; therefore, this provision of the convention is not applied. Such verification can only be possible at later stages in the presence of both parties and depends on the circumstances of the specific case.

Cases, where the subject matter of the difference is not capable of settlement by arbitration under the laws of the country where recognition and enforcement are being sought (referred to Art. V part II lit. a of New York Convention) are very rare. Indeed, it would be hard to conceive of any situation in the relationship between parties from Austria, Belarus, or any other jurisdictions belonging to the European legal tradition. In its first decision to grant recognition and enforcement in the case of the Belarusian claimant, Private Unitary Enterprise "A" against the company "B AG", the Austrian court of appeal did not refer to the grounds for refusal listed in of Art. V part II lit. a) of New York convention, and consequently did not verify the presence of these grounds.

Verification for consistency with public policy (ordre public), Art. V part II lit. b of New York convention

The court of the jurisdiction on which enforcement of an arbitral award is being sought shall verify its consistency with domestic policy (*ordre public*) independently, i. e. irrespectively of the existence of grounds for the overruling of the award on appeal in the jurisdiction where it was made. Any such grounds may be declared by the party against whom the award is involved at any stage in the hearing by the arbitral tribunal before or after submission of such award to a foreign court.

[3]Die Liste der Gerichtsdolmetscher Österreichischer Verband der allgemein beeideten und gerichtlich zertifizierten Dolmetscher [Electronic resource]. URL: http://www.gerichtsdolmetscher.at/index.php/de/com-ponent/content/article?id=55&country=912. http://www.gerichtsdolmetscher.at/index.php/de/component/content/article?id=55&country=912(date of access: 28.05.2020).

Consistent with the established practice, an Austrian court is precluded from questioning, under the pretext of verifying consistency with public policy, the factual basis of the award or compliance with the due process or material provisions of the law of the jurisdiction where the arbitral award was made. Austrian courts are precluded from reviewing the substance of an award rendered by a foreign arbitral tribunal (prohibition of revision au fond)[4]. The findings of a foreign arbitral tribunal may only be reviewed to establish whether they are in direct contradiction to the Austrian *ordre public*.

One aspect of such autonomous review for consistency with public policy is conformity of the arbitral award with the fundamental principles of Austrian law. Where an award of a foreign arbitral tribunal is grounded in a legal doctrine that is fully contradictory to the Austrian *ordre public*, an Austrian court may refuse recognition of the foreign arbitral award. Such decisions may be made only in the most extreme cases, so the international *ordre public* may not be put in jeopardy. Moreover, contradiction of a foreign legal provision or a legal relationship with a foreign party to contradict to the Austrian legal order does not constitute sufficient basis for such decision per se; the court will also needs implementation of such provision or relationship in domestic law be fundamentally unacceptable[5].

The fundamental principles and provisions of Austrian law that constitute the Austrian *ordre public* refer mostly to the principles and provisions of the Federal Constitution and also to the fundamental principles of criminal, private and procedural law. Conformity with public policy, in this case, does not refer to the process or reasoning behind a foreign arbitral award, but rather the legal implications of such award[6].

Violation of due process as inconsistency with public policy

The final and subsidiary grounds for refusing recognition of an award is its inconsistency with European (supranational) public policy established by the procedural safeguards contained in Art. 6 part I of the European convention on human rights and fundamental freedoms of 1951 (right to fair trial). The said article has had a profound effect on the development of the procedural standards in all European *ordres publics*. The Republic of Belarus has not ratified this convention to date, although this should not be construed as to its non-compliance with the principles of due process. Similarly, being a party to the European convention of human rights and fundamental freedoms is not a guarantee of an arbitral award's conformity with the European standards of due process. The primary consideration in this regad should not be the procedural arrangements, but rather the circumstances in which specific award was made. Of greatest relevance are guarantees of independence and impartiality of a court, respect for the procedural equality of the parties and for the right of each party to present their case to the court. Moreover, not every violation of the procedural order in the jurisdiction where the award was made, or inconsistency with the procedural order of the state where recognition is sought will constitute a violation of the *ordre public*.

Under Austrian law, violation of the procedural *ordre public* occurs when the fundamental principles of due process have been violated, of which the most important are the right of each party to make clarifications on the case and present their position to the court[7]. In these examples, the procedural rights of the parties will have been grievously violated (*in unerträglicher Weise*), constituting grounds for invoking of Art. V part II lit. b of New York convention to refuse recognition of an arbitral award.

Conclusions and recommendations

Based on the results of this review, the following conclusions and recommendations may be proposed:

• one advantage of Austrian procedural law is that it enables a party seeking enforcement of a foreign arbitral award to file two motions at the same time – the motion for recognition and the motion for enforcement a foreign arbitral award;

• in real estate cases, which typically have high claim value, special attention should be paid to the rules of judicial and administrative jurisdiction over cases in order to avoid unnecessary legal costs and avoid being downgraded the order of the satisfaction of the claim where multiple claims have been made against a single debtor;

[4] 3 Ob 221/04b [Electronic resource] // Das Rechtsinformationssystem des Bundes. URL: https://www.ris.bka.gv.at/Ergebnis.wxe?Suchw-orte=3+Ob+221%2F04b&x=0&y=0&Abfrage=Gesamtabfrage (date of access: 28.05.2020).

[5] RS0110743 [Electronic resource] // Das Rechtsinformationssystem des Bundes. URL: https://www.ris.bka.gv.at/Ergebnis.wxe?-Suchworte=RS-0110743&x=14&y=11&Abfrage=Gesamtabfrage (date of access: 28.05.2020).

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[7] 3 Ob 161/09m/91 [Electronic resource] // Das Rechtsinformationssystem des Bundes. URL: https://www.ris.bka.gv.at/Ergebnis.wxe?Suchworte-=3+Ob+161%2F09m&x=9&y=13&Abfrage=Gesamtabfrage (date of access: 28.05.2020).

• authentication of the signatures of the arbitrators, performed by the chairman of the International Court of Arbitration at the Belarusian Chamber of Commerce and Industry, should be supported by translation and apostille of the relevant legal provision, notably, Art. 39 part I of the Regulations of the Tribunal which vests the chairman of the Tribunal with the authority to do so;

• where an Austrian court refuses recognition and enforcement of a foreign arbitral award on the grounds that the award would contradict public policy, it will not just establish a formal discrepancy of the arbitral award to the Austrian *ordre public*, but will also need to find that implementation such decision would be *fundamentally unacceptable* in domestic law.

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