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INTERNATIONAL DISTRIBUTION CONTRACT AND AGENCY CONTRACT: SIMILARITIES AND DIFFERENCES

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Abstract. *The article analyzes the main aspects of international distribution and agency agreements, as well as the similarities and differences between them. The subject of the research is the legal regulation of international distribution and agency agreements. The purpose of the research is to identify the peculiarities of the regulation of these contracts in various legal systems and to substantiate the need for their legal consolidation in the legislation of the Republic of Uzbekistan. The relevance of the topic is due to the intensification of international trade relations, the need for clear legal regulation of intermediary agreements in cross-border activities, as well as the absence in the current legislation of Uzbekistan of the rights and legal norms applicable to these types of agreements. The problem of the research is the lack of unified standards at the international level and gaps in national legal regulation, which complicate the application of law and create legal uncertainty for participants in foreign economic activity. The research methodology was based on the method of comparative legal analysis based on the legislation and law enforcement practice of the European Union, the USA, and Latin American countries; international recommendations; model agreements; as well as scientific and theoretical sources. Systematic, logical, and formal-legal analysis methods were used. The results of the study showed that there are significant differences in the regulation of distribution and agency contracts in different countries: In the European Union, agency contracts are strictly regulated in accordance with Directive 86/653/EEC; in the USA, distributors have the same freedom as independent entrepreneurial activity; Latin American countries have extensive legislation covering this type of contract. At the same time, it was revealed that there are no universally recognized standards regulating distribution agreements at the international level, and there are also insufficient unified norms for agency agreements. The practical significance of the research results lies in the fact that, on their basis, it is possible to improve the civil legislation of the Republic of Uzbekistan, in particular, by including separate chapters regulating distribution and agency contracts in the Civil Code. This creates a solid legal basis for protecting the interests of the parties in mediation relations. The conclusions of the study emphasize the need for legislative consolidation of distributorship and agency agreements in national legislation. It is proposed to include in the Civil Code of the Republic of Uzbekistan separate chapters regulating such aspects as the concept of these contracts, the procedure for their conclusion, the rights and obligations of the parties, the procedure for their termination, and liability. The need*

to supplement the norms on the definition of applicable law in international mediation agreements is also noted. In the conclusion, the author formulated author's definitions reflecting the specifics and characteristics of international distribution and agency contracts.

Keywords: *international distribution agreement, international agency agreement, distributor, agent, supplier, intermediary, principal, exclusive right*

XALQARO DISTRIBYUTORLIK VA AGENTLIK SHARTNOMASI: O‘XSHASHLIKLAR VA FARQLAR

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Annotatsiya. *Maqolada xalqaro distribyutorlik va agentlik shartnomalarining asosiy jihatlari, shuningdek, ular orasidagi o‘xshashlik va farqlar tahlil qilinadi. Tadqiqot predmetini xalqaro distribyutorlik va agentlik shartnomalarining huquqiy tartibga solinishi tashkil etadi. Tadqiqotning maqsadi ushbu shartnomalarning turli huquqiy tizimlardagi tartibga solinishiga xos xususiyatlarni aniqlash hamda ularning O‘zbekiston Respublikasi qonunchiligida huquqiy mustahkamlash zarurligini asoslashdan iborat. Mavzuning dolzarbligi xalqaro savdo aloqalarining jadallashuvi, transchegaraviy faoliyatda vositachilik shartnomalarini aniq huquqiy tartibga solish zarurati, shuningdek, ushbu turdagi shartnomalar bo‘yicha qo‘llanadigan huquq va huquqiy normalarning O‘zbekiston amaldagi qonunchiligida mavjud emasligi bilan bog‘liq. Tadqiqot muammosi – xalqaro darajada yagona standartlarning yo‘qligi va milliy huquqiy tartibga solishdagi bo‘shliqlar, bu esa huquqni qo‘llashni qiyinlashtiradi va tashqi iqtisodiy faoliyat ishtirokchilari uchun huquqiy noaniqlikni keltirib chiqaradi. Tadqiqot metodologiyasi Yevropa Ittifoqi, AQSh va Lotin Amerikasi mamlakatlarining qonunchiligi hamda huquqni qo‘llash amaliyoti, xalqaro tavsiyalar, model shartnomalar, shuningdek, ilmiy-nazariy manbalar asosida qiyosiy-huquqiy tahlil usuliga asoslandi. Sistemali, mantiqiy va formal-huquqiy tahlil metodlari qo‘llangan. Tadqiqot natijalari turli mamlakatlarda distribyutorlik va agentlik shartnomalarining tartibga solinishi borasida sezilarli farqlar mavjudligini ko‘rsatdi: Yevropa Ittifoqida agentlik shartnomalari 86/653/EEC Direktivasiga muvofiq qat’iy tartibga solinadi; AQShda distribyutorlar mustaqil tadbirkorlik faoliyatiga yaqin bo‘lgan erkinlikka ega; Lotin Amerikasi mamlakatlarida ushbu turdagi shartnomalarni qamrab oluvchi keng qamrovli qonunchilik mavjud. Shu bilan birga, distribyutorlik shartnomalarini xalqaro darajada tartibga soluvchi umumtan olingan standartlar yo‘qligi va agentlik shartnomalari bo‘yicha ham yetarli darajada yagona normalarning mavjud emasligi aniqlangan. Tadqiqot natijalarining amaliy ahamiyati shundan iboratki, ularning asosida O‘zbekiston Respublikasining fuqarolik qonunchiligini takomillashtirish mumkin, xususan, Fuqarolik kodeksiga distribyutorlik va agentlik shartnomalarini tartibga soluvchi alohida boblarni kiritish orqali. Bu vositachilik munosabatlaridagi tomonlarning manfaatlarini himoya qilish uchun mustahkam huquqiy asos yaratadi. Tadqiqot xulosalari distribyutorlik va agentlik shartnomalarini milliy qonunchilikda qonuniy mustahkamlash zarurligini ta’kidlaydi. O‘zbekiston Respublikasi Fuqarolik kodeksiga ushbu shartnomalarning tushunchasi, tuzish tartibi, tomonlarning huquq va majburiyatlari, bekor qilish tartibi va javobgarligi kabi jihatlarni tartibga soluvchi alohida boblarni kiritish taklif qilinmoqda. Shuningdek, xalqaro vositachilik shartnomalarida qo‘llanadigan huquqni aniqlashga doir normalarni to‘ldirish zarurati qayd etiladi. Xulosada muallif xalqaro distribyutorlik va agentlik shartnomalarining o‘ziga xosligi va xususiyatlarini aks ettiruvchi mualliflik ta’riflarini shakllantirdi.*

Kalit so‘zlar: *xalqaro distribyutorlik shartnomasi, xalqaro agentlik shartnomasi, distribyutor, agent, yetkazib beruvchi, vositachi, prinsipal, eksklyuziv huquq*

МЕЖДУНАРОДНЫЕ ДИСТРИБЬЮТОРСКИЙ И АГЕНТСКИЙ ДОГОВОРЫ: СХОДСТВА И РАЗЛИЧИЯ

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Аннотация. *В статье рассматриваются ключевые аспекты международных дистрибьюторских и агентских договоров, а также выявляются их сходства и различия. Объектом исследования является правовое регулирование международных дистрибьюторских и агентских договоров. Целью исследования является определение особенностей правового регулирования указанных договоров в различных правовых системах и обоснование необходимости их законодательного закрепления в праве Республики Узбекистан. Актуальность темы обусловлена активизацией международной торговли, необходимостью чёткого регулирования посреднических договоров в трансграничной деятельности, а также отсутствием их правового регулирования и норм, определяющих подлежащее право, в действующем законодательстве Узбекистана. Проблема исследования заключается в отсутствии единых международных стандартов и пробелах национального правового регулирования, что затрудняет правоприменительную практику и создаёт правовую неопределённость для участников внешнеэкономической деятельности. Методология исследования основана на сравнительно-правовом анализе законодательства и правоприменительной практике Европейского союза, США и стран Латинской Америки, изучении международных рекомендаций, модельных договоров, а также теоретических и научных источников. Используемые методы включают системный, логический и формально-юридический анализ. В результате исследования выявлены существенные различия в регулировании дистрибьюторских и агентских договоров в различных странах: в Европейском союзе агентские договоры строго регулируются Директивой 86/653/ЕЭС; в США дистрибьюторы обладают большей самостоятельностью и ближе к модели независимой предпринимательской деятельности; в странах Латинской Америки существует разветвлённая нормативная база, охватывающая как гражданско-правовые, так и торговые аспекты. Также отмечается отсутствие общепринятых международных стандартов регулирования дистрибьюторских договоров и ограниченность унифицированных норм в отношении агентских договоров на глобальном уровне. Практическая значимость исследования заключается в возможности использования его результатов для совершенствования гражданского законодательства Республики Узбекистан, в частности путём включения в Гражданский кодекс отдельных глав, регулирующих дистрибьюторские и агентские договоры. Это создаст прочную правовую основу для защиты интересов сторон посреднических соглашений. В выводах подчёркивается необходимость законодательного закрепления дистрибьюторских и агентских договоров в национальном праве. Предлагается включить в Гражданский кодекс Республики Узбекистан отдельные главы, определяющие понятие, порядок заключения, права и обязанности сторон, порядок прекращения и ответственность сторон по вышеуказанным договорам. Также предлагается внести дополнения в нормы, регулирующие определение подлежащего права в международных посреднических сделках. В заключение автор формулирует собственные определения международных дистрибьюторских и агентских договоров, отражающие их специфику и особенности.*

Ключевые слова: *международный дистрибьюторский договор, международный агентский договор, дистрибьютор, агент, поставщик, посредник, принципал, исключительное право*

Introduction

Currently, one of the common types of foreign economic transactions in contractual practice, among intermediary contracts, is the international distribution and agency contract. Intermediary contracts are agreements under which one party (the intermediary) assists another party (the principal, customer, or seller) in the performance of commercial transactions. Intermediary contracts vary in the extent of the intermediary's involvement, duties, and responsibilities, but all are designed to facilitate commercial transactions and generally involve the receipt of remuneration for the intermediary's services.

International distribution contracts and agency contracts, as intermediary agreements, have differences defined by the subject matter of each. They are often confused or compared to commission and assignment contracts. Despite some similarities, as both types of contracts regulate the sale of goods or services between parties from different countries, the differences manifest themselves in the rights and obligations of the parties, in the transfer of exclusive rights, in the allocation of risks, and in the nature of the legal relationship.

The legislation of the Republic of Uzbekistan with respect to intermediary contracts reflects only commission and assignment contracts, and distribution and agency contracts are not reflected; however, despite this, such types of contracts are concluded. According to Article 817 of the Civil Code of the Republic of Uzbekistan, under a commission contract one party (the attorney) undertakes to perform on behalf of and at the expense of the other party (the principal) certain legal actions, but under a transaction made by the attorney, rights and obligations arise directly with the principal, and under a commission contract one party (the commissioner) undertakes on behalf of the other party (the commissioner) to perform one or more transactions on its own behalf but at the expense of the commissioner for a fee (Article 832 of the Civil Code of the Republic of Uzbekistan).

Based on the above, it is clear that these types of contracts have both similar and distinctive features between them. The commission contract has similar features to the contract of assignment; for example, in both of these contracts, the executors act in the interests of the guarantor, and the contracts must be concluded in writing. At the same time, there are also differences. Firstly, a commission contract can be both compensated and non-reimbursable. A commission agreement is always reimbursable, which excludes its personal fiduciary nature. This means that the commission agent, unlike the attorney, cannot unilaterally and powerlessly refuse to fulfill the contract, and the death of the citizen-commissioner or liquidation of the legal entity-commissioner does not entail termination of the contract, as succession is possible here. Secondly, the subject of the commission agreement is transactions (usually on the purchase and sale of the property of the commissioner), whereas the subject of the assignment agreement is certain legal actions of the attorney (signing of documents, execution of transactions, acceptance of works and goods, etc.). Thus, the latter are not always reduced to transactions. Thirdly, the commission agent is directly a party to the transaction, while the commissioner does not become a party to transactions even if he was named in the transaction or entered into direct relations with a third party for the fulfilment of the transaction (part 2 of Article 832 of the Civil Code of the Republic of Uzbekistan). Therefore, the third party with whom the commission agent enters into legal relations may assume that the commission agent is the alienator of the goods. Consequently, the rights and obligations under the

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transaction made by the intermediary with the third party arise precisely with the commission agent. Based on this peculiarity of the commission agreement, the third party resolves all disputable issues with the commission agent. Accordingly, all transaction documents (purchase and sale agreements, etc.) are executed for the commission agent, who is not obliged to indicate that he acts on the instructions of the commissioner. In contrast, an attorney always represents himself as a person acting for and on behalf of his principal [1, pp. 824–825].

If we compare distribution and agency contracts between commission and assignment contracts, it should be noted that they all belong to intermediary contracts, and they differ depending on the scope of application of these types of contracts. The distribution contract is focused on commercial risks, the presence of exclusive rights, and the right to use trademarks, while the agency contract is to represent the interests of the principal for remuneration. The commission agreement is a transaction in its own name for remuneration, and the assignment – to perform legal actions without transferring ownership.

To date, there is still no unified international legal regulation of the international distribution and agency contract, as well as its unified international definition. In addition, under the laws of some countries, distribution and agency agreements are not subject to special legal regulation.

Materials and methods

The object of the study is social relations regulating issues related to the differentiation and similarity of international distribution and agency contracts. The subject of the study is international and national legal regulation of distribution and agency contracts, as well as the practice of their application in international trade. The purpose of studying these issues in the article is to identify key similarities and differences between international distribution and agency contracts, to determine the features of their legal regulation in different countries, and to develop proposals related to improving the national legislation of Uzbekistan through legal regulation of distribution and agency contracts.

In the article, the comparative legal method is applied, which allows for revealing the peculiarities of legal regulation of these contracts in different legal systems. Special attention is paid to the analysis of normative acts regulating intermediary contracts, such as distribution and agency contracts, as well as their legal qualification in the judicial practice of foreign countries. In the course of the research, the key legislative acts of the European Union, the USA, Great Britain, Germany, France, the Netherlands, Latin American countries, etc., as well as the Guidelines for the Drafting of Commercial Agency Agreements between the Parties and the Model Commercial Agency Contract developed by the International Chamber of Commerce were considered.

The method of comparative legal analysis is aimed at studying the differences in the regulation of distribution and agency contracts, as well as differentiating these contracts from other intermediary contracts, such as commission and assignment contracts. The analysis of judicial practice of different countries also serves as an important source of information, making it possible to identify key trends and problems arising in the application of the rules governing distribution and agency relations.

In addition, the paper uses the formal-legal method, which allows systematising and classifying legal norms, as well as identifying gaps and contradictions in national and international regulation. The comprehensive approach allows for comprehensive analysis of the legal aspects

of distribution and agency contracts, identifies key differences between them, and suggests possible ways to improve legal regulation in this area.

The study is based on the analysis of scientific and theoretical works of lawyers, the comparative legal method, as well as the analysis of legislative acts and judicial practice in the field of international private law. The main method used is a comparative analysis of the rules governing distribution and agency contracts in foreign countries, with an emphasis on the differences in the legal regulation of these contracts.

Research results

An international distribution contract implies the right of the intermediary-distributor to act in its own name and for its own account, which makes it an independent participant in foreign trade transactions. Depending on the country and legal system, the terms of a distribution agreement may vary. Under an international distribution agreement, the manufacturer (supplier) may grant the distributor an exclusive right to operate in a certain territory.

An international agency contract involves an agent who acts on behalf of the principal and concludes transactions on its behalf. In some countries, such as England and the US, the agent may be engaged to perform certain actions, and his role as the principal's representative is clearly defined in national law. In most countries in Europe, the agent also acts on behalf of the principal but may be liable to third parties unless his status as a representative is declared.

An international distribution contract is widely used by manufacturers (suppliers) to organize sales of their goods in a certain territory, particularly when it is difficult to establish a branch network in that region.

In the USA, distributorship gives the distributor the right to enter into relationships with several manufacturers (suppliers) of similar goods and is considered a convenient alternative to franchising and agency agreements [2, p. 81]. In Great Britain, in practice, the distribution agreement is referred to as an agreement on the sole right to sell, which provides that the seller, an English manufacturing or trading firm, grants to the buyer, a foreign firm, the sole rights to trade in a limited territory in respect of goods of a certain type [3, p. 132]. In the Netherlands, a distribution agreement means a contract under which one party (distributor) acquires goods from a manufacturer or other supplier based on a contract of sale and assumes the obligation to distribute and resell these goods to third parties on its own behalf and at its own expense. In France, a distribution contract is an agreement between a supplier and a distributor, under which the supplier supplies goods and services to the distributor, and the distributor promotes them in a certain territory [4, p. 37].

The most extensive legislative regulation of the distribution contract appears to be in the Latin American States, which, based on the available legislative norms concerning the distribution contract, can be conditionally divided into three groups: 1) States in which the rules on the distribution contract are found in the Civil Code (Federative Republic of Brazil); 2) States in which the distribution contract is regulated in the Commercial Code (Republic of Guatemala); 3) States in which a special law regulating the peculiarities of the legal position of the parties and the relations between them has been adopted with respect to the distribution contract (Republic of Paraguay; Free Associated State of Puerto Rico; Republic of Honduras). In contrast to the legislative consolidation of the distribution contract in Latin American States, this is not the case in the countries of the European Union. Only the Kingdom of Belgium has separate legislation regulating distributors and manufacturers. Other

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countries of the European Union regulate the agency agreement, and there is no separate legal regulation of the distribution agreement [5, p. 15].

The distribution contract is dedicated to Chapter XII of the Civil Code of the Federative Republic of Brazil No. 10.406, dated 10.01.2002. [6], in which it is mixed with the agency contract and does not meet the autonomy and thus does not have features that distinguish it from other contractual structures. Article 710 of the Brazilian Civil Code defines the agency contract, according to which one person undertakes to distribute, on a reimbursable basis, goods at the expense of another person to perform a separate range of activities in a specified territory, which includes this kind of distribution, when the agent has in his possession the products to be distributed, which are the subject of the contract. In Brazil, a distribution contract is defined as a contract in which one party ('distributor') acquires from another party ('producer'), at its own risk, consumer goods for subsequent sale for profit. The ownership of the goods does not always pass to the distributor. It is a situation in which the goods for distribution are shipped to a third party – a sub-distributor who has entered into a sub-distributor agreement with the distributor [7, pp. 160–161].

Due to the fact that there is no international legal regulation of the distribution agreement, special attention should be paid to the means of its non-governmental regulation. Namely, the International Chamber of Commerce (ICC) adopted in 1988 the Guide to Drafting International Distribution Agreements and in 1993 the Model Distribution Contract. Monopoly Distributor. The following non-governmental regulators, intended to regulate distribution agreements concluded in EU countries, are the Principles of European Law: Commercial Agency, Franchising, and Distribution (PEL CAFDC) and the Model Rules of European Private Law (Model Rules of EPL) [8, p. 88].

Neither the Guide to International Distribution Agreements nor the Model Distribution Contract contains a clear definition of a distributor. However, a definition of a distribution agreement is contained in Article IV.E.-5:101 of the Model Rules of the EPL: under this agreement, one party, the supplier, undertakes to supply the other party, the distributor, with a product on an ongoing basis, and the distributor undertakes to purchase it or accept, pay for, and sell it to third parties on its own behalf and in its interests. This definition is no different from the definition contained in the PEL CAFDC. The Model Rules of the EPL do not regulate issues related to the granting of intellectual property rights (trademarks) by the supplier to the distributor [8, pp. 88–89].

Article 217 of the Code of European Contract Law reflects the distribution agreement as a licence sale, and under this agreement, the manufacturer-seller undertakes to supply at an agreed price goods, a known quantity of which he produces for the intermediary licensee, in the quantities agreed in the contract, not exceeding the maximum and minimum limits; the latter undertakes to accept such goods in the quantities ordered by him, not lower than the agreed minimum, in order to resell them in his own name and at his own risk in the territory of the contracting parties [9, pp. 135–136].

There is no specific regulation of distribution agreements in Singapore.

A distributor (dealer) has the following characteristics [10, pp. 167–168]:

- a distributor agreement is a complex contract involving not only a sales and purchase relationship but also contractual (services) relationships, such as advertising, maintenance, and other services, as well as

the transfer of intellectual property rights, primarily trademark rights;

- the distributor agreement is long-term and operates within a certain framework, and specific sales contracts are concluded within the framework of its validity;

- the distributor officially acts independently of the manufacturer (exporter);

- under the contract, the distributor receives ownership of the goods sold to him;

- the distributor is fully liable to the manufacturer (exporter) for payment for the goods received, and the fact of their further sale is irrelevant;

- the distributor cannot create rights and obligations for the manufacturer (exporter) by his actions;

- the distributor's activity in the relevant region is absolute (exclusive), and no other distributors can operate in this region, or the manufacturer (exporter) itself cannot engage in sales.

Agency contracts are used in English and U.S. law for a wide range of relationships. Agency contracts include any type of relationship in which one person is engaged by a second person to perform any actions in such a way that, on the one hand, the engaged person is not a person who independently decides on the conclusion of contracts (independent contractor) and, on the other hand, does not act as a person who, by virtue of his official position, provides services of a factual nature that are not related to assistance in the conclusion of a transaction (servant). That is, the law of England and the United States uses the term 'agent' in relation to any type of representation. (At the same time, the person who authorizes the agent is called "principal") [11].

In European countries (Germany, the Netherlands, and France), the agent acts on behalf of the principal; this must be explicitly communicated to the third party or it may be obvious from the situation [12, pp. 32–33]. According to Dutch law, if the agent does not inform the third party of his status (that he acts on behalf of the principal), the agent will be considered the responsible person for the principal transaction concluded by him with the third party [12, p. 34]. According to the law of Germany, the Netherlands, and France, if an agent concludes a contract with a third party on his own behalf, such a contract is called a commission agency contract [13, pp. 97–98].

As well as the international distribution contract, the international agency contract has not found international legal regulation. It has found its non-state regulation through the International Chamber of Commerce, which developed the Guidelines for the preparation of commercial agency agreements between parties located in different countries in 1961, as revised in 1983 (ICC publication No. 410) and Model Commercial Agency Contract 1991 (ICC publication No. 496), the second edition of which was adopted in 2002 (ICC publication No. 644) [14].

The national legislation of the Republic of Uzbekistan does not reflect the legal regulation of distribution and agency contracts. The Civil Code of the Republic of Uzbekistan reflects some intermediary contracts, namely the legal regulation of contracts of assignment, acting in another's interest without an assignment, commission, etc.

Analysis of research results

In some countries, distributors are protected on the basis of jurisprudence by applying to them, by analogy, the rules on agents or by applying general principles of law. For example, in the Federal Republic of Germany, the jurisprudence, in some circumstances, applies the status of a commercial agent to a distributor, particularly when it comes to compensation for customers [15, p. 205].

Distributor agreements are different from agency agreements, where there

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is no resale situation: the agent sells goods on behalf of the principal, while the distributor acts on his own behalf. A distributorship agreement may be mistakenly labelled as an agency agreement, and vice versa. In this case, the courts will inquire into the true nature of the agreement, irrespective of how it has been named. If the agreement is labelled as a distributorship agreement but is, in fact, an agency agreement, the courts will treat it as an agency agreement [16].

As a result of the analysis, the main similarities and differences between international distribution and agency contracts are highlighted.

It should be noted that the partial similarities between an international distribution contract and an agency contract are as follows:

1. Purpose of the contract. One of the parties to the contract is acting as an intermediary with certain rights and obligations transferred to him under the contract for the promotion or sale of goods or services.

2. Party to the contract. Both contracts include the manufacturer or supplier who seeks to expand the market and the intermediary (agent or distributor) who will promote the goods or services in a particular territory.

3. Legal regulation. Both contracts have not found their international legal regulation, but are regulated by non-state regulation, and the legal regulation is not reflected in the national legislation of some countries.

The difference between an international distribution contract and an agency contract is as follows:

1. The legal status of the intermediary. In an international agency contract, the agent acts as a representative of the principal and concludes transactions on his behalf, while the distributor acts on his own behalf, making him an independent partner in foreign trade relations.

2. Risk allocation. In an international agency contract, all risks remain with the principal, as the agent acts on his behalf, and the agent receives remuneration in the form of a commission agreed with the principal. In contrast, in the international distribution contract, the distributor assumes the risk, as he acquires the goods or services and then sells them on his own behalf. The distributor determines his own profit on the resale of the goods.

3. Control and management. In an international agency contract, the principal can control the actions of the agent, and set specific instructions for the agent, and the agent is obligated to follow the principal's instructions within the scope of the contract. In an international distribution contract, the distributor has more freedom in choosing sales methods, and the manufacturer has no direct control over the process of selling the goods in the territory reflected in the contract.

4. Applicable law. The parties in both contracts can choose the applicable law. However, in EU countries, agency contracts are more often governed by the peremptory norms of Directive 86/653/EEC [17], which gives agents additional protection in case of disputes. In Directive 86/653/EEC, commercial agency is modelled on the contract of assignment, i.e., it is based on the direct representation adopted in the countries of continental Europe. A commercial agent is an independent commercial intermediary who has a permanent duty to negotiate the sale of goods on behalf of another person, called the principal, or to negotiate and conclude said contracts on behalf of the principal (paragraph 2 of Art. 1) [18, pp. 132–133].

Thus, the choice between an international agency and a distribution contract depends on the degree of independence, level of

responsibility, and risks that the parties are willing to accept.

There are various disputes arising out of distribution agreements, including, for example, a number of cases heard by the Supreme Court of Singapore on various subjects:

– in the case of HoneySecret Pte Ltd v Atlas Finefood Pte Ltd & others [2016] SGHC 164, the court found that prior to entering into a distribution agreement, the supplier made false representations to the distributor as to (1) the existence and size of its customer base in Singapore; (2) the terms of performance of the agreement: the supplier promised that 60 percent of the volume in each of the distributor's orders would already be pre-sold to its customers; and (3) the cost: the supplier claimed that the distributor would be able to sell the goods at a minimum 20 percent mark-up. These assurances were made orally during the negotiation of the exclusive distributor agreement. In the course of the litigation, it became clear that the supplier's customer base was much smaller and that it was not possible to pre-sell orders in these volumes. In addition, the supplier had not given the distributor a list of customers and had not delivered some of the orders that had already been paid for. The court upheld the distributor's unilateral cancellation of the contract and awarded the supplier damages;

– in the case of William Jacks & Co (Singapore) Pte Ltd v Nelson Honey & Marketing (NZ) Ltd [2015] SGHCR 21, the court considered whether an agreement was formed by the existence of a draft exclusive distribution agreement which the parties had negotiated. The court concluded that there was no agreement between the parties. It found that one party required superior office approval to enter into the agreement, which had not been obtained at the time the negotiations were finalized;

– in the case of Citrus World Inc v Neotrade Marketing Pte Ltd [2000] SGHC 283 the distributor believed that such behaviour by the supplier was indicative of an extension of the contract. The distributor claimed that the supplier had wrongfully terminated the exclusive distribution agreement and declared a set-off against the supplier's claims for payment of the purchase price. The court, however, pointed out that regardless of the distributor's motivation and investment in promoting the products, the supplier was entitled to appoint another distributor as the distributorship agreement had terminated. In the same case, the court pointed out that the actions taken to fulfil the contract also did not confirm the fact that the contract had been concluded. The order, which the distributor claimed was part of the distribution agreement, did not comply with its terms in terms of the delivery territory, trademarks, INCOTERMS® delivery basis, and others [16].

In relation to agency contracts, the case of Lonsdale v. Howard & Hallam Ltd [2007] UKHL 32, where the House of Lords considered the question of an agent's entitlement to compensation following the termination of a contract and set out the criteria for determining the amount of such compensation. Mr. Graham Lonsdale, a commercial agent in the shoe trade, had a contractual relationship with H & H, which ceased trading in 2003 and sold the goodwill of the Elmdale brand to a competitor. H & H provided Mr. Lonsdale with six months' notice, terminating his contractual entitlement. Mr. Lonsdale sought either an indemnity under Article 17(2) or compensation under Article 17(3) for the termination of his relations with the principal. French law, specifically Article 12, provides for compensation to the agent for the loss suffered due to the termination of the business relationship, which is interpreted to include the loss of the business itself. The value of the agency relationship is based

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on the potential income stream it would have generated, with French courts valuing agencies at twice the average annual gross commission over the previous three years. Mr. Lonsdale's counsel argued that the directive under Article 17(3) should be interpreted in line with French practice, which the Commission suggested needed clarification. The Court of Justice has clarified that the method of calculating compensation is within the discretion of each Member State [19].

Conclusion

In conclusion, international distribution contracts regulate relations between partners from different countries and are usually aimed at expanding markets, consolidating the supplier's position in the foreign market, and distributing and promoting goods through an independent intermediary.

In private international law, distribution contracts face a number of legal peculiarities, such as the choice of applicable law, the determination of jurisdiction, possible antitrust restrictions, and issues related to the protection of intellectual property. The applicable law and jurisdiction are often determined by the parties to the contract, as national laws of different countries regulate distribution agreements differently. For example, the EU has a directive on the protection of agents, which may affect distributors, whereas in the USA, such agreements are typically treated as independent contracts.

The main issues that are regulated under an international distribution agreement include:

- exclusivity: the transfer of a certain right of the supplier to the distributor, namely the exclusive distribution of products in a certain territory;

- transfer of title and risk: the conditions under which title to the goods and the associated risks are transferred to the distributor;

- obligations of the parties: this may include the distributor's obligations for minimum purchase volumes, marketing support, and the supplier's obligations for delivery and adherence to quality standards.

The choice between an international distribution and agency contract depends on the subject matter of the contract, the degree of independence, the level of responsibility, and the risks that the parties are willing to accept. In the absence of a harmonized international regulation of these contracts, the parties should carefully choose the legal model, taking into account the legal rules of the country in which they intend to conclude the contract.

Based on the existing various definitions of the concept of international distribution agreement, the following author's definition is proposed: under the international distribution agreement, one party (supplier) undertakes to provide goods produced or purchased by it to another party (distributor), and the distributor undertakes, at its own expense and on its own behalf, to sell the goods in a certain territory agreed with the supplier to strengthen its position in the relevant commodity market, where one of the parties is a distributor [4, p. 125].

An international agency contract should be understood to mean that one party (agent) undertakes to perform legal and other actions on behalf of another party (principal) in its own name but at the expense of the principal, or in the name and at the expense of the principal, with at least one of the parties (agent or principal) is a foreign legal entity or individual in relation to the other party.

International distribution and agency agreements are important for participants in foreign economic activities, providing flexibility and protection of the parties' rights in different legal systems.

International distribution and agency contracts play a key role in the development

of foreign economic activity, facilitating the efficient distribution of goods and services in the global market.

Currently, the legislation of the Republic of Uzbekistan lacks special norms regulating distribution and agency contracts, which creates legal uncertainty for business entities. In this regard, it seems advisable to make additions to the Civil Code of the Republic of Uzbekistan. In particular, it is proposed to introduce separate chapters regulating: "Distributor's contract," which should provide for the concept of a distribution agreement and its legal nature; peculiarities of the conclusion of the contract, and its essential conditions; rights and obligations of the parties, including issues of exclusivity and limitation of competition; procedure for cancellation of the agreement and distribution of risks; liability of the parties for breach of contract; and regulation of sub-distribution, and its legal consequences. Also, Agency agreement, including definition of an agency contract and its characteristic features; the legal status of the agent and the principal, their rights and obligations; the procedure of payment of remuneration to the agent and its amount; grounds and procedure for cancellation of the contract; liability of the parties, including for non-compliance with the terms of the agreement and violation of third-party rights.

In addition, in order to eliminate legal uncertainty in determining the applicable law to international distribution and agency contracts, it is proposed to make an addition to the first part of Article 1190 of the Civil Code of the Republic of Uzbekistan. In particular, the wording of this provision may be supplemented with the following content: "by the distributor in a distribution contract and by the agent in an agency contract." This amendment would allow for a clear determination of the parties' competencies in foreign economic contracts and ensure more precise application of private international law norms in the field of distributorship and agency contracts.

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O‘ZGANING YER UCHASTKASIDAN CHEKLANGAN TARZDA FOYDALANISH (SERVITUT) HUQUQI

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Annotatsiya. *Mazkur maqola yer uchastkasidan cheklangan tarzda foydalanish huquqi (servitut)-ning huquqiy asoslari, mohiyati va amaliy ahamiyatiga bag‘ishlangan. Yer resurslarini huquqiy muhofaza qilish va undan oqilona foydalanishni ta’minlashga alohida e’tibor berilayotgan hozirgi paytda yer uchastkasi egalari va boshqa manfaatdor tomonlar o‘rtasida servitut munosabatlarining shakllanishi, tartibga solinishini o‘rganish dolzarb masaladir. Shu bois servitutning fuqarolik va yer huquqi doirasidagi o‘rni, unga oid milliy qonunchilik, xususan, O‘zbekiston Respublikasi Fuqarolik kodeksi va Yer kodeksining tegishli normalari bilan birga, servitutning vujudga kelish asoslari, belgilash tartibi va uni davlat ro‘yxatiga olish masalalari ko‘rib chiqildi. Xususan, maqolada servitutni sud orqali o‘rnatish va tomonlar o‘rtasida kelishmovchilik yuzaga kelganda nizolarni hal etish tartiblari, servitutning turlari, muddati, haq to‘lash lozim bo‘lgan holatlar va uni bekor qilish shartlari muhokama qilindi. Servitutning milliy qonunchiligimizda izohlanishi va ushbu tushunchaga nisbatan olimlarning munosabatlari empirik, tarixiy, qiyoslash metodlaridan foydalangan holda tadqiq qilindi. Muallif servitutning ijtimoiy-mulkiy munosabatlarni tartibga solishda muhim huquqiy institut ekanini ta’kidlab, yer uchastkasidan foydalanishning samaradorligini oshirishga qaratilgan huquqiy mexanizmlarni takomillashtirish bo‘yicha o‘z taklif va tavsiyalarini bayon etdi. Ushbu tavsiyalar yuristlar, yer huquqi bo‘yicha mutaxassislarga amaliyotda, ilmiy tadqiqotchilar uchun esa ilmiy izlanishlarida foydali manba bo‘lib xizmat qiladi.*

Kalit so‘zlar: *servitut, drenaj ishlari, yer uchastkasi, ko‘chmas mulk, ekinzorlar, elektr uzatgich, aloqa, quvur tarmoqlari, ommaviy servitut, xususiy servitut, o‘tish servituti*

ПРАВО ОГРАНИЧЕННОГО ПОЛЬЗОВАНИЯ ЧУЖИМ ЗЕМЕЛЬНЫМ УЧАСТКОМ (СЕРВИТУТ)

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Аннотация. *Данная статья посвящена правовым основам, сущности и практическому значению права ограниченного пользования чужим земельным участком (сервитута). В условиях повышенного внимания к правовой охране и рациональному использованию земельных ресурсов актуальным является изучение формирования и регулирования сервитутных отношений между собственниками земельных участков и другими заинтересованными лицами. В статье рассматривается место сервитута в системе гражданского и земельного*

права, нормы национального законодательства, в частности Гражданского кодекса и Земельного кодекса Республики Узбекистан, а также основания возникновения сервитута, порядок его установления и государственная регистрация. Особое внимание уделено вопросам установления сервитута в судебном порядке, разрешения споров между сторонами, видам сервитута, срокам действия, случаям, когда необходимо возмещение, и условиям прекращения действия сервитута. Правовая природа сервитута, а также мнения учёных относительно данной правовой категории проанализированы с использованием эмпирического, исторического и сравнительного методов. Автор подчёркивает, что сервитут является важным правовым институтом в регулировании социально-имущественных отношений и предлагает рекомендации по совершенствованию правовых механизмов, направленных на повышение эффективности использования земельных участков. Представленные предложения могут служить полезным источником как для практикующих юристов и специалистов по земельному праву, так и для научных исследователей.

Ключевые слова: *сервитут, дренажные работы, земельный участок, недвижимое имущество, посевные участки, линии электропередачи, связь, трубопроводы, публичный сервитут, частный сервитут, проходной сервитут*

THE RIGHT TO LIMITED USE OF ANOTHER'S LAND (SERVITUDE)

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Abstract. *This article is dedicated to the legal foundations, essence, and practical significance of the right to limited use of a land plot (servitude). At the present time, when special attention is paid to ensuring the legal protection and rational use of land resources, the study of the formation and regulation of servitude relations between owners of land plots and other interested parties is an urgent issue. In this regard, the role of easement in the sphere of civil and land law, along with the relevant norms of national legislation, in particular, the Civil Code and the Land Code of the Republic of Uzbekistan, the grounds for the emergence of servitude, the procedure for its establishment, and the issues of its state registration were considered. In particular, the article discusses the procedure for establishing an servitude through the court and resolving disputes in the event of disagreements between the parties, the types and duration of the servitude, the circumstances under which payment is made, and the conditions for its termination. The interpretation of servitude in our national legislation and the attitude of scholars towards this concept were studied using empirical, historical, and comparative methods. Noting that the servitude is an important legal institution in the regulation of socio-property relations, the author presented his proposals and recommendations for improving the legal mechanisms aimed at increasing the efficiency of land use. These recommendations serve as a useful resource for lawyers, specialists in land law in practice, and for scientific researchers in their scientific research.*

Keywords: *servitude, drainage works, land plot, real estate, agricultural lands, power lines, communication, pipelines, public servitude, private servitude, transit servitude*

Kirish

Yerdan foydalanishni tashkil etishda uni ilm-fan integratsiyasi asosida olib borish, uning muhofazasini to‘g‘ri ta’minlash orqali mustahkam iqtisodiy rivojlanishga erishiladi. Mamlakatimizda iqtisodiy islohotlar amalga oshirilayotgan hozirgi sharoitda yer resurslarini huquqiy muhofaza qilish va undan oqilona foydalanishni ta’minlashga alohida e’tibor berilmoqda. Bu borada 20 ga yaqin qonunlar hamda 200 ga yaqin qonunosti aktlar qabul qilingan [1, 56–57-b.].

O‘zbekiston Respublikasida amalga oshirilayotgan islohotlarning pirovard maqsadi – tabiiy resurslardan, shu jumladan, yerdan samarali foydalanish hisoblanadi. Xusu-

san, 2022–2026-yillarga mo‘ljallangan Yangi O‘zbekistonning taraqqiyot strategiyasida “… yangi va foydalanishdan chiqqan 464 ming gektar maydonni o‘zlashtirish, ilm-fan va innovatsiyaga asoslangan agroxizmatlar ko‘rsatish tizimini takomillashtirish, agrosanoat korxonalarini xomashyo bilan ta’minlash va ishlab chiqarish hajmini 1,5 baravar oshirish” kabilar muhim strategik vazifalar sifatida belgilab berilgan [2, 7–9-b.].

Hozirgi bozor iqtisodiyoti sharoitida servitut zamonaviy yer huquqshunosligi nuqtayi nazaridan o‘ziga xos ahamiyat kasb etuvchi hamda amaliy jihatdan bir qancha muammoli masalalar yechimini talab qiladigan institutga aylangan.

Shu o‘rinda *servitut* so‘zi ma’nosiga to‘xtalsak. Servitut (lotincha “*servitus*”; inglizcha “*servitude”, “easement”*) qadimgi Rim davlati davrida qabul qilingan huquqiy hujjatlardan biri hisoblanib, o‘zganing ko‘chmas mulkidan cheklangan tarzda foydalanish huquqi deb e’tirof etilgan. Umumiy qilib aytganda, bunda o‘zganing ko‘chmas mulkidan cheklangan tarzda foydalanish huquqi (servitut), yon atrofdagi qo‘shni bo‘lgan bir yoki bir necha yer uchastkalaridan cheklangan tarzda foydalanish huquqi tushuniladi [3, 174–177-b].

Ushbu huquqiy shakl orqali ehtiyojlarni qondirishdagi barqarorlik uning ashyoviylik xususiyati bilan ta’minlanadi: ya’ni servitut huquqining predmeti muayyan shaxslarning harakati emas, balki yer uchastkasining o‘zi hisoblanadi. Shu sababli servitut huquqi subyekti qo‘shnining yer uchastkasidan cheklangan foydalanish huquqini mulkdor o‘zgarishidan qat’i nazar, saqlab qolgan. Servitut yer uchastkasiga tegishli bo‘lib, mulkdorlar o‘zgargan taqdirda ham, to‘la saqlab qolingan.

Yuqoridagilar asosida servitut u yoki bu munosabat bilan boshqaning mulkidan cheklangan tarzda foydalanish sifatida tavsiflanadi. Bunda mazkur huquq yerga nisbatan xususiy mulkchilik belgilangani hamda alohida yer uchastkalari o‘rtasida tabiiy qulayliklar teng taqsimlanmagani sababli yuzaga keladigan noqulaylik va qiyinchiliklarni bartaraf etish nuqtayi nazaridan muhim ahamiyatga ega.

Demak, servitut o‘zining mohiyatiga ko‘ra, klassik shaklda Rim huquqi davrida vujudga kelgan huquqiy tushuncha sifatida o‘zga (boshqa) shaxsga tegishli bo‘lgan ashyodan foydalanish huquqi (servitut) ma’nosini anglatgan [4, 298–317-b.].

Material va metodlar

Maqolada yer uchastkasidan cheklangan tarzda foydalanish huquqi (servitut)ning huquqiy asoslari, qonunchilik bazalari, servitutni belgilashda amalga oshiriladigan tamoyillar tahlili yoritib berilgan.

Mavzuni tadqiq qilish asnosida:

1) o‘zganing yer uchastkasidan cheklangan tarzda foydalanishning huquqiy asosini o‘rganib chiqishga imkon beruvchi empirik metod;

2) servitutning kelib chiqishi, uning ahamiyati, mohiyatining huquqiy asoslarini, nazariya va amaliyotdagi tajribalarini o‘rganib chiqish imkoniyatini beradigan tarixiy metod;

3) o‘zaro mavjud elementlar majmui sifatida xalqaro qonunchilikdagi qonunlarni qiyoslash metodlaridan foydalanildi.

Tadqiqot natijalari

Mustaqillik yillarida ijtimoiy-iqtisodiy, siyosiy, huquqiy sohalarda amalga oshirilgan tub islohotlar, bozor iqtisodiyotiga o‘tilishi natijasida yerga nisbatan ijtimoiy munosabatlar yangicha mazmun kasb etdi. Hozirgacha ushbu munosabatlar subyektlarining huquqiy holati takomillashtirilmoqda, ularning huquqlari kengaytirilmoqda, yerdan foydalanishga nisbatan turli mulkchilik va xo‘jalik yuritish shakllarini joriy etish uchun imkoniyatlar yaratilmoqda.

Yangi ijtimoiy-iqtisodiy va huquqiy o‘zgarishlar sababli yer, suv va boshqa tabiiy resurslar endi cheklangan tarzda fuqarolik muomalasiga kiritilib, unga nisbatan ham fuqarolik shartnomalari, ya’ni ipoteka, garov,

meros, oldi-sotdi, ijara, servitut kabi shartnomalar tuziladigan bo‘ldi [3, 181–203-b.]. Bulardan, xususiy servitut:

1) ma’lum bir shaxs foydasiga o‘rnatilishi;

2) vujudga kelish maqsadi yakuniy xarakter kasb etmasligi;

3) shartnoma asosida vujudga kelishi;

4) davlat ro‘yxatidan o‘tkazilishi kabi belgilarga ega bo‘ladi.

A.N. Jumanovning fikricha [5, 22–25-b.], ushbu servitut belgilanishi mustahkamlangan qonun yoki boshqa qonunosti hujjati orqali amalga oshirilishi ommaviy servitutlar vujudga kelishining o‘ziga xos xususiyati bo‘lib, xususiy servitutlar vujudga kelishidan (shartnoma yoki sud qaroriga asosan) farqlanadi.

Ta’kidlash joizki, O‘zbekiston Respublikasining amaldagi qonunchiligida ommaviy servitutni qo‘llash asoslari belgilangan. Ommaviy servitut yerdan foydalanishning ijtimoiy ahamiyatga ega bo‘lgan muhim huquqiy institutlaridan biri bo‘lib, u jamoat manfaatlarini ta’minlashga qaratilgan. Servitutning bu turi fuqarolarning yoki yuridik shaxslarning muayyan ehtiyojlarini qondirish uchun belgilanadi.

Ommaviy servitut, qoida tariqasida, davlat yoki jamoat ahamiyatiga ega bo‘lgan ehtiyojlarni qondirish maqsadida o‘rnatiladi. Masalan, yo‘llarning o‘tishi, elektr yoki aloqa tarmoqlarini o‘tkazish, quvurlarni yotqizish va drenaj ishlarini amalga oshirish kabi holatlar bunga misol bo‘lishi mumkin. Bunda servitutni o‘rnatish jarayoni, uning qonuniy asoslari va davlat ro‘yxatidan o‘tkazilishi Yer kodeksi hamda O‘zbekiston Respublikasining 2023-yil 23-oktabrdagi “Yer to‘g‘risidagi qonunchilik takomillashtirilishi munosabati bilan O‘zbekiston Respublikasining ayrim qonun hujjatlariga o‘zgartirish va qo‘shimchalar kiritish to‘g‘risida”gi O‘RQ–871-sonli Qonuni bilan tartibga solinadi.

Ommaviy servitutning o‘ziga xos xususiyati shundaki, uni qo‘llash jamoat manfaatlarini himoya qilishga qaratilgan bo‘lib, u yer egasiga ma’lum majburiyatlarni yuklaydi. Biroq bunda yer egasining huquqlari cheklanishiga qaramay, uning manfaatlari ham inobatga olinishi lozim.

O‘zbekiston Respublikasining Yer kodeksiga muvofiq, ommaviy servitut o‘rnatilishi uchun asosiy shart – bunday cheklashlarning ijtimoiy zaruratini tasdiqlovchi omillarning mavjudligidir. O‘zbekiston Respublikasi Yer kodeksining 30-moddasiga muvofiq, servitut – o‘zganing yer uchastkasidan cheklangan tarzda foydalanish huquqidir.

Servitut huquqi boshqa shaxsning mulkiga nisbatan jismoniy yoki yuridik shaxslarga berilgan qonuniy huquqdir. U o‘tish huquqini, suv manbalariga kirish huquqini yoki kommunal tarmoqlarni o‘rnatish va saqlash huquqini o‘z ichiga olishi mumkin [1, 205–209-b.].

Bir qator mualliflar, masalan, B.V. Yerofeyev, servitutni qo‘shni yer uchastkasidan cheklangan foydalanish huquqi sifatida ta’riflaydi [6, 252-b.], biroq bu ta’rif, fikrimizcha, qonunchilik kontekstiga mos kelmaydi, chunki mulk huquqi tamoyillariga rioya qilgan holda zarurat tug‘ilganda har qanday shaxs uchun birovning yer uchastkasidan foydalanishning cheklangan huquqi paydo bo‘lishi mumkin.

Bugungi kun islohotlaridan kelib chiqqan holda, bizningcha, servitut tushunchasini quyidagicha to‘ldirish to‘g‘riroq bo‘lar edi: “...ayrim yer uchastka egalari boshqa yer uchastkasi egalaridan qonunga belgilab qo‘yilgan tarzda yer uchastkasidan huquq talab qilishga haqli. Ayniqsa, qo‘shni yer uchastkasi egasi, agar ushbu huquqsiz o‘z yeridan foydalana olmasa, qo‘shnining yer uchastkasidan foydalanish huquqiga ega bo‘lishi mumkin”.

Tadqiqot natijalari tahlili

Servitut shartnomasi. Servitut shartnomasi – yer egasi va servitut egasi o‘rtasidagi huquqiy shartnoma bo‘lib, servitutning shartlarini belgilaydi. Servitut shartnomalarida yer egasining va servitut belgilovchi shaxsning huquq va majburiyatlari aniq belgilanishi shart. Shuningdek, shartnomada tomonlarga

yuklatilgan majburiyatlar bajarilishi zarurdir.

Servitut shartnomasida yer egasi uchun ham, servitut egasi uchun ham ularning huquq va majburiyatlari aniq belgilab qo‘yilgani sababli bu huquqiy himoyani ta’minlaydi. Servitut hududidan foydalanish va texnik xizmat ko‘rsatish masalalari aniq belgilanadi. Huquqiy me’yorlarning belgilab qo‘yilgani esa kelgusi avlodlar uchun servitut o‘z maqsadiga xizmat qilishini ta’minlaydi, bu nizolar yoki tushunmovchiliklar ehtimoli kamayishiga ham sabab bo‘ladi.

Servitut shartnomalari ishtirokchilarning o‘ziga xos ehtiyojlarini qondirish uchun o‘zgartirilishi mumkin, bu esa servitut hududidan foydalanish va boshqarishda moslashuvchanlik imkonini beradi.

Servitut uchun haq – mulkdorga boshqa shaxs yer uchastkasining bir qismidan ma’lum maqsadda foydalanish uchun mutlaq va doimiy huquq beruvchi mulkiy manfaat turi. Servitut uchun haq to‘lash odatda servitut va mulkdor huquqlarini himoya qilish hamda saqlash uchun qo‘llanadi.

Servitut uchun haq to‘lashning bir qancha afzalliklari mavjud bo‘lib, ularni quyidagicha ajratishimiz mumkin [7, 187–189-b.]:

– doimiy himoya: servitut uchun haq uning doimiy himoyasini, kelajakda servitut egasining huquqlari buzilmasligi yoki tugatilmasligini ta’minlaydi;

– sotish imkoniyati: servitut yuklangan yer boshqa shaxsga o‘tkazilishi yoki sotilishi, ijaraga berilishi yoki meros qilib olinishi mumkin, haq esa servitutni boshqarish va himoya qilishda moslashuvchanlikni ta’minlaydi;

– osonlashtirilgan majburiy ijro: haq to‘lash servitut egasining huquqiy mavqeyini mustahkamlaydi va servitut shartlarini bajarishni osonlashtiradi.

O‘zbekiston Respublikasi Yer kodeksi 30^{6}-moddasi, Fuqarolik kodeksi 173^{3}-moddasi servitut uchun haq to‘lashni nazarda tutadi: “Servitut kimning manfaatlarini ko‘zlab belgilangan bo‘lsa, o‘sha shaxs, agar qonunda yoki servitut to‘g‘risidagi shartnomada boshqacha tartib nazarda tutilmagan bo‘lsa, servitut uchun haq to‘lashi shart.

Servitut uchun haq servitut belgilangan yer uchastkasi uchun yer solig‘i (ijara haqi) summasini, shuningdek, servitutdan foydalanish jarayonida yer egalari, yerdan foydalanuvchilar, yer uchastkalarining ijarachilari va mulkdorlariga yetkazilgan zararni (boy berilgan foydani) kompensatsiya qilish maqsadida belgilanadi.

Servitut uchun haq to‘lash bir martalik yoki muntazam to‘lab boriladigan ko‘p martalik to‘lov tarzida amalga oshirilishi mumkin.

Servitut uchun haq miqdori servitut belgilangan yer uchastkasi doirasida yoki u belgilangan chegaralar doirasida hisoblab chiqariladi.

Yer uchastkasining servitut belgilangan muayyan qismi uchun yer solig‘i (ijara haqi) yer egalari, yerdan foydalanuvchilar, yer uchastkalarining ijarachilari va mulkdorlari tomonidan to‘lanadi, bunda servitut uchun to‘lanadigan (bir martalik yoki doimiy) haq miqdori servitut amal qiladigan davrdagi yer solig‘i (ijara haqi) summasidan kam bo‘lishi mumkin emas.

Shuningdek, quyidagi hollarda servitut haq undirmasdan (tekin) amalga oshirilishi mumkin:

– tunnellarda avtomobil yo‘llari yoki temir yo‘llari qurish, shuningdek, avtomobil yo‘llarining muhofaza zonalaridan foydalanish maqsadida servitut belgilanganda;

– muhandislik-texnik jihatdan ta’minlash, tegishli texnik-texnologik ulanish ishlarini amalga oshirish maqsadida servitut belgilanganda”.

Qonunchilikda aytilganidek, servitut uchun haq yer egasi va servitut egasi o‘rtasidagi qonuniy kelishuv, odatda shartnoma orqali tuziladi. Garchi qonunchiligimizda tabiatni muhofaza qilish servitutlari mavjud bo‘lmasa ham, qator rivojlangan mamlakat-

larda bunday servitutlar uchun haq to‘lash, nafaqat himoya, balki manfaat ham beradi. Shu o‘rinda ularga ham to‘xtalib o‘tishni zarur deb bildik.

Servitut belgilanganlik uchun haq to‘lash yerni muhofaza qilish maqsadida himoya qilish uchun qo‘llanadi. Masalan, tabiatni muhofaza qilish tashkiloti o‘rmon, botqoq yerlar yoki boshqa nozik yashash hududlarini tabiiy resurslarga zarar yetkazadigan rivojlanish yoki boshqa faoliyatlardan himoya qilish uchun yer egasidan oddiy pullik servitut huquqini olishi mumkin. Haq to‘lash tabiatni muhofaza qilish tashkilotiga yerni muhofaza qilish maqsadida undan foydalanishning mutlaq va doimiy huquqini beradi, yer egasi esa yerga egalik huquqini saqlab qoladi.

Afsuski, sud amaliyotida (ayniqsa, xususiy shartnomaviy servitutlardan foydalanish) juda kam uchraydi. Shu sababli servitut huquqiy munosabatlardan foydalanish uchun obyektiv sabablar mavjudligiga qaramay, 2024-yil 10-may sanasigacha servitut uchun arizalar soni atigi 404 ta ekanini va ularning 117 tasigina tugallanganini ko‘rishimiz mumkin. Ko‘pincha yerdan foydalanuvchi subyektlar servitutlardan foydalanmaydi [8, 223–229-b].

O‘tish servitutining amaliyotda qo‘llanishi. O‘tish servituti ikkita kichik turni o‘z ichiga oladi: o‘zganing yer uchastkasidan piyoda yoki transportda o‘tish va chorva mollarini haydab o‘tish uchun servitut. O‘tish servituti – servitut egasiga o‘z yerlariga yoki umumiy foydalanishdagi yo‘lga chiqish uchun boshqa shaxsning mulkini kesib o‘tish huquqini beruvchi servitut turi. Chorva mollarining o‘tishi uchun servitut odamlarning o‘tishidan tashqari, chorva mollariga xizmat ko‘rsatish obyekti orqali transport vositalaridan foydalanmasdan olib o‘tish imkonini beradi. Narsalarni ko‘chirish imkoniyati to‘g‘ridan to‘g‘ri ko‘rsatilmagan, ammo bunday imkoniyat ko‘zda tutilgan bo‘lishi mumkin, aks holda, ikkita servitut o‘rnatilishi kerak bo‘lardi. Bu esa mantiqqa ziddir.

Kommunal xizmat ko‘rsatish kompaniyalari ko‘pincha xususiy mulkka elektr uzatish liniyalari, gaz quvurlari yoki suv quvurlarini o‘rnatish va ularga xizmat ko‘rsatish uchun servitutlarini talab qiladi.

Ba’zi xorijiy mamlakatlarda piyoda sayr qilish, velosipedda sayr qilish yoki boshqa hordiq chiqarish tadbirlari uchun yerga jamoatchilik kirishiga ruxsat berish uchun o‘tish servitutlari berilishi mumkin. Kirish servitutlari sudlar tomonidan amalga oshiriladigan qonuniy majburiy shartnomalardir. Agar yer egasi servitut egasining o‘z mulkiga kirish huquqiga to‘sqinlik qilsa, servitut egasi servitutni qo‘llash va huquqlarini himoya qilish uchun qonuniy choralar ko‘rishi mumkin.

O‘tish servitutlarining afzalliklari bor bo‘lib, ular, bizningcha, quyidagilar hisoblanadi:

– mulk qiymatining oshishi. O‘tish servituti umumiy foydalanishdagi yo‘lga chiqishni ta’minlash orqali umumiy yo‘lga chiqmagan mulk qiymatini oshirishi mumkin;

– qulaylik va samaradorlik. O‘tish servitutlari yerga qulay va samarali kirishni ta’minlab, aylanma yo‘llar yoki chegarani buzish zaruratini kamaytiradi;

– mulk huquqlarini himoya qilish. O‘tish servitutlari yer egalarining mulkiy huquqlarini ularning mulkiga qonuniy kirishini ta’minlash orqali himoya qilishi mumkin;

– jamoat manfaati. O‘tish servitutlari aholining dam olish va boshqa maqsadlar uchun yerga kirishini ta’minlab, butun jamiyatga foyda keltirishi mumkin.

O‘tish servituti yerdan foydalanishning turli muammolarini hal qilish va yer egalari va boshqa tomonlar uchun amaliy yechimlarni taqdim etishda qo‘llanishi mumkin bo‘lgan qimmatli vositadir.

Jismoniy shaxslar va tashkilotlar servitutlarining amaliy qo‘llanishi va huquqiy oqibatlarini tushunib, yerdan foydalanishni samarali boshqarishi, o‘z manfaatlarini himoya qilishi mumkin.

Xulosalar

2023-yil 23-oktabrda qabul qilingan “Yer to‘g‘risidagi qonunchilik takomillashtirilishi munosabati bilan O‘zbekiston Respublikasining ayrim qonun hujjatlariga o‘zgartirish va qo‘shimchalar kiritish to‘g‘risida”gi O‘RQ–871-sonli Qonun bilan jami 11 ta qonunga o‘zgartirish va qo‘shimchalar kiritildi. Lekin shunga qaramay qonunchiligimizda servitutning tabiatini to‘liq qamrab olgan yagona tushuncha hali ishlab chiqilmagan. Ba’zida servitutlar asossiz ravishda majburiyatlar bilan belgilanadi yoki mulkning o‘ziga bo‘lgan huquq sifatida emas, balki o‘zgaga tegishli mulkning muayyan funksiyasiga bo‘lgan huquq sifatida ko‘riladi. Bu esa nazariy-huquqiy yondashuvni ishlab chiqish zaruratini yuzaga keltiradi. Ya’ni servitutning belgilari, cheklangan mulkiy huquqlar tizimida uning o‘rni, mazmuniga qo‘yilgan talablarga aniqlik kiritilishi lozim.

Shuningdek, respublikamizda servitut huquqini tartibga soluvchi va o‘zida servitut huquqini tartibga soluvchi ayrim normalar aks etgan normativ-huquqiy hujjatlar (O‘zbekiston Respublikasi Yer kodeksi, O‘zbekiston Respublikasi Fuqarolik kodeksi) mavjud. Ushbu normativ-huquqiy hujjatlardagi normalar ko‘lami keng bo‘lib, ularni unifikatsiya qilish orqali O‘zbekiston Respublikasining yagona Servitutlar to‘g‘risidagi qonunini ishlab chiqish zarur. Unda servitutni tartibga soluvchi qonun hujjatlarini birlashtirish maqsadga muvofiq.

Yevropa davlatlari tajribasiga nazar tashlaydigan bo‘lsak, inson huquqlarini himoya qilish darajasi bo‘yicha yuqori o‘rinlarda turuvchi bir qancha davlatlar, xususan, AQSh, Buyuk Britaniya, Kanada va boshqa davlatlarda bunday qonun bor.

Bundan tashqari, servitutlarga nisbatan yondashuvlarni tasniflash lozim. Bu borada xorijiy tajribalar tahlili shuni ko‘rsatdiki, ko‘plab xorijiy davlatlarning yer va fuqarolik qonunchiligida yer servitutiga nisbatan turlicha tasniflash yondashuvi mavjud. Bu tahlillar umumlashtirilganda tasniflashning asoslari va mezonlari ham turlicha ekanini ko‘rish mumkin. Yer servitutlarini, bizningcha, quyidagicha tasniflash: mazmun jihatdan ijobiy va salbiyga ajratish lozim. Chunki yer servitutining bunday bo‘linishi uning har bir turi uchun alohida huquqiy asosni belgilab beradi, tomonlarning huquq va majburiyatlari aniq belgilab qo‘yilgan bo‘ladi. Bu, o‘z navbatida, vakolatli organlarning har bir servitut turiga oid nizolarni hal qilish uchun maxsus huquqiy mexanizmlarni yaratishi, qonun-qoidalarni servitut turlarining ehtiyojlariga moslashtirishiga olib kelishi mumkin. Natijada servitut bilan bog‘liq nizolarni hal qilishda yanada samarali yechimlar taklif etilishi ehtimoli oshadi.

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OLIB QO‘YISH VA TINTUV O‘TKAZISHDA FUQAROLARNING HUQUQ VA QONUNIY MANFAATLARINI TA’MINLASHNING PROTSESSUAL KAFOLATLARI

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Annotatsiya. *Ushbu maqolada jinoyat protsessida tergov harakati hisoblangan olib qo‘yish tushunchasi va olib qo‘yish tergov harakatini o‘tkazishda shaxs huquqlari va qonuniy manfaatlarining protsessual kafolatlari masalalari atroflicha tahlil qilingan. Bunda olib qo‘yish tushunchasi bo‘yicha jinoyat-protsessual qonunchiligida belgilangan normalar, soha mutaxassislari va olimlarning bu boradagi qarashlari o‘rganilgan. O‘z navbatida, olib qo‘yish tushunchasining tintuv tergov harakati tushunchasidan farqli jihatlari ochib berilgan. Jinoyat-protsessual qonunchiligida tergovchiga olib qo‘yish o‘tkazishda shaxs huquqlari, erkinliklari va manfaatlariga taalluqli bo‘lgan masalalarni hal qilish bo‘yicha keng vakolatlar berilgan bo‘lib, ushbu maqolada tergov jarayonida tintuv o‘tkazishda tergovchi va ishtirokchilar amal qilishi zarur bo‘lgan shartlar tahlil qilingan. Olib qo‘yish jarayoni shaxslarning mol-mulki daxlsizligiga bo‘lgan huquqi bilan bevosita aloqador ekanligi sababli mazkur maqolada ushbu tergov harakatini amalga oshirishda mol-mulk daxlsizligiga bo‘lgan huquqni kafolatlashga doir milliy va xalqaro qonunchilik normalari ham qisqacha tadqiq etilgan. Shuningdek, mavzu yuzasidan qonun hujjatlari, aynan shu mavzu bo‘yicha ilmiy izlanishlar olib borgan olimlarning fikrlari, takliflari ham atroflicha o‘rganilgan holda, mualliflarning shaxsiy fikrlari, xulosalari va takliflari ilgari surilgan.*

Kalit so‘zlar: *olib qo‘yish, tintuv, shaxs huquqlari va qonuniy manfaatlari, protsessual kafolatlar, tergovchi, mol-mulk daxlsizligi, sud ajrimi, olib qo‘yish bayonnomasi.*

ПРОЦЕССУАЛЬНЫЕ ГАРАНТИИ ОБЕСПЕЧЕНИЯ ПРАВ И ЗАКОННЫХ ИНТЕРЕСОВ ГРАЖДАН ПРИ ВЫЕМКЕ И ОБЫСКЕ

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Аннотация. *В данной статье всесторонне рассмотрены вопросы, связанные с понятием выемки как следственного действия в уголовном процессе, а также с обеспечением процессуальных гарантий прав и законных интересов личности при проведении выемки. Анализируются нормы уголовно-процессуального законодательства, регулирующие данное действие, и приводятся мнения специалистов и учёных в этой области. Особое внимание уделяется отличиям понятия выемки от обыска как следственного действия. В статье подчёркивается, что уголовно-процессуальное законодательство предоставляет следователю широкие полномочия по разрешению вопросов, затрагивающих права, свободы и законные интересы личности при проведении выемки. Также проанализированы условия, которые должны соблюдаться следователем и участниками процесса при проведении обыска. Так как процедура выемки напрямую связана с правом на неприкосновенность имущества, в статье кратко рассматриваются нормы национального и международного законодательства, направленные на обеспечение этого права. Кроме того, проанализированы нормативные акты и научные исследования по теме, а также изложены авторские взгляды, выводы и предложения по совершенствованию правоприменительной практики.*

Ключевые слова: *выемка, обыск, права и законные интересы личности, процессуальные гарантии, следователь, неприкосновенность имущества, постановление суда, протокол выемки*

PROCEDURAL GUARANTEES OF ENSURING THE RIGHTS AND LEGAL INTERESTS OF CITIZENS DURING SEIZURES AND SEARCHES

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Abstract. *This article thoroughly analyzes the concept of seizure, which is considered an investigative action in criminal proceedings, and the procedural guarantees of individual rights and legal interests during the seizure investigative action. In this case, the norms established in the criminal procedure legislation on the concept of seizure and the views of specialists and scientists in this area were studied. In turn, the distinctive features of the concept of seizure from the concept of a search investigative action are revealed. Criminal procedure legislation grants investigators broad powers to resolve issues related to the rights, freedoms, and interests of individuals during seizures, and this article analyzes the conditions that investigators and participants must adhere to during searches during the investigation*

process. Since the seizure process is directly related to the right of individuals to the inviolability of their property, this article briefly examines the norms of national and international legislation regarding the guarantee of the right to the inviolability of property during this investigative action. Also, the legislative acts on the topic, the opinions and proposals of scientists who conducted scientific research on this topic were thoroughly studied, and the personal opinions, conclusions, and proposals of the authors were put forward.

Keywords: *seizure, search, individual rights and legal interests, procedural guarantees, investigator, property integrity, court ruling, seizure report*

Kirish

Jahonda tergov harakatlari qonunlarning samarali ijrosini tashkil etish va ushbu protsessda shaxs huquqlarini kafolatlash bilan muvozanatlashni nazarda tutuvchi qat'iy huquqiy normalar bilan tartibga solinadi. Jumladan, hozirda rivojlangan davlatlarda tintuv va olib qo‘yishda uyali telefon/smartfon, turli kuzatuv qurilmalari va ilovalari, aqlli soatlar va boshqa aqlli texnologiyalar, xususan, sun'iy intellektga asoslangan yordamchi texnologiyalarni qo‘llash hamda bu boradagi muammolarga jiddiy e'tibor qaratilmoqda. Bunday tartib-qoidalarga qaramay, tergov jarayonida turli qonunbuzilish holatlari, mansab vakolatlarini suiiste'mol qilish, vakolat doirasidan chetga chiqish yoki huquqlarni boshqacha tarzda buzish holatlari saqlanib qolmoqda, bu esa jinoyat protsessida fuqarolarning huquqlari va erkinliklarini himoya qilish borasida jiddiy tashvish uyg‘otmoqda. Global statistik ma'lumotlar tahliliga ko‘ra, tintuv va olib qo‘yish tergov harakatlari jarayonida huquqlarning buzilishi holatlari xavotirli darajada yuqoriligicha qolmoqda.

O‘zbekiston Respublikasi Konstitutsiyasining 31-moddasiga ko‘ra, har bir inson shaxsiy hayotining daxlsizligi, shaxsiy va oilaviy sirga ega bo‘lish, o‘z sha'ni va qadr-qimmatini himoya qilish huquqiga ega. Konstitutsiyaning bunday tamoyili jinoyatlarni tez va to‘la ochishga, aybdor shaxslarni jinoiy javobgarlikka tortish, aybsiz shaxslarning jazoga tortilmasligini nazarda tutadi. Bu esa, o‘z navbatida, qonuniy faoliyat yuritishda o‘z ifodasini topadi. Tergov harakati hisoblanmish olib qo‘yish ham ushbu tamoyilga asosan amalga oshirilishi shart.

Surishtiruv va dastlabki tergov davomida shaxsning huquq va erkinliklarini muhofaza qilish va ularni ta'minlash muhim ahamiyat kasb etadi, jumladan, olib qo‘yish tergov harakatini amalga oshirishda ham. Bu esa mavzuning dolzarb ekanligini anglatadi desak mubolag‘a bo‘lmaydi.

Maqolaning asosiy maqsadi – tintuv va olib qo‘yish tushunchasini aniq yoritish, uni o‘tkazishda shaxs huquqlari va qonuniy manfaatlarining protsessual kafolatlarini batafsil ochib berishdan iborat. Ushbu mavzuni tahlil qilishda boshqa olimlarning ham fikrlari o‘rganib chiqildi. Jumladan, rus olimi O. Michurina shunday ta'rif berib o‘tgan: “Olib qo‘yish tintuvga yaqin turadigan tergov harakati bo‘lsa-da, olib qo‘yish tintuvdan butunlay farq qiladi. Olib qo‘yish muayyan narsalar va hujjatlar qayerda va kimda turgani aniq bo‘lganda o‘tkaziladi. Olib qo‘yish qidirilayotgan narsalar va hujjatlarni ixtiyoriy ravishda berishni talab qilish va ularni olib qo‘yish bilan kifoyalanadi. Tintuv esa asosan bunday taklif bilan boshlanadi. Olib qo‘yishning maqsadi faqat biror narsa yoki hujjatni olib qo‘yish, tintuvning maqsadi esa, eng avvalo, narsa yoki hujjatni qidirib topish va shundan keyin uni olib qo‘yish” [1, 14-b.].

Material va metodlar

Ushbu mavzuni yoritishda bir qator metodlardan foydalanilgan. Jumladan, mavzuni ifodalashda qonunchilik normalari, huquqshunos olimlarning ilmiy-nazariy qarashlaridan hamda mavzuni tahlil qilishda qiyosiy-

huquqiy usul, tahlil, umumlashtirish, induksiya va deduksiya metodlaridan foydalanildi.

Tadqiqot natijalari

Rus olimi O. Michurinaning fikricha, shaxsning yozishmalaridagi sirlariga yoki uning nomus va sha'niga o'zboshimchalik bilan tajovuz qilinishi mumkin emas. Har bir inson xuddi shunday aralashuv yoki tajovuzdan qonun orqali himoya qilinish huquqiga ega [2, 33-b.].

Bu borada boshqa olimlarning fikrlarini o'rganadigan bo'lsak, V.V. Mozyakovaning ta'kidlashicha, olib qo'yish jinoyat ishi uchun ahamiyatga molik narsa va hujjatlarning aynan kimda va qayerda ekanligi ma'lum bo'lib, ularni qidirishning hojati bo'lmagan hollarda surishtiruvchi, tergovchi va sud tomonidan qo'llanadigan chora hisoblanadi. Tintuv doimo majburlov xarakteriga ega bo'lgan tergov harakati bo'lib, uning vazifalari jinoyat ishiga daxldor bo'lgan narsa va hujjatlarni, tirik shaxslar va murdalarni, jinoyat yo'li bilan topilgan pullar va boshqa qimmatliklarni binolardan yoki ularni yashirgan deb taxmin qilingan shaxslarga tegishli joylardan qidirib topish va olingan natijalarni bayonnomada qayd etishdan iboratdir [3, 259-b.].

Tergov qilishda tergovchiga mustaqil protsessual vositalarni tanlash imkoniyatining berilishi unga yuklatilgan funksiyalarning muvaffaqiyatli bajarilishiga imkoniyat beradi [4].

G'. Shodiyev o'z ilmiy ishlarida shunday yozadi: "Tintuv olib qo'yishdan o'z maqsadi va o'tkazish tartibiga ko'ra farqlanadi: 1) tintuvda qanday obyektlar qidirilayotganligi, ular qayerdaligi noma'lum bo'lsa, olib qo'yishda predmetning individual belgilari, uning qayerda (kimda) ekanligi ma'lum bo'ladi; 2) olib qo'yishni o'tkazish uchun (fakt) asos sifatida faqat dalillar tan olinsa, tintuvda hatto tezkor-qidiruv tadbirlari davomida olingan ma'lumotlar ham asos bo'lishi mumkin; 3) olib qo'yishda qidiruv harakatlari man qilinadi, tintuvda esa aynan ular ko'zda tutiladi" [5, 53-b.].

Jinoyat-protsessual normalar asosida ish yuritadigan tergovchi o'zi bajaradigan protsessual harakatlarni, jinoiy sudlov ish yurituvida prokuror nazoratini amalga oshiruvchi prokurorning vakolatlari bilan bog'lamaydi. Chunki qonun tergovchiga protsessual vakolatlarni bera turib, shu vaqtning o'zida u bajaradigan protsessual harakatlarning to'g'riligi va qonuniyligi uchun to'liq javobgarlikni ham belgilagan.

Dastlabki tergov harakatlarini yuritishda qonunlarning ijro etilishi ustidan prokuror nazorati tergovchining protsessual mustaqilligiga xalal bermaydi. Aksincha, prokuror tergovchining mustaqilligini va jinoyatlarni fosh etish, tergov harakatlarini o'z vaqtida va qonun talablari asosida yuritishda mas'uliyatini oshirishi shart. Prokuror va tergovchi munosabati qonun bilan belgilangan [6, 125-b.].

Olib qo'yish tintuvning bir qismi emas, balki mustaqil tergov harakati hisoblanadi. Olib qo'yishda aynan ish uchun ahamiyatli narsani yoki hujjatni, nusxasini emas, uning aslini olishni ta'minlash zarur. Ana shunday xavf-xatar mavjud bo'lganda, olib qo'yishga tintuvdagi singari mutaxassisni taklif etish maqsadga muvofiqdir. Masalan, buxgalteriya hujjatlarini olib qo'yishda auditor yoki ekspertni taklif qilish zarur. Agar o'g'irlangan (tortib olingan, tamagirlik yo'li bilan olingan) buyumlarni olib qo'yish ko'zda tutilgan bo'lsa, jabrlanuvchini taklif qilish mumkin. O'zbekiston yuridik ensiklopediyasida esa tintuv va olib qo'yishga JPK normalari mazmunidan kelib chiqqan holda ta'rif berilgan [7, 347–348-b.].

Olib qo'yishning tintuv tergov harakatidan farqi olib qo'yishda jinoyat ishi uchun ahamiyatga molik narsa va hujjatlar aynan kimda va qayerda ekanligi ma'lum bo'lib, ularni qidirishning hojati bo'lmaydi, tintuvda esa surishtiruvchi va tergovchida turar joy, xizmat, ishlab chiqarish binosi yoki o'zga joyda yoxud biror shaxsda narsa va hujjatlar bor deb o'ylash uchun ma'lumot bo'lsa ham,

uning qayerda, kimda va qanday narsa ekanligi to‘g‘risida tasavvur bo‘lmaydi.

A.R. Ratinov tomonidan berilgan ta’rif umume’tirof etilgan bo‘lib, unga ko‘ra, tintuv yashiringan shaxslarni, shuningdek, ish uchun ahamiyatli narsalarni topish va olib qo‘yish maqsadida turar joylar, binolar, yer maydonlari va alohida shaxslarni majburiy kuzatishdan iborat bo‘lgan tergov harakatidir [8, 7-b.].

Tintuv va olib qo‘yish shaxsning konstitutsiyaviy huquq va erkinliklarini cheklash bilan bog‘liq harakat bo‘lganligi uchun huquqni muhofaza qilish organlari xodimlari (ayniqsa, jinoyat-qidiruv xodimlari) qonun talablari asosida harakat qilishlari kerak [9, 38-b.].

Ko‘rinib turibdiki, nazariyotchi olimlar o‘rtasida olib qo‘yish tushunchasi va uning tintuvdan asosiy farqlari deyarli bir xil tarzda ifodalanmoqda. Albatta, biz ham bu fikrlarga qo‘shilamiz.

Shu o‘rinda tintuv tushunchasiga rus olimi N. Shuruxnov tomonidan keltirilgan quyidagi ma’lumotni ham keltirib o‘tishni joiz deb topdik. Kompyuter axborotini olib qo‘yishda tintuv o‘tkazish muayyan xususiyatga ega. Ko‘p miqdordagi axborot tashuvchisi hisoblangan kompyuter jinoyatni ochish uchun muayyan ahamiyatga ega bo‘lishi mumkin. Uy egasi yoki EHM operatori tintuv paytida kompyuter yoki klaviaturaga yaqinlashtirilishi mumkin emas (hatto tintuv qilinayotgan shaxs qidirilayotgan axborotni ixtiyoriy ravishda topshirishga rozilik bergan bo‘lsa ham). EHMda bu ishni taklif qilingan mutaxassis bajarishi lozim. Tintuv qilinayotgan shaxsning kompyuter yoki klaviatura bilan biron-bir harakatni amalga oshirishi (shu jumladan, kompyuterni o‘chirish va yoqish) borasidagi barcha urinishlari EHM axborotini yo‘q qilib tashlashga urinish sifatida qaralishi lozim va bu bayonnomada aks ettirilsa, maqsadga muvofiq bo‘ladi [10, 207-b.].

Qidirish jinoyat ishiga taalluqli narsa yoki hujjatni topish va olish hisoblanadi. Agar narsa yoki hujjat shaxs tomonidan ixtiyoriy ravishda huquqni muhofaza qilish organlariga taqdim etilmasa yoki shaxs uni taqdim etishdan bosh tortsa, “qidirishga”ga ehtiyoj tug‘iladi. Bundan tashqari, tintuv va olib qo‘yish fuqarolar tomonidan bir xilda tushunilmaydi, chunki fuqarolarni tintuv ko‘proq tashvishga soladi, olib qo‘yish esa, agar u ixtiyoriy ravishda sodir etilgan bo‘lsa, protsessual majburlov choralari qatoriga kirmaydi. Shulardan kelib chiqqan holda aytish mumkinki, fuqarolarning huquq va qonuniy manfaatlarini himoya qilish borasida tintuv va olib qo‘yishni bir-biridan farqlash kerak.

Olib qo‘yishda shaxsning huquq va qonuniy manfaatlarini kafolatlashda asosiy bevosita subyekt bo‘lib, tergovchi va uning protsessual faoliyati hisoblanadi. Jinoyat-protsessual kodeksining 161-moddasiga ko‘ra, surishtiruvchi yoki tergovchi olib qo‘yish jarayonida keng protsessual mustaqillikka ega bo‘lib, bu har bir alohida olib qo‘yish holatida adolatlilik, obyektivlikka erishishda o‘rnatilgan protsessual tamoyillar va normalarning to‘g‘ri qo‘llanishini ta’minlaydi.

Qonunda olib qo‘yishni o‘tkazish uchun prokuror sanksiyasini olish hamda davlat siri bilan bog‘liq hujjatlarni olib qo‘yish nazarda tutilmagan. Lekin o‘zida davlat yoki harbiy sirni saqlaydigan hujjatlar yoki narsalarni olib qo‘yishda shu sirlar bilan tanishishga ruxsati bo‘lgan xolislar taklif qilinib, ular tegishli tartibda ogohlantirilishi shart.

Yuqorida ko‘rib o‘tganimizdek, JPKga muvofiq pochta-telegraf jo‘natmalarini xatlash to‘g‘risida surishtiruvchi va tergovchi prokurorning sanksiyasi olingan qaror, sud esa ajrim chiqaradi. Surishtiruvchi yoki tergovchi aloqa muassasasiga borib, ushlangan pochta-telegraf jo‘natmalarini xolislar ishtirokida, zarurat bo‘lganda esa tegishli mutaxassis ishtirokida ochib, ko‘zdan kechiradi. Ish uchun ahamiyatga molik ma’lumotlar, hujjatlar, narsalar topilgan taqdirda, surishtiruvchi, tergovchi pochta-telegraf jo‘natmalarini olib

qo‘yadi yoxud ulardan nusxa ko‘chirish bilan chegaralanadi.

JPKning 160-moddasiga ko‘ra, olib qo‘yishni o‘tkazish jarayonida bu harakatlar uyida o‘tkazilayotgan shaxsning o‘zi yoki hech bo‘lmaganda uning voyaga yetgan oila a’zolaridan birining ishtirok etishi ta’minlanishi lozimligi, basharti ularning ishtirok etishini ta’minlashga imkon bo‘lmasa, tegishli hokimlik yoki fuqarolarning o‘zini o‘zi boshqarish organining vakili taklif qilinishi belgilangan.

O‘ylaymizki, bunday holatda tegishli hokimlik yoki fuqarolarning o‘zini o‘zi boshqarish organining vakili taklif qilinishidan oldin prokurorning sanksiyasi talab etilishi kerak. Bu normaning JPKda belgilanishi, fuqarolarning turar joy daxlsizligi to‘g‘risidagi JPKning 18-moddasida belgilangan konstitutsiyaviy prinsip talabiga javob beradi.

Tergovchi olib qo‘yish to‘g‘risida o‘zi qaror qabul qiladi, buning uchun faktik va formal asoslar yetarliligini mustaqil belgilaydi. Faktik asos olib qo‘yilishi lozim bo‘lgan aniq bir predmet, turli protsessual manbalardan olinishi mumkin bo‘lgan, uning joylashgan joyi to‘g‘risidagi ma’lumotlar hisoblanadi.

Olib qo‘yishni amalga oshirish uchun faktik asoslar quyidagilar: muayyan shaxsning egaligida (shu muassasada, boshqa joyda, uning o‘zida yoki yonida) bo‘lgan jinoyat ishi uchun ahamiyatli muayyan narsa yoki hujjatni topish; muayyan predmet yoki hujjatning yo‘qotilishi yoki yashirish xavfi borligi; ularni dastlabki tergov organlari tomonidan qidirish zaruratining yo‘qligidir [11, 72-b.]

Qonunchilikka ko‘ra, gumon qilinuvchi, ayblanuvchi, sudlanuvchi boshqa shaxslarga yuborgan yoxud boshqa shaxslar gumon qilinuvchiga, ayblanuvchiga, sudlanuvchiga yuborgan pochta-telegraf jo‘natmalarida sodir etilgan jinoyatga doir ma’lumotlar yoki ish uchun ahamiyatga molik hujjatlar va buyumlar bor deb gumon qilish uchun yetarlicha asoslar bo‘lgandagina surishtiruvchi, tergovchi, sud bu shaxslarning barcha pochta-telegraf jo‘natmalarini yoki ularning ayrimlarini xatlab qo‘yishga haqlidir.

Surishtiruvchi yoki tergovchi olib qo‘yish to‘g‘risidagi asoslantirilgan qarorida kimdan nimani olib qo‘yish lozimligi, olib qo‘yiladigan predmetning nomi va individual xususiyatlari, joylashgan joyi va uning ish uchun qanday ahamiyat kasb etishi ko‘rsatilishi kerak. Ko‘pgina holatlarda surishtiruvchi va tergovchi qisqa, lekin mazmunan to‘liq, jinoyat-protsessual qonunchilik talablariga javob beradigan qarorlar qabul qilishadi [12, 44-b.].

Shu bilan birga, qayd etish kerakki, ba’zi hollarda olib qo‘yish to‘g‘risidagi bayonnoma o‘rniga ixtiyoriy taqdim etish bayonnomasi tuziladi.

Bu esa mohiyatan protsessual harakatning almashtirilishiga hamda JPKning 92-, 163-moddalari buzilishiga va tergov ostida bo‘lgan shaxs huquqlarining cheklanishiga olib keladi. Masalan, JPKning 92-moddasiga asosan, tergov ostidagi shaxs olib qo‘yish bayonnomasiga imzo chekishdan bosh tortishi va unga bayonnomaga kiritiladigan bosh tortish sabablari keltirilgan tushuntirish berish imkoniyati taqdim etilishi shart. Biroq tergov ostidagi shaxs ixtiyoriy topshirish to‘g‘risidagi bayonnoma tuziladigan sharoitda qanday qilib bu huquqdan foydalanishi mumkin? Bizningcha, olib qo‘yishning kerakli obyektlarini talab qilib olish bilan almashtirilishi manfaatdor shaxslarga ushbu obyektlarni yashirish yoki kerak bo‘lsa, yo‘q qilish imkoniyatini yaratib beradi.

Oliy Sud Plenumining “Gumon qilinuvchi va ayblanuvchini himoya huquqi bilan ta’minlashga oid qonunlarni qo‘llash bo‘yicha sud amaliyoti to‘g‘risida”gi 17-sonli qarorida “Himoyachi o‘z himoyasi ostidagi shaxs ishtirokida o‘tkaziladigan barcha tergov harakatlarida, shu jumladan, tintuv yoki olib qo‘yish o‘tkazilayotganda qatnashishga haqlidir”, – deb belgilangan. Bunday ko‘rsatmaning aniq qilib belgilab qo‘yilishi shaxsning huquq va

qonuniy manfaatlarini yanada kafolatlaydi desak, mubolag‘a bo‘lmaydi.

Tadqiqot natijalari tahlili

“Qonunda gumon qilinuvchi, ayblanuvchi, ularning himoyachilari, fuqarolik da’vogar, fuqarolik javobgar tomonidan jinoyat ishi uchun ahamiyatli bo‘lgan dalil tariqasidagi hujjatlar yoki narsalarni taqdim qilishi belgilangan. Bunday holatlarda tergovchi tomonidan olib qo‘yish to‘g‘risida qaror va bayonnoma tuzilmasdan, topshirilayotgan narsa va hujjatni qabul qilish haqida bayonnoma tuzilishi kerak” [13], – degan fikrga biz ham qo‘shilamiz.

Olib qo‘yishni amalga oshirish uchun surishtiruvchi yoki tergovchi xolislarni jalb etishlari kerak. Bunday huquqdan tergovchi mustaqil foydalanadi va hech kimning aralashishiga yo‘l qo‘yilmaydi. Ular tomonlarning tarafdorlari sifatida emas, balki bu tergov harakatining faol kuzatuvchilari sifatida ishtirok etishni ta’minlaydilar. Surishtiruvchi yoki tergovchi korxona, muassasa va tashkilotlar binolarida olib qo‘yish amalga oshirilishida ushbu tashkilotlarning vakillari ishtirokida o‘tkazilishini ta’minlashlari zarur. Bu esa, o‘z navbatida, shaxslarning huquq hamda qonuniy manfaatlarini himoya qilish uchun ko‘maklashadi [14, 248-b.].

Pochta-telegraf jo‘natmalarini olib qo‘yishda ishtirok etish uchun xolislarni jalb etishda tergovchi pochta-telegraf tashkilotlarining xodimlari orasidan xolislarni tanlab olishi maqsadga muvofiqdir. Bunday talab yozishmalar sirini saqlash kafolati nuqtayi nazaridan muhim ahamiyat kasb etadi. Chunki jo‘natmalar mazmunini sir saqlash ko‘rsatilgan xodimlarning xizmat majburiyatlari hisoblanadi.

Shuningdek, tergovchi olib qo‘yishni tungi vaqtda amalga oshirilmaslik talabini ham mustaqil amalga oshiradi, kechiktirib bo‘lmaydigan hollar bundan mustasno. Tergovchida mazkur shaxs olib qo‘yishni kechgacha cho‘zib, uning to‘xtalishi yoki tugatilishiga umid bog‘laganligi to‘g‘risida taxmin bo‘lsa, u olib qo‘yish kimdan amalga oshirilayotgan bo‘lsa o‘sha shaxs hozirligida o‘tkazishi mumkin [15].

JPKga muvofiq, olib qo‘yishga kirishishdan oldin tergovchi olib qo‘yish to‘g‘risidagi qarorni shaxs yoki tashkilot rahbariga taqdim etadi hamda qarorda ko‘rsatilgan narsa va hujjatlarni berish taklifini kiritadi. Ushbu obyektlar berilgan taqdirda olib qo‘yish tugatilib, bu to‘g‘risida bayonnoma tuziladi. Rad etilgan taqdirda olib qo‘yish majburiy amalga oshiriladi.

Majburiy olib qo‘yishda tajribali tergovchilar ayblanuvchiga nisbatan hurmat munosabatini saqlab qolish maqsadida har qanday ziddiyatli holatni keltirib chiqarmaslik choralarini ko‘radi. Ular bu shaxsga ishontirish kabi ta’sir etishning faol usullarini qo‘llashlari lozim.

Bunda ishontirishning amaliy mohiyati shundaki, olib qo‘yiladigan obyektni ixtiyoriy topshirish haqidagi talabga nisbatan ayblanuvchining salbiy munosabatiga nisbatan uning ongiga ijobiy ta’sir etishdir. Ishontirish tergovchining nuqtayi nazariga ayblanuvchida tushunish va rozilik hissini uyg‘otish maqsadida ta’sir etish usulidir. Ishontirish ushbu shaxsning tergovchi talablariga muvofiq harakat qilishiga erishish demakdir.

Ishontirish jarayoni ikki bosqichdan iborat. Birinchi bosqichda olib qo‘yish amalga oshirilayotgan shaxsga, agar u ixtiyoriy topshirishni istamasa, qonunda belgilangan tartib va tergovchining yopiq bino va xonalarga kirish vakolatlari mavjudligi tushuntiriladi. Ikkinchi bosqichda shaxsga tergovchi tomonidan qo‘llangan harakatlar, shaxsning shaxsiy hayotiga oid ma’lumotlar oshkor etilmasligi to‘g‘risida tushuntirish olib boriladi. Shuning uchun protsessual nuqtayi nazardan olib qo‘yish xonadonlarda bajarilayotganda tergovchidan yuksak professional mahorat talab etiladi [16, 238-b.].

Bundan tashqari, mahalliy mentalitetdan kelib chiqib va Konstitutsiyasining 31-mod-

dasiga ko‘ra, har bir inson shaxsiy va oilaviy sirga ega bo‘lishi normasini buzmaslik uchun xolis guvoh sifatida qatnashtirilishi lozim bo‘lgan shaxslarni tintuv va olib qo‘yish o‘tkazilayotgan manzildagi qo‘shnilardan qatnashtirmasdan, mazkur oilaga umuman aloqasi bo‘lmagan, notanish fuqarolarning ishtirok etishini ta’minlash lozim. Sababi ushbu protsedurada qo‘shnilar xolis sifatida qatnashadigan bo‘lsalar, shaxsning uyida bo‘lgan voqea keng jamoatchilikda gap-so‘z bo‘lishi, oilaviy obro‘-yining tushishi, oilaning o‘g‘il va qiz farzandlarining bo‘lg‘usi taqdiriga ta’sir ko‘rsatishi va bu esa ularning oilaviy o‘sib-unishiga o‘z ta’sirini o‘tkazishi mumkin.

Xulosalar

Ushbu mavzuni atroflicha o‘rganib, yakunida quyidagilarni xulosa va taklif sifatida bildirib o‘tishni o‘rinli deb hisoblaymiz:

1. Tintuv va oliy qo‘yishga tergov harakati sifatida quyidagi xususiyatlar xosdir: 1) ushbu tergov harakatlari jinoyat ishi bo‘yicha dalillarni to‘plash, tekshirish va baholashga qaratiladi; 2) tintuv va olib qo‘yishda majburlash va majburiylik xususiyati mavjud; 3) boshqa tergov harakatlari singari faqat qonunda vakolat berilgan shaxslar tomonidan amalga oshiriladi; 4) faqat qonunda belgilangan tartibda amalga oshiriladi; 5) tintuv va olib qo‘yishni o‘tkazish vaqtida tintuv va olib qo‘yish tergov harakatlari o‘tkazilayotgan shaxsning huquq va erkinliklari cheklanishiga yo‘l qo‘yiladi.

2. O‘zida yoki uyi va boshqa obyektlarida tintuv va olib qo‘yish harakati o‘tkazilayotgan shaxslar lozim darajada huquqiy savodxonlikka ega bo‘lmagan shaxslar ekanligini e’tiborga olib, Konstitutsiyamizning 31-moddasidagi normaga asosan o‘zida tintuv va olib qo‘yish protseduralari o‘tkazilayotgan shaxs darhol va to‘xtovsiz himoya huquqi bilan ta’minlanishi lozim hamda o‘z hisobidan bo‘lsin yoki davlat hisobidan bo‘lsin himoyachi advokat bilan ta’minlanishi zarur, aks holda shaxsning protsessual huquqlari buzilishiga olib keladi.

3. Tintuv va olib qo‘yish tushunchalariga ta’rif ishlab chiqildi hamda bunday tergov harakatlarining shakllari ajratib ko‘rsatildi.

4. Amaldagi qonunchilik bo‘yicha shaxsning uy-joyida amalga oshiriladigan tintuv va olib qo‘yishda oila a’zolari hisoblangan voyaga yetmagan farzandlarning ishtirokini istisno etadigan norma, ya’ni voyaga yetmaganlarning ushbu harakatlarni ko‘rmasligi nazarda tutilmagan. Shu sababli oiladagi voyaga yetmaganlarni ushbu protseduraning guvohi bo‘lishining oldi olinishi zarur deb hisoblaymiz. Bu o‘z navbatida, voyaga yetmagan farzandlarning mazkur holatlarni ko‘rishi otasi yoki onasining yoxud voyaga yetgan oila a’zolarining qandaydir jinoyat sodir etganligini va uni jinoyatchi deb tushunib, uning psixologik rivojlanishiga o‘z ta’sirini o‘tkazishi aniq.

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JINOYAT PROTSESSIDA MAXSUS IQTISODIY BILIMLAR TUSHUNCHASI VA O‘ZIGA XOS XUSUSIYATLARI

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Annotatsiya. *Ushbu maqolada jinoyat protsessida maxsus iqtisodiy bilimlar tushunchasi, mohiyati va ahamiyati chuqur tahlil qilingan. Xususan, maxsus iqtisodiy bilimlarning mazmun-mohiyati, asosiy elementlari va o‘ziga xos belgilari ilmiy-nazariy jihatdan atroflicha o‘rganilgan. Maqolada maxsus iqtisodiy bilimlarning jinoyatlarni aniqlash, tergov qilish va sudda ko‘rib chiqish jarayonidagi o‘rni va ahamiyati, shuningdek, ulardan foydalanishning protsessual shakllari tadqiq etilgan. Muallif maxsus iqtisodiy bilimlarning boshqa sohalardagi maxsus bilimlardan farqlovchi xususiyatlarini tahlil qilib, ularning o‘ziga xos jihatlarini aniqlagan. Shuningdek, maqolada maxsus iqtisodiy bilimlardan jinoyat protsessida foydalanishning dolzarb amaliy muammolari yoritilgan. Maxsus iqtisodiy bilimlar asosida jinoyatlarni aniqlash, dalillarni to‘plash va mustahkamlash, tergov harakatlarini o‘tkazish, ekspertizani tayinlash va o‘tkazish, jinoyatlarning sodir etilish mexanizmi va jinoyatlarning oqibatlarini aniqlash, profilaktik chora-tadbirlarni ishlab chiqish hamda sud qarorlarini asoslash masalalari tadqiq etilgan. Muallif maxsus iqtisodiy bilimlar tushunchasiga yangicha ta’rif bergan. Maqolada keltirilgan tahlil va xulosalar jinoyat protsessida maxsus iqtisodiy bilimlardan foydalanish samaradorligini oshirishga, sohadagi qonunchilikni takomillashtirishga hamda huquqni qo‘llash amaliyotini yaxshilashga xizmat qiladi.*

Kalit so‘zlar: *maxsus iqtisodiy bilimlar, jinoyat protsessi, ekspertiza, mutaxassis, dalillar, iqtisodiy jinoyatlar, tergov harakatlari, sud ekspertizasi, jinoyat ishi, isbotlash*

ПОНЯТИЕ И ОСОБЕННОСТИ СПЕЦИАЛЬНЫХ ЭКОНОМИЧЕСКИХ ЗНАНИЙ В УГОЛОВНОМ ПРОЦЕССЕ

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Аннотация. *В настоящей статье всесторонне проанализированы понятие, сущность и значение специальных экономических знаний в уголовном процессе. В частности, с научно-теоретической точки зрения исследовано содержание и структура специальных экономических знаний, их основные элементы и характерные признаки. Рассматривается роль*

и значение специальных экономических знаний на этапах выявления, расследования и судебного разбирательства преступлений, а также процессуальные формы их использования. Автор анализирует особенности, отличающие специальные экономические знания от других видов специальных знаний, и выявляет их специфические характеристики. В статье раскрываются актуальные практические проблемы использования специальных экономических знаний в уголовном процессе. Исследуются аспекты применения данных знаний при выявлении преступлений, сборе и закреплении доказательств, проведении следственных действий, назначении и проведении экспертиз, установлении механизма совершения преступлений и их последствий, разработке профилактических мер, а также обосновании судебных решений. Автор даёт новое определение понятию «специальные экономические знания». Приведённые в статье анализ и выводы направлены на повышение эффективности применения специальных экономических знаний в уголовном процессе, совершенствование законодательства в данной сфере и улучшение правоприменительной практики.

Ключевые слова: *специальные экономические знания, уголовный процесс, экспертиза, специалист, доказательства, экономические преступления, следственные действия, судебная экспертиза, уголовное дело, доказывание*

THE CONCEPT AND SPECIFIC FEATURES OF SPECIAL ECONOMIC KNOWLEDGE IN CRIMINAL PROCEEDINGS

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Abstract. *In this article, the concept, essence, and significance of special economic knowledge in criminal proceedings are analyzed in depth. In particular, the essence, main elements, and specific features of special economic knowledge are thoroughly studied from a scientific and theoretical perspective. The article examines the role and significance of special economic knowledge in the processes of identifying, investigating, and considering crimes in court, as well as the procedural forms of its application. The author analyzes the features that distinguish special economic knowledge from special knowledge in other fields and identifies its specific aspects. The article also highlights current practical problems associated with the use of special economic knowledge in criminal proceedings. Based on special economic knowledge, issues related to identifying crimes, collecting and securing evidence, conducting investigative actions, appointing and conducting expert examinations, determining the mechanism of committing crimes and their consequences, developing preventive measures, and substantiating court decisions are explored. The author provides a new definition of the concept of special economic knowledge. The analysis and conclusions presented in the article aim to increase the effectiveness of using special economic knowledge in criminal proceedings, improve legislation in this area, and enhance law enforcement practices..*

Keywords: *special economic knowledge, criminal proceedings, expertise, specialist, evidence, economic crimes, investigative actions, forensic examination, criminal case, proof*

Kirish

Jinoyat protsessida jinoyat-protsessual huquqiy munosabatlarni amalga oshirishda, jumladan, jinoyat ishlarini tergov qilish va sudda ko‘rib chiqish jarayonida maxsus iqtisodiy bilimlardan foydalanish masalasi hozirgi kunda dolzarb ahamiyat kasb etmoqda.

Buning sababi shundaki, iqtisodiyot sohasidagi jinoyatlar tobora murakkablashib, ularni aniqlash, fosh etish va tergov qilish uchun chuqur iqtisodiy bilimlar talab etilmoqda. Shu sababli jinoyat protsessida maxsus iqtisodiy bilimlar tushunchasining mazmun-mohiyatini ochib berish, ularning

o‘ziga xos xususiyatlarini tahlil qilish orqali jinoyat protsessida tutgan o‘rnini ilmiy-nazariy jihatdan o‘rganish muhim ahamiyatga ega.

Material va metodlar

Tadqiqot ishida qiyosiy-huquqiy va statistik tahlil metodidan foydalanildi. Ishda umumlashtirish, induksiya va deduksiya metodlari ham qo‘llandi.

Tadqiqot natijalari

Sohani tartibga solishga qaratilgan normativ-huquqiy hujjatlarda maxsus bilim yoki maxsus iqtisodiy bilim tushunchalari uchramaydi. Umumiy ma’noda Jinoyat-protsessual kodeksida ekspertning maxsus bilimlarga ega bo‘lishi, mutaxassisning esa maxsus bilim va malakasidan foydalangan holda ishda ishtirok etishi mumkinligi belgilangan. N. Bababekov ham mazkur fikrlarni qo‘llab, mutaxassisdan tashqari maxsus bilimlarga ega bo‘lgan shaxs sifatida ekspert maydonga chiqishini e’tirof etgan [1, 80–86-b.].

Darhaqiqat, Jinoyat-protsessual kodeksi 69-moddasining birinchi qismiga muvofiq, ekspertning ma’lum bir sohalar bo‘yicha maxsus bilimlarga ega bo‘lishi talab etiladi. Biroq alohida tushuncha sifatida maxsus bilimlar va maxsus iqtisodiy bilimlarning nima ekanligi ochib berilmagan.

Shunga qaramasdan, maxsus iqtisodiy bilimlar tushunchasiga bir qator olimlar tomonidan turlicha ta’riflar berilgan. Ular ushbu tushunchaning mazmun-mohiyatini o‘z ilmiy tadqiqot ishlari doirasida qisman bo‘lsa-da, ochib berishga harakat qilishgan.

Jumladan, B.A. Mo‘minov “Maxsus iqtisodiy bilimlar – jinoyat protsessida haqiqatni aniqlash maqsadida dalillarni to‘plash, tekshirish va baholash jarayonida qonunda belgilangan shakllarda foydalaniladigan iqtisodiyot sohasidagi bilimlar”, – deb ta’rif beradi hamda maxsus iqtisodiy bilimlar dalillar to‘plashning Jinoyat-protsessual kodeksida belgilangan boshqa me’yorlari bilan birga isbotlash predmetini aniqlash uchun xizmat qilishini ta’kidlaydi [2, 11-b.].

Shunga o‘xshash fikrlarni J.Sh. Raxmonov ham ilgari surib, u ham maxsus iqtisodiy bilimlarni isbot qilishga bog‘lab, jinoyat protsessida dalillarni to‘plash, tekshirish va baholash jarayonida iqtisodiyot sohasidagi bilimlarga tayanishni qayd etgan [3, 201–205-b.].

Yuqoridagi fikrlar bilan kelishgan holda aytish mumkinki, maxsus iqtisodiy bilimlar isbot qilish jarayonida keng foydalanilishi bilan bir qatorda ular isbot qilish predmeti, ya’ni jinoyatning obyektini, jinoyat sodir etilishi tufayli yetkazilgan zarar xususiyati va miqdorini, sodir etilgan jinoyatning vaqti, joyi va usulini, ijtimoiy xavfli qilmish va ro‘y bergan ijtimoiy xavfli oqibat o‘rtasidagi sababiy bog‘lanishni, jinoyatning subyekti va subyektiv tomonini (jinoyatning to‘g‘ri yoki egri qasd bilan yoxud beparvolik yoki o‘z-o‘ziga ishonish natijasida sodir etilganligini), jinoyatning sabablari va maqsadlarini aniqlashga, o‘z navbatida, isbot qilishning asosiy maqsadi hisoblangan haqiqatni aniqlashga ham yordam beradi.

L.P. Klimovich maxsus iqtisodiy bilimlar sud-buxgalteriya bilimlari sohasiga oid ekanligini qayd etib, maxsus bilimlarga ega bo‘lgan shaxslarning qonunda belgilangan usullarni qo‘llagan holda jinoyat protsessi maqsadlarini amalga oshirishda ulardan foydalanish tajribasini baholaydi [4, 48-b.].

Biroq L.G. Shapiro L.P. Klimovichning mazkur fikrlariga e’tiroz bildirib, maxsus ta’lim jarayonida olingan kasbiy bilimlarsiz faqat tajribaning o‘zi maxsus bilimga ega bo‘lgan shaxsning yetarli darajada kompetentligini ta’minlay olmasligini ta’kidlaydi [5, 320-b.].

Darhaqiqat, mazkur bildirilgan fikrlar bilan to‘liq kelishib bo‘lmaydi. Chunki yuqoridagi fikrlarga ko‘ra, maxsus iqtisodiy bilimlar faqatgina sud-buxgalteriya sohasi bilan chegaralab qo‘yilgan. Iqtisodiy munosabatlarning shiddat bilan rivojlanishi yangi turdagi iqtisodiy ekspertizalar turlarini tadqiq qilishni taqozo etmoqda. Ekspertiza muassasalarida sud-iqtisodiy ekspertizasi, sud-moli-

ya-kredit ekspertizasi, sud-rejali-iqtisodiyot ekspertizasi, sud-iqtisodiy-statistik ekspertizasi va boshqa shu kabi tekshirishning yangi turlari o‘tkazib kelinmoqda.

Shuningdek, L.G. Shapironing fikrlarini qo‘llab-quvvatlagan holda aytish mumkinki, har qanday bilim sohasida bo‘lgani kabi maxsus iqtisodiy bilimlarda ham tegishli ixtisosliklar bo‘yicha zarur bo‘lgan bilimlarni egallamasdan turib ularni to‘g‘ridan to‘g‘ri kasbiy tajriba sifatida baholab bo‘lmaydi. Kasbiy tajriba shaxsda yillar davomida shakllanadigan faoliyat mahsuli hisoblanadi. Aynan maxsus iqtisodiy bilimlar sohasida tajribaga ega bo‘lmagan shaxsni maxsus iqtisodiy bilimlarga ega bo‘lgan mutaxassis sifatida baholab bo‘lmaydi.

M.M. Vinogradova maxsus iqtisodiy bilimlar bir nechta sohalar yig‘indisidan iborat ekanligini e’tirof etgan hamda ekspert-iqtisodchining maxsus iqtisodiy bilimlari asosini buxgalteriya, moliyaviy va soliq hisobi, iqtisodiyot va ishlab chiqarishni boshqarish, moliya va kredit, soliqlar va soliqqa tortish, bank ishi, moliyaviy-xo‘jalik faoliyatini tahlil qilish, mehnat iqtisodiyoti, qimmatli qog‘ozlar aylanmasining o‘ziga xos xususiyatlari va boshqa shu kabi fanlar tashkil etishini ta’kidlaydi [6, 24-b.].

Yuqorida berilgan fikrlar asosida maxsus iqtisodiy bilimlar tushunchasiga quyidagicha ta’rif berish mumkin:

“Maxsus iqtisodiy bilimlar – iqtisodiyot sohasidagi umumiy ta’lim va amaliy tajriba doirasidan tashqariga chiqadigan, maxsus tayyorgarlik va kasbiy faoliyat natijasida olingan, cheklangan doiradagi shaxslarga ma’lum bo‘lgan, jinoyat-protsessual qonunchilikda belgilangan tartibda jinoyatlarni aniqlash, ularni tergov qilish va sudda ko‘rib chiqish jarayonida foydalaniladigan buxgalteriya, moliya, soliq, bank va boshqa iqtisodiyot sohasidagi bilimlar majmuidir”.

Ushbu berilgan ta’rifdagi maxsus iqtisodiy bilimlar tushunchasining mazmun-mohiyati yanada tushunarli bo‘lishi uchun uning asosiy elementlarini tahlil qilamiz.

1. Maxsus iqtisodiy bilimlar umumiy ta’lim va amaliy tajriba doirasidan tashqariga chiqadi. V.N. Maxov ham maxsus iqtisodiy bilimlarni umumiy ta’lim va kundalik hayotiy tajribadan tashqariga chiqadigan bilimlar sifatida baholab, ular maxsus tayyorgarlik yoki kasbiy tajriba orqali egallanishini qayd etgan [7, 296-b.]. Umumiy ta’limda turli sohalarga oid umumiy doiradagi bilimlar olingani uchun ham maxsus iqtisodiy bilimlar umumiy ta’limga nisbatan aniq sohaga ixtisoslashtirilgan bo‘ladi hamda uning doirasidan chetga chiqib, chuqurlashtirilgan holda egallanadi.

2. Maxsus iqtisodiy bilimlar maxsus tayyorgarlik va kasbiy faoliyat natijasida olinadi. Demak, maxsus iqtisodiy bilimlarga ega bo‘lish uchun tegishli oliy ta’lim muassasasida o‘qish yoki uzoq yillik amaliy faoliyat tajribasiga ega bo‘lish talab etiladi.

Y.R. Rossinskaya ta’kidlaganidek, “maxsus bilimlar – kasbiy tayyorgarlik va ish tajribasi natijasida olingan, fan, texnika, san’at yoki hunar sohasidagi nazariy va amaliy bilimlar tizimidir” [8, 656-b.].

3. Maxsus iqtisodiy bilimlar cheklangan doiradagi mutaxassislarga ma’lum bo‘ladi. Ya’ni bu oddiy shaxslarga emas, balki faqatgina maxsus tayyorgarlikdan o‘tgan mutaxassislarga ma’lum bo‘lgan bilimlar doirasini o‘z ichiga oladi. Bu fikrni A.A. Eysman ham qo‘llab-quvvatlab, u maxsus bilimlarni “barcha shaxslarga ma’lum bo‘lmagan va keng doirada tarqalmagan, cheklangan doiradagi mutaxassislarga tegishli bo‘lgan bilimlar”, – deb ta’riflaydi [9, 152-b.]. N. Bababekov maxsus bilimlarning omma uchun ma’lum emasligini ularning birinchi muhim belgisi sifatida qayd etgan [10, 116–123-b.]. Darhaqiqat, maxsus bilimlarning alohida turi sifatida maxsus iqtisodiy bilimlar tor doiradagi soha mutaxassislari uchun ma’lum bo‘ladi.

4. Maxsus iqtisodiy bilimlar sodir etilgan jinoyatlarni aniqlash, ularni tergov qilish va sudda ko‘rib chiqish jarayonida qo‘llanadi. Demak, maxsus iqtisodiy bilimlar faqat naza-

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riy ahamiyatga ega bo‘lmasdan, balki amaliy jihatdan ham muhimdir. A.A. Eksarxopulo maxsus iqtisodiy bilimlarni jinoyat ishlari bo‘yicha dalillarni aniqlash, to‘plash, tekshirish va baholash maqsadida foydalaniladigan, maxsus tayyorgarlik va tajriba natijasida olingan bilimlar sifatida baholaydi [11, 280-b.].

A.A. Eksarxopuloning mazkur fikrlari bilan kelishib shuni aytish mumkinki, maxsus iqtisodiy bilimlar orqali jinoyatlarni ochish uchun zarur bo‘lgan dalillarni aniqlash, ularni to‘plash, tekshirish va baholash mumkin hamda bu orqali ish bo‘yicha qonuniy, asosli va adolatli qaror qabul qilishga ham erishish mumkin.

5. Maxsus iqtisodiy bilimlar buxgalteriya, moliya, soliq, bank va boshqa iqtisodiyot sohalaridagi bilimlarni o‘z ichiga oladi. Darhaqiqat, B.A. Mo‘minov ta’kidlaganidek, “maxsus iqtisodiy bilimlar buxgalteriya hisobi, moliya, soliq, bank faoliyati, iqtisodiy tahlil kabi iqtisodiy fanlar sohasidagi bilimlarni ham o‘z ichiga oladi hamda ushbu bilimlarga maxsus tayyorgarlik orqali erishish mumkin”.

Tadqiqot natijalari tahlili

Demak, yuqorida maxsus iqtisodiy bilimlar bo‘yicha berilgan tushunchadagi eng asosiy elementlarni tahlil qildik. Endi esa maxsus iqtisodiy bilimlarning mohiyatini yanada to‘liqroq tushunish uchun ularning asosiy belgilarini ko‘rib chiqish maqsadga muvofiq. Bu belgilarga quyidagilarni kiritish mumkin:

Professionallik. Maxsus iqtisodiy bilimlar kasbiy tayyorgarlik va amaliy tajriba natijasida shakllanadi. Ular umumiy ta’lim doirasidan tashqariga chiqib, ma’lum bir sohadagi kasb egalariga xos bo‘ladi. Ya’ni aniq bir sohadagi (moliya, soliq, audit ishi, pul-kredit va boshqalar) kasb egalariga tegishli bo‘ladi. N.P. Yablokov maxsus bilimlar “maxsus (kasb-hunar ta’limi) va tajriba orqali” olinishini qayd etgan [12, 156-b.]. Bunda olim maxsus iqtisodiy bilimlarning shakllanish jarayonini professional darajadagi kasb-hunar ta’limi va amaliy tajribaga bog‘liq deb biladi.

Ilmiylik. Maxsus iqtisodiy bilimlar zamonaviy iqtisodiyot fanining so‘nggi yutuqlariga asoslanadi. Ular ilmiy asoslangan va amaliyotda sinovdan o‘tgan bo‘lishi lozim. Misol uchun, ekspertizani oladigan bo‘lsak, ekspert tomonidan beriladigan xulosa uning maxsus bilimlari asosida ilmiy jihatdan asoslantirilgan bo‘lishi lozim. Chunki ekspert xulosasi ishda to‘plangan boshqa dalillar bilan birgalikda uning ilmiy asoslanganligi nuqtayi nazaridan ham baholanadi.

Shunga ko‘ra, har qanday maxsus bilimlarda bo‘lgani singari maxsus iqtisodiy bilimlar ham ilmiylik belgisiga ega bo‘ladi hamda maxsus bilimlarga ega bo‘lgan mutaxassislar ish yuritish davomida mazkur belgidan foydalanadilar.

Tizimlilik. Maxsus iqtisodiy bilimlar tartibga solingan, o‘zaro bog‘liq bilimlar tizimidan iborat bo‘ladi. Ular alohida-alohida emas, balki yaxlit tizim sifatida namoyon bo‘ladi.

Maxsuslik. Bu bilimlar umumiy emas, balki iqtisodiyotning muayyan sohalariga oid maxsus bilimlardir. Masalan, buxgalteriya hisobi, moliyaviy tahlil, soliq hisobi kabi maxsus sohalarga oid bilimlar. Umumiy maxsus bilimlarni ham ko‘plab olimlar, shu jumladan: R.S. Belkin, Y.R. Rossinskaya va boshqalar fan, texnika, san’at va hunarmandchilik sohasidagi bilimlarga bo‘lishni ma’qullaydilar [13, 125-b.].

Biz ham maxsus bilimlarni, jumladan, maxsus iqtisodiy bilimlarni sohalarga bo‘lishni maqsadga muvofiq deb hisoblaymiz. Chunki ularning sohalarga bo‘linishi mutaxassislarda aniq soha bo‘yicha yetarli bilimlar olishni kengaytiradi hamda ishda samaradorlik darajasi oshishiga xizmat qiladi.

Amaliy yo‘nalganlik. Maxsus iqtisodiy bilimlar nazariy ahamiyatga ega bo‘lishi bilan birga amaliy jihatdan ham muhimdir. Ular jinoyatlarni aniqlash, ularni tergov qilish va sudda ko‘rib chiqish jarayonida amaliy qo‘llanish uchun mo‘ljallangan. L.V. Lazare-

va va N. Bababekov kabi mualliflar amaliy faoliyat jarayonida olingan tajribalar maxsus bilimlar mezonlarini aniqlashda muhim rol o‘ynashini, shu sababli ham maxsus iqtisodiy bilimlar amaliyotga yo‘naltirilganini qayd etishgan [14, 29–37-b.].

Obyektivlik. Maxsus iqtisodiy bilimlar subyektiv fikrlarga emas, balki obyektiv faktlarga va asosli ma’lumotlarga tayanadi.

Maxsus iqtisodiy bilimlarning ushbu xususiyati maxsus bilimlardan foydalanish natijalarining ishonchliligini ta’minlaydi hamda jinoyat ishi doirasida holatga aniq baho berish imkonini beradi.

Doimiy yangilanish. Iqtisodiyot sohasi doimiy ravishda rivojlanib boradi, sohani tartibga solishga qaratilgan yangi normativ-huquqiy hujjatlar qabul qilinadi. Shuning uchun ham maxsus iqtisodiy bilimlarni doimiy ravishda yangilash va to‘ldirib borish lozim.

Huquqiy tartibga solinganlik. Maxsus iqtisodiy bilimlardan foydalanish tartibi va shakllari qonunchilik hujjatlarida belgilab qo‘yilgan. Bu normalar maxsus bilimlarni tartibga solishga qaratilgan O‘zbekiston Respublikasi Jinoyat-protsessual kodeksining 69-, 172-, 173-, 180-, 184-moddalarida, 22^1-bobida (Taftish), “Sud ekspertizasi to‘g‘risida”gi Qonunda va boshqa qonunchilik hujjatlarida belgilangan. Ushbu normalarda belgilangan qoidalar jinoyat ishlarini yuritishda maxsus iqtisodiy bilimlardan foydalanishda ham qo‘llanadi.

Komplekslilik. Maxsus iqtisodiy bilimlar ko‘pincha boshqa sohalardagi bilimlar bilan uyg‘unlikda qo‘llanadi. Masalan, iqtisodiy jinoyatlarni tergov qilishda iqtisodiy bilimlar bilan bir qatorda huquqiy, kriminalistik bilimlardan ham foydalanish talab etiladi.

Maqsadli yo‘nalganlik. Maxsus iqtisodiy bilimlar jinoyat ishlari bo‘yicha haqiqatni aniqlash, dalillarni to‘plash, tekshirish va baholash kabi aniq maqsadlarga erishish uchun qo‘llanadi. N. Bababekov ham olingan (egallangan) maxsus bilimlardan foydalanishning yakuniy maqsadi jinoyat ishini ochish va tergov qilish ekanligini qayd etgan.

Maxsus iqtisodiy bilimlarning yuqorida sanab o‘tilgan xususiyatlari ularning mohiyatini yanada chuqurroq anglashga yordam beradi. Shu bilan birga, bu xususiyatlar maxsus iqtisodiy bilimlarning boshqa sohalardagi maxsus bilimlardan farqini ham ko‘rsatib beradi.

Maxsus iqtisodiy bilimlar jinoyat ishlarini yuritishning turli bosqichlarida muhim ahamiyat kasb etadi. Bu bilimlardan foydalanish orqali jinoyat ishlari bo‘yicha to‘liq, har tomonlama va xolisona tergov o‘tkazish hamda jinoyat ishi bo‘yicha qonuniy, asosli va adolatli qaror qabul qilish imkoniyati yaratiladi.

Jinoyat ishlarini yuritishda maxsus iqtisodiy bilimlarning ahamiyati quyidagi jihatlarda namoyon bo‘ladi:

Jinoyatlar va ularning izlarini aniqlash. Maxsus iqtisodiy bilimlar yordamida iqtisodiy sohadagi jinoyatlar va ularning sodir etilishini aniqlash mumkin. Masalan, soliqlarning o‘z vaqtida to‘langan yoki to‘lanmagani, olingan daromadlarning soliq hisobotlarida to‘g‘ri qayd etilgan yoki etilmagani, buxgalteriya hisobotlaridagi noqonuniy operatsiyalar, moliyaviy hujjat va hisobotlardagi ma’lumotlarning qalbakilashtirilganlik holatlarini aniqlash uchun chuqur iqtisodiy bilimlar talab etiladi. B.V. Voljenkin ta’kidlaganidek, “iqtisodiy jinoyatlarning aksariyati hujjatlarda aks ettirilgan moliyaviy-xo‘jalik operatsiyalarini noto‘g‘ri rasmiylashtirish orqali sodir etiladi, bunday holatlarni faqat maxsus iqtisodiy bilimlarga ega bo‘lgan shaxslar (mutaxassislar)gina aniqlay oladi” [15, 291-b.].

Shuningdek, iqtisodiyot sohasidagi jinoyatlar ko‘pincha jinoyat izlari hujjatlarda, elektron ma’lumotlar bazalarida, buxgalteriya hisobotlarida qoladi. Bu izlarni aniqlash, ularni olish va to‘g‘ri talqin qilish uchun maxsus iqtisodiy bilimlar talab etiladi. Y.S. Lexanova “iqtisodiy jinoyatlarning izlari ko‘pincha raqamlar, hisob-kitoblar,

moliyaviy ko‘rsatkichlar ko‘rinishida namoyon bo‘lishini hamda bu izlarni aniqlash va ularning jinoiy ahamiyatini tushunish uchun maxsus iqtisodiy tayyorgarlik talab etilishini qayd etadi [16, 91–94-b.].

Dalillarni to‘plash va mustahkamlash. Iqtisodiy jinoyatlar bo‘yicha isbot qilishda, shu jumladan, dalillarni to‘plash va mustahkamlash jarayonida maxsus iqtisodiy bilimlar muhim rol o‘ynaydi. Jumladan, moliyaviy hujjatlarni tahlil qilish, buxgalteriya hisobotlarini tekshirish, bank operatsiyalarini o‘rganish kabi harakatlarni amalga oshirish hamda ularni tahlil qilish uchun chuqur iqtisodiy bilimlar zarur bo‘ladi.

S.P. Golubyatnikov va Y.S. Lexanovalar ta’kidlaganidek, “iqtisodiyot sohasidagi jinoyatlar bo‘yicha dalillarni to‘plash jarayonida buxgalteriya hisobi, moliyaviy tahlil, audit kabi sohalardagi bilimlardan keng foydalaniladi” [17, 345-b.].

Tergov harakatlarini o‘tkazish. Maxsus iqtisodiy bilimlar yordamida iqtisodiyot sohasidagi jinoyatlar bo‘yicha tergov harakatlarini yanada samaraliroq tashkil etish va o‘tkazish mumkin. Masalan, gumon qilinuvchini so‘roq qilishda unga asosli savollar berish va uning javoblarini qayd qilish va tushunish, hujjatlarni olib qo‘yish va ko‘zdan kechirish, taftish tayinlash kabi tergov harakatlarini amalga oshirishda iqtisodiy bilimlar muhim ahamiyat kasb etadi. Y.S. Dubonosovning fikricha, “iqtisodiy jinoyatlar bo‘yicha tergov harakatlarini o‘tkazishda maxsus iqtisodiy bilimlarga ega bo‘lgan mutaxassislarni jalb qilish tergov samaradorligini sezilarli darajada oshiradi” [18, 83-b.].

Ekspertizani tayinlash va o‘tkazish. Iqtisodiy jinoyatlar bo‘yicha sud-iqtisodiy ekspertizasi, sud-moliya-kredit ekspertizasi, sud-rejali-iqtisodiyot ekspertizasi, sud-iqtisodiy-statistik ekspertizasi, sud-buxgalteriya va boshqa turdagi ekspertizalarni tayinlash va o‘tkazish jarayonida maxsus iqtisodiy bilimlar alohida ahamiyat kasb etadi. Bu borada Sh.N. Xo‘jaqulov ham fikr bildirib, sud-iqtisodiy ekspertizalarini o‘tkazishda ekspert oldiga qo‘yiladigan savollarni to‘g‘ri shakllantirish, ekspertiza obyektlarini aniqlash, ekspertiza xulosasini baholash uchun tergovchi va sudyalar yetarli darajada iqtisodiy bilimlarga ega bo‘lishlari lozimligini qayd etadi [19, 132-b.].

Jinoyatlarning sodir etilish mexanizmini aniqlash. Maxsus iqtisodiy bilimlar yordamida iqtisodiy jinoyatlarning sodir etilish mexanizmi, usullari va sxemalarini aniqlash mumkin. Bu esa, o‘z navbatida, jinoyatchilarni aniqlash, ularni fosh etish va shaxsning aybini isbotlashda muhim ahamiyatga ega. A.F. Lubin iqtisodiy jinoyatlarning sodir etilish mexanizmini aniqlash uchun iqtisodiyot sohasidagi chuqur bilimlar, shu jumladan, buxgalteriya, moliya, soliq tizimi, bank faoliyati kabi sohalarni yaxshi bilish talab etilishini ta’kidlaydi [20, 143-b.].

Jinoyatlarning oqibatlarini aniqlash. Maxsus iqtisodiy bilimlar yordamida iqtisodiy jinoyatlarning sodir etilishi natijasida yetkazilgan zarar miqdorini, jinoyat sodir etilishi natijasida olingan daromadlar hajmini aniqlash mumkin. Bu esa jinoyatning og‘irlik darajasini belgilash va jazo tayinlashda muhim ahamiyat kasb etadi.

B.V. Voljenkin to‘g‘ri ta’kidlaganidek, “iqtisodiy jinoyatlar oqibatida yetkazilgan zararni aniqlash murakkab jarayon bo‘lib, bunda moliyaviy tahlil, iqtisodiy hisob-kitoblar o‘tkazish talab etiladi”.

Profilaktik chora-tadbirlarni ishlab chiqish. Maxsus iqtisodiy bilimlar yordamida iqtisodiy jinoyatlarning sodir etilishiga imkon beruvchi sabab va shart-sharoitlarni aniqlash, bunday jinoyatlarning oldini olishga qaratilgan chora-tadbirlarni ishlab chiqish mumkin.

I.A. Popovaning ta‘kidlashicha, “iqtisodiy jinoyatlar profilaktikasi uchun iqtisodiy tizimning zaif tomonlarini aniqlash, moliyaviy nazorat mexanizmlarini takomillashtirish zarur, bu ishlarni amalga oshirish uchun chuqur iqtisodiy bilimlar talab etiladi” [21, 84-b.].

Sud qarorlarini asoslash. Iqtisodiy jinoyatlar bo‘yicha sud qarorlarini qabul qilish va asoslashda ham maxsus iqtisodiy bilimlar muhim rol o‘ynaydi. Sudyalar iqtisodiy jinoyatlar mohiyatini to‘g‘ri anglash, ish bo‘yicha to‘plangan dalillarni to‘g‘ri baholash va adolatli hukm chiqarish uchun yetarli darajada iqtisodiy bilimlarga ega bo‘lishlari lozim.

A.N. Larkov to‘g‘ri ta’kidlaganidek, “iqtisodiy jinoyatlar bo‘yicha sud qarorlarining asosliligi va qonuniyligi ko‘p jihatdan sudyalarning iqtisodiy bilim darajasiga bog‘liq” [22, 192-b.].

Bundan tashqari, xalqaro hamkorlikni amalga oshirishda ham maxsus iqtisodiy bilimlarning ahamiyati oshib bormoqda. Globallashuv sharoitida iqtisodiy jinoyatlar ko‘pincha transmilliy xususiyat kasb etmoqda. Bunday jinoyatlarni tergov qilish va sudda ko‘rib chiqish jarayonida xalqaro hamkorlikni amalga oshirish zarur bo‘ladi. Bu esa, o‘z navbatida, xalqaro moliya tizimi, valyuta operatsiyalari, xalqaro bank faoliyati kabi sohalarda chuqur iqtisodiy bilimlarni talab etadi. V.A. Jbankovning fikricha, “transmilliy iqtisodiy jinoyatlarni tergov qilish va sudda ko‘rib chiqishda nafaqat milliy, balki xalqaro iqtisodiy qonunchilik va amaliyot bo‘yicha ham chuqur bilimlarga ega bo‘lish talab etiladi” [23, 207-b.].

Shuningdek, maxsus iqtisodiy bilimlarning o‘ziga xos xususiyatlarga ega bo‘lishi ularni boshqa sohalardagi maxsus bilimlardan farqlashga imkon beradi. Quyida maxsus iqtisodiy bilimlarning boshqa sohalardagi maxsus bilimlardan farqlarini tahlil qilamiz:

O‘rganish predmeti va obyektining o‘ziga xosligi. Maxsus iqtisodiy bilimlar iqtisodiy munosabatlar, moliyaviy jarayonlar, xo‘jalik faoliyati kabi sohalarni qamrab oladi. Bu esa ularni texnika, tibbiyot yoki boshqa sohalardagi maxsus bilimlardan farqlash imkoniyatini beradi.

Sh.N. Xo‘jaqulov to‘g‘ri ta’kidlaganidek, “maxsus iqtisodiy bilimlar predmeti iqtisodiy kategoriyalar, moliyaviy ko‘rsatkichlar, iqtisodiy-moliyaviy operatsiyalar kabi tushunchalar bilan bog‘liq bo‘lib, bu ularni boshqa sohalardagi maxsus bilimlardan ajratib turadi”.

Qo‘llanish sohasining kengligi. Maxsus iqtisodiy bilimlar jamiyat hayotining deyarli barcha sohalarida qo‘llanishi mumkin, chunki iqtisodiy munosabatlar jamiyatning asosini tashkil etadi. Bu esa ularni muayyan sohada qo‘llanadigan tor doiradagi maxsus bilimlardan farqlaydi.

Y.R. Rossinskaya bu haqda shunday yozadi: “Maxsus iqtisodiy bilimlar universal xususiyatga ega bo‘lib, ular nafaqat iqtisodiy jinoyatlarni, balki boshqa turdagi jinoyatlarni ham tergov qilishda qo‘llanishi mumkin”.

Miqdoriy ko‘rsatkichlarga asoslanganligi. Maxsus iqtisodiy bilimlar ko‘p hollarda raqamlar, statistik ma’lumotlar, moliyaviy ko‘rsatkichlar kabi miqdoriy ifodalangan ma’lumotlar bilan ishlashni nazarda tutadi. Mazkur miqdoriy ko‘rsatkichlar ularni boshqa sohalar, masalan, psixologiya yoki pedagogika sohasidagi maxsus bilimlardan ajratib turadi. L.P. Klimovichning fikricha, “maxsus iqtisodiy bilimlarning o‘ziga xos xususiyati shundaki, ular asosan miqdoriy ko‘rsatkichlarga, matematik hisob-kitoblarga tayanadi” [24, 49-b.].

Normativ-huquqiy asosning mavjudligi. Maxsus iqtisodiy bilimlar ko‘p hollarda qonunchilik hujjatlari, me’yoriy-huquqiy hujjatlar bilan tartibga solinadigan sohalarga taalluqli bo‘ladi. Masalan, buxgalteriya hisobi, moliya, soliq, audit, bank faoliyati kabi sohalar qat’iy huquqiy tartibga solingan. Bu esa maxsus iqtisodiy bilimlarni boshqa sohalar, masalan, san’at yoki adabiyot sohasidagi maxsus bilimlardan farqlash imkoniyatini beradi.

S.P. Golubyatnikov ham maxsus iqtisodiy bilimlar normativ-huquqiy hujjatlarda qat’iy belgilab qo‘yilganini ularning asosiy xususiyatlaridan biri sifatida qayd etgan [25, 103-b.].

Dinamik o‘zgaruvchanlik. Iqtisodiyot juda tez o‘zgaruvchan soha bo‘lib, yangi iqtisodiy

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va moliyaviy munosabatlar rivojlanib borishi natijasida bozor mexanizmlari paydo bo‘ladi. Shu sababli maxsus iqtisodiy bilimlar ham doimiy yangilanishni talab etadi. Bu esa ularni nisbatan barqaror bo‘lgan boshqa sohalardagi maxsus bilimlardan farqlaydi.

M.M. Vinogradova to‘g‘ri ta’kidlaganidek, “maxsus iqtisodiy bilimlar doimiy ravishda yangilanib turishi kerak, chunki iqtisodiyot sohasida tez-tez yangi qonunlar, me’yoriy hujjatlar qabul qilinadi, yangi moliyaviy munosabatlar paydo bo‘ladi”.

Prognozlash imkoniyati. Maxsus iqtisodiy bilimlar yordamida nafaqat mavjud iqtisodiy holatni tahlil qilish, balki kelajakdagi iqtisodiy jarayonlarni ham prognozlash mumkin. Bu esa ularni, masalan, faqat o‘tmishdagi hodisalarni o‘rganishga qaratilgan tarix sohasidagi maxsus bilimlardan farqlaydi. V.A. Prorvichning fikricha, “maxsus iqtisodiy bilimlar iqtisodiy jarayonlarning rivojlanish tendensiyalarini aniqlash, kelgusidagi iqtisodiy holatni bashorat qilish imkonini beradi” [26, 116-b.].

Ixtisoslashuv darajasining yuqoriligi. Maxsus iqtisodiy bilimlar iqtisodiyotning turli tarmoqlari bo‘yicha chuqur ixtisoslashuvni nazarda tutadi. Masalan, bank ishi, sug‘urta, qimmatli qog‘ozlar bozori kabi sohalarda alohida mutaxassislar tayyorlanadi. Bu esa maxsus iqtisodiy bilimlarni nisbatan keng qamrovli bo‘lgan boshqa sohalardagi maxsus bilimlardan farqlaydi.

L.G. Shapiro to‘g‘ri qayd etganidek, “maxsus iqtisodiy bilimlar sohasidagi mutaxassislar odatda iqtisodiyotning muayyan tor sohasi bo‘yicha chuqur bilimlarga ega bo‘ladilar” [27, 174-b.].

Ijtimoiy ahamiyati. Maxsus iqtisodiy bilimlar jamiyat hayotida muhim o‘rin tutadi, chunki ular yordamida iqtisodiy jinoyatlarni fosh etish, iqtisodiy xavfsizlikni ta’minlash, iqtisodiy barqarorlikka erishish mumkin. Bu esa ularning ijtimoiy ahamiyatini oshiradi. Ushbu masalani B.V. Voljenkin ham alohida qayd etib, maxsus iqtisodiy bilimlar nafaqat alohida jinoyat ishlarini tergov qilish, balki umuman iqtisodiy jinoyatchilikka qarshi kurashish, iqtisodiy xavfsizlikni ta’minlash uchun ham muhim ahamiyat kasb etishini ta’kidlaydi.

Yuqorida keltirilgan farqlar maxsus iqtisodiy bilimlarning o‘ziga xos xususiyatlarini ko‘rsatib beradi. Bu farqlarni anglash esa jinoyat ishlarini yuritish jarayonida maxsus iqtisodiy bilimlardan samarali foydalanish imkonini beradi.

Xulosalar

Yuqoridagi tahlillar asosida maxsus iqtisodiy bilimlar tushunchasi va o‘ziga xos xususiyatlari yuzasidan quyidagi xulosalarga kelish mumkin:

Yuridik adabiyotlarda maxsus iqtisodiy bilim tushunchasiga nisbatan turli fikrlar bildirilganidan kelib chiqib, maxsus iqtisodiy bilimlar tushunchasiga quyidagicha ta’rif berish mumkin:

“Maxsus iqtisodiy bilimlar – iqtisodiyot sohasidagi umumiy ta’lim va amaliy tajriba doirasidan tashqariga chiqadigan, maxsus tayyorgarlik va kasbiy faoliyat natijasida olingan, cheklangan doiradagi shaxslarga ma’lum bo‘lgan, jinoyat-protsessual qonunchilikda belgilangan tartibda jinoyatlarni aniqlash, ularni tergov qilish va sudda ko‘rib chiqish jarayonida foydalaniladigan buxgalteriya, moliya, soliq, bank va boshqa iqtisodiyot sohasidagi bilimlar majmui”.

Ushbu berilgan ta’rifdagi maxsus iqtisodiy bilimlar tushunchasining mazmun-mohiyati yanada tushunarli bo‘lishi uchun uning asosiy elementlari sifatida quyidagilarni ajratib ko‘rsatish mumkin:

– umumiy ta’lim va amaliy tajriba doirasidan tashqariga chiqadi;

– maxsus tayyorgarlik va kasbiy faoliyat natijasida olinadi;

– cheklangan doiradagi mutaxassislarga ma’lum bo‘ladi;

– sodir etilgan jinoyatlarni aniqlash, ularni tergov qilish va sudda ko‘rib chiqish jarayonida qo‘llanadi;

– buxgalteriya, moliya, soliq, bank va boshqa iqtisodiyot sohalaridagi bilimlarni o‘z ichiga oladi.

Maxsus iqtisodiy bilimlarning asosiy belgilari sifatida quyidagilarni ajratib ko‘rsatish mumkin:

– professionallik;
– ilmiylik;
– tizimlilik;
– maxsuslik;
– amaliy yo‘nalganlik;
– obyektivlik;
– doimiy yangilanish;
– huquqiy tartibga solinganlik;
– komplekslilik;
– maqsadga yo‘nalganlik.

Jinoyat ishlarini yuritishda maxsus iqtisodiy bilimlarning ahamiyati quyidagilarda namoyon bo‘ladi:

– jinoyatlar va ularning izlarini aniqlash;
– dalillarni to‘plash va mustahkamlash;
– tergov harakatlarini o‘tkazish;
– ekspertizani tayinlash va o‘tkazish;
– jinoyatlarning sodir etilish mexanizmini aniqlash;
– jinoyatlarning oqibatlarini aniqlash;
– profilaktik chora-tadbirlarni ishlab chiqish;
– sud qarorlarini asoslash.

Maxsus iqtisodiy bilimlarning o‘ziga xos xususiyatlarga ega bo‘lishi ularni boshqa sohalardagi maxsus bilimlardan farqlashga imkon beradi. Maxsus iqtisodiy bilimlarning boshqa sohalardagi maxsus bilimlardan farqlari quyidagilarda namoyon bo‘ladi:

– o‘rganish predmeti va obyektining o‘ziga xosligi;
– qo‘llanish sohasining kengligi;
– miqdoriy ko‘rsatkichlarga asoslanganligi;
– normativ-huquqiy asosning mavjudligi;
– dinamik o‘zgaruvchanlik;
– prognozlash imkoniyati;
– ixtisoslashuv darajasining yuqoriligi;
– ijtimoiy ahamiyati.

Xulosa qilib aytganda, maxsus iqtisodiy bilimlar jinoyat protsessining muhim elementi hisoblanadi. Ular iqtisodiy jinoyatlarni aniqlash, tergov qilish va oldini olishda katta ahamiyat kasb etadi. Maxsus iqtisodiy bilimlarning o‘ziga xos xususiyatlari ularni boshqa sohalardagi maxsus bilimlardan farqlab turadi va jinoyat protsessida alohida o‘rin tutishini ta’minlaydi.

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THE IMPACT OF CORRUPTION FACTORS IN PUBLIC ADMINISTRATION

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Abstract. *This article highlights the growing global impact of corruption and its negative aspects on democracy, human rights, and sustainable development goals. At the same time, in this research work, using a literature review and analysis of secondary data, special attention is paid to the spread of corruption, its various forms, and especially its destructive consequences in public administration. Furthermore, this article highlights how corruption undermines public trust, reduces institutional effectiveness, misallocates resources, and seriously impacts critical sectors such as healthcare. In turn, this research work pays special attention to the importance of developing a culture of honesty, raising public awareness, and ensuring transparency and accountability in public services. At the same time, this article focuses on assessing the complex relationship of corruption to the effectiveness of public administration, how corruption affects public administration institutions, and what negative consequences it leads to in the provision of public services in general. This article also emphasizes the need for systemic reforms, transparency, accountability, and a radical improvement of the code of ethics for civil servants, as well as other efforts to combat and effectively eradicate corruption. At the same time, it is shown that this is one of the important measures in instilling moral values and a culture of honesty in the younger generation. Using the example of developed countries free from corruption, it is noted that the fight against corruption is carried out through strict laws and coordinated efforts. In turn, this article emphasizes through examples that corruption is not only a problem that worries the public but also a catalyst leading to weakened governance, increased instability, and overall economic difficulties.*

Keywords: *transparency, public administration, institutional effectiveness, citizen participation, mechanisms, legal literacy, functional measures*

DAVLAT BOSHQARUVIGA KORRUPSIYAVIY OMILLARNING TA’SIRI

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Annotatsiya. *Ushbu maqolada korrupsiyaning kuchayib borayotgan global ahamiyati hamda uning demokratiya, inson huquqlari va barqaror rivojlanish maqsadlariga salbiy ta’siri yoritilgan; adabiyotlar sharhi va ikkilamchi ma’lumotlar tahlillaridan foydalanib, korrupsiyaning tarqalishi, uning turli shakllari va ayniqsa, davlat boshqaruvidagi oqibatlariga alohida e’tibor qaratilgan; korrupsiyaning jamiyat*

ishonchini susaytirishi, institutsional samaradorlikni pasaytirishi, resurslarni noto‘g‘ri taqsimlashi va sog‘liqni saqlash kabi muhim sohalarga jiddiy ta’sir ko‘rsatishi o‘rganilgan. Tadqiqotda, shuningdek, halollik madaniyatini shakllantirish, jamoatchilik xabardorligini oshirish hamda davlat xizmatlarida shaffoflik va hisobdorlikni ta’minlashning muhimligi kabi masalalar tahlil qilingan. Korrupsiyaning davlat boshqaruvi samaradorligi bilan o‘zaro aloqasini baholash, uning davlat boshqaruvi institutlariga ta’siri va davlat xizmatlari ko‘rsatishda qanday salbiy oqibatlar olib kelishi bayon etilgan. Shu bilan birga, maqolada tizimli islohotlar, shaffoflik, hisobdorlik, davlat xizmatchilari axloqiy kodeksini tubdan takomillashtirish va korrupsiyani samarali tarzda bartaraf etishga qaratilgan boshqa sa’y-harakatlar zarurligi ta’kidlangan. Bu yoshlar orasida axloqiy qadriyatlar va halollik madaniyatini shakllantirishning asosiy shartlaridan biridir. Bundan tashqari, maqolada rivojlangan va kurrupsiyadan xoli mamlakatlar misolida korrupsiyaga qarshi kurashish qat’iy qonunlar hamda hamjihatlikdagi sa’y-harakatlar orqali amalga oshirilishi qayd etilgan; korrupsiyaning nafaqat jamoatchilikni tashvishga soluvchi muammo, balki zaif boshqaruv, beqarorlikning kuchayishi va umumiy iqtisodiy qiyinchiliklarga sabab bo‘luvchi omil ekanligi aniq misollar asosida keltirilgan.

Kalit so‘zlar: *shaffoflik, davlat boshqaruvi, institutsional samaradorlik, fuqarolar ishtiroki, mexanizmlar, huquqiy savodxonlik, funksional chora-tadbirlar*

ВЛИЯНИЕ ФАКТОРОВ КОРРУПЦИИ В СИСТЕМЕ ГОСУДАРСТВЕННОГО УПРАВЛЕНИЯ

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Аннотация. *В данной статье освещается растущее глобальное влияние коррупции и её негативное воздействие на демократию, права человека и цели устойчивого развития. В рамках исследования, основанного на анализе литературы и вторичных данных, особое внимание уделяется распространению коррупции, её различным формам и, в частности, разрушительным последствиям в сфере государственного управления. В статье подчёркивается, как коррупция подрывает общественное доверие, снижает эффективность институтов, приводит к нецелевому распределению ресурсов и оказывает серьёзное влияние на ключевые сферы, такие как здравоохранение. В свою очередь, исследование акцентирует важность формирования культуры честности, повышения общественной осведомлённости, а также обеспечения прозрачности и подотчётности в сфере государственных услуг. Особое внимание уделено оценке сложной взаимосвязи между коррупцией и эффективностью государственного управления, влиянию коррупции на институты государственной власти и тем негативным последствиям, к которым она приводит при предоставлении государственных услуг в целом. Также подчёркивается необходимость системных реформ, прозрачности, подотчётности, радикального совершенствования этического кодекса государственных служащих и иных усилий по борьбе с коррупцией и её эффективному искоренению. Отдельно отмечается, что это является одним из ключевых условий формирования моральных ценностей и культуры честности у молодёжи. На примере развитых стран, свободных от коррупции, показано, что борьба с этим злом ведётся посредством строгого законодательства и скоординированных действий. В статье подчёркивается, что коррупция – это не только проблема, вызывающая тревогу у общества, но и фактор, провоцирующий ослабление управления, рост нестабильности и общие экономические проблемы.*

Ключевые слова: *прозрачность, государственное управление, институциональная эффективность, участие граждан, механизмы, правовая грамотность, функциональные меры*

Introduction

There is no secret that corruption-related offences are on the rise due to insufficient decisive actions to tackle corruption and reinforce public institutions, which undermines democracy, human rights, and jeopardizes the Sustainable Development Goals. One empirical approach to comprehend the evolution of corruption at international, regional, or local levels is through measurement indicators. Since the 1990s, various agencies across the globe have developed tools aimed at obtaining a more comprehensive understanding of corruption, its catastrophic impacts, and its deeply rooted nature. Critical methods for assessing corruption risks include opinion surveys and government statistical tools, with similar initiatives observed at national or local levels [1].

It is worth noting that the Corruption Perceptions Index, published annually by Transparency International, highlights Denmark and Finland as the top-ranking countries in terms of low corruption rates in 2023, with respective scores of 90 and 87 among 180 countries. In contrast, Afghanistan, North Korea, and Somalia rank the lowest, constituting 20, 17, and 11, respectively. The index represents that Uzbekistan has seen a modest gain compared to previous reports, meaning that although Uzbekistan has not achieved outstanding scores in corruption perception index, the country is making significant efforts.

It is common knowledge that corruption invariably represents a grueling challenge that can lead to severe consequences within a society. When corruption is unchecked and infiltrates public officials, it erodes trust in government, undermines institutional effectiveness, and compromises justice as a whole. To be specific, corruption has surpassed some control measures in a last decade; for instance, corruption within the healthcare sector during the COVID-19 pandemic has emerged as a global issue, for instance. In turn, Medicare-related corruption has a detrimental and unjust impact on individuals' lives. This issue affects both developed and developing nations on a large scale. In many developing countries, public health has been hindered by inadequate basic infrastructure, insufficient human resources, and a lack of necessary supplies and equipment, among other factors.

As we pointed out above, corruption and bribery erode public trust in public institutions and weaken the rule of law. These practices not only negatively influence a country's economy and development but also harm civilians by misallocating resources that could be directed toward essential services such as education, healthcare, safety and just to name a few. In this regard, promoting a culture of integrity and good ethics within public service is paramount [2]. This can be achieved through training and raising awareness among both civilians and public officials about the risks and repercussions of corruption while encouraging responsibility and citizen engagement in overseeing government activities.

A literature review on this topic will enhance our understanding of how corruption impacts the effectiveness of public administration, which is vital for identifying controversial areas and seeking solutions to improve public management. Investigating the relationship between corruption and public administration effectiveness is essential for enhancing governance, transparency, and the quality of government services. This not only benefits society as a whole but also improves governmental operations and efforts to fight against corruption. Fundamentally, the aim of this research is to evaluate corruption and its effects on the effectiveness of public administration. Furthermore, the aim is to explore the impact of corruption on

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the capacity of government institutions to perform their duties and adequately serve the public interest while offering a more comprehensive insight into the fundamental mechanisms that link corruption with administrative effectiveness [3].

Materials and methods

This study employs a multi-faceted approach to identify and evaluate corruption risks in public administration, accounting for legislative review, academic articles, report from international organizations, policy evaluation, alongside comparative analysis. The study's methodology includes analyzing legal frameworks, evaluating current practices, conducting comparative studies, raising awareness about corruption and developing proposals and so on. Through a thorough examination of existing legal measures against corruption, this paper aims to enhance our understanding and management of corruption, assess its risks, and explore how to modify legislation to better combat it [4].

These combined methods enable us to do a detailed research on this topic, offering essential insights into the devastating consequences of corruption and contributing to a better understanding of how to assess, identify and prevent corruption and its risks in government. Especially, the all-around analysis carried out will focus on identifying patterns, trends, and disparities in corruption levels and their relationship with public administration effectiveness across different countries and sectors on the whole [5].

Research results

Corruption is widely recognized as a major impediment to societal progress. It undermines the foundational pillars of democracy, harms public health, deprives citizens of essential services, and erodes public trust. This, in turn, urges us to figure out that there is an urgent the need for concerted efforts, including systemic reforms, transparency, accountability, ethical leadership, a continuous commitment to combatting corruption on the whole [6]. To address the current corruption-related situation and circumstances, we are expected to pay more attention to education as it plays a vital role in combating corruption by instilling ethical values and a culture of integrity in individuals from an early age. In addition, a collaborative approach among society, government, and institutions are paramount in the fight against corruption. While several developed and developing countries are making progress by establishing specialized anti-corruption mechanisms, enacting stricter laws, and promoting transparency in state governance, hands-on reforms always remain effectively to address this challenge [7].

Furthermore, citizen engagement is crucial, as many individuals must stay informed and actively participate in anti-corruption efforts by coming forward report suspicious activities and holding officials accountable [8].

It is important to recognize that corruption is not just a public concern—it contributes to various issues such as weakened government capacity, increased instability, and economic challenges consisting of black economy [9]. Addressing corruption requires a comprehensive approach that involves education, citizen engagement, and robust government action to foster integrity and transparency as a whole. Through the aforementioned measures, we can identify, assess, and root out corruption and corruption risks in public administration. However, achieving lasting results demands time, resources, political will, long-term perseverance, and resilience.

Analysis of research results

In recent years, policies promoting transparency, responsible public management, and citizens' access to public information have become crucial to reconnecting with the populace [10].

The increasing skepticism towards public administrations has led to a new focus on transparency, as governments across the globe strive to reclaim lost legitimacy [11]. Many individuals recognize the prevalence of corruption in the public sector and view it as a major pressing concern for the growth of populace. However, various barriers hinder the reporting of corrupt activities, including lack of information, fear of retaliation, insufficient support, and anxiety regarding authorities.

It is widely acknowledged that corruption poses significant challenges and dire ramifications, negatively affecting efforts to enhance governance and public administration quality. This, in turn, can erodes public trust in government institutions, as citizens may feel that officials are not acting in their interests and that the system benefits a select few rather than the broader population. Furthermore, corruption also diminishes the credibility of government bodies and disrupts the social contract between the state and its citizens as a lack of trust in governmental entities can adversely affects national political stability and economic development on the whole [10]. A lack of awareness about corruption further fosters feelings of frustration and powerlessness among the populace. For example, a study conducted in South Africa regarding e-government implementation found that citizens distrust local municipalities, believing them to be rife with corruption. Similarly, Jones, one of the most renowned scientists in the domain of law, notes that public trust in Malaysian government institutions has been eroded due to corruption. According to these two distinguished scientists, the pervasive nature of corruption, particularly at high government levels, has led to diminished confidence in the integrity and transparency of these institutions. In a sense, it is apparent that this erosion of trust can significantly impact government stability and legitimacy, as well as perceptions regarding the effectiveness of governmental policies and initiatives [12].

Based on my experience and knowledge, public confidence is adversely affected by various forms of corruption within government institutions in some countries. Corruption undermines trust in these institutions, which, in turn, negatively impacts the effectiveness and efficiency of public policies. Additionally, it influences the political stability and economic development of the country, as well as the credibility of governmental bodies and the social contract between the state and its citizens, which is because, without a doubt corruption can diminish the efficacy of government policies, hinder economic growth, and perpetuate poverty and underdevelopment nationwide.

To prevent and combat corruption in public administration, top-down mechanisms are essential. For instance, when independent bureaucrats hold politicians accountable by criticizing inefficiencies in public works projects, it can lead to a reallocation of public resources from mismanaged projects to initiatives that promote growth, such as well-planned infrastructure [13]. Although supreme audit institutions are not officially designated as anti-corruption agencies, both theoretical and empirical research indicates that their functions can effectively lessen corruption. Theoretically, these institutions can deter public officials from engaging in corrupt practices due to the transparency and accountability inherent in their auditing processes.

The public oversight and transparency procedures for expenditures related to public procurement must include stringent requirements, such as the necessity to submit spending data to national transparency portals or reports to Anti-corruption agencies. Moreover, the use of these funds

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is subject to additional scrutiny from both national and supervisory bodies of every country [14].

Numerous programs and reforms in administrative governance across various countries have been implemented, where governance theories are extensively discussed, leading to improvements in public administration by transforming traditional practices. Increased budget transparency correlates with enhanced governance management, resulting in greater accountability from the government, providing essential information to the public, and reducing corruption overall.

A glaring example can be found in Slovakia. During the electoral period from 2012 to 2016, numerous corruption allegations surfaced within public administration and high political circles. Both political and private sectors impacted by corruption during this time included healthcare, information technology services, and e-government. Concurrently, the Slovakian government initiated anti-corruption measures, such as creating a state-run electronic marketplace for public procurement aimed at eliminating clientelism within governmental and local institutions [15]. Additionally, amendments were made to public procurement laws, new electoral codes focusing on political party financing were established, and legislation to protect whistleblowers who come forward to report corrupt or anti-social activities was enacted. In our view, Slovakia served as a role model in addressing and mitigating corruption.

Last but not least, leadership and cultural factors play vital roles in the fight against corruption. Countries such as Singapore and Hong Kong, which have successfully reduced corruption, demonstrate strong leadership and enforce zero-tolerance policies. They have also put a lot of effort to transform the culture surrounding corruption through effective strategies.

Furthermore, a significant number of countries have adopted different mechanisms to find a remedy for corruption in public administration. These include the use of digital technologies and e-government, the involvement of supreme audit institutions, specific institutional reforms, and policies promoting transparency and public access to information [16]. It is obvious that the goal of these mechanisms is to enhance transparency, eliminate conditions that ignite corruption, and strengthen the legal framework.

It is also worth noting that the research carried out by Sanchez-Hernandez et al. in 2020 in Spain underscores that corruption puts unprecedented strain on government effectiveness. It emphasizes that the global crisis, combined with poor organizational practices, has revealed alarming corruption issues within local public administration, particularly in areas like urban planning, construction, and public procurement as well. These corrupt activities pose a threat and negatively influence government efficacy and public administration as corruption can skew resource allocation towards lower-priority projects or individuals who do not require assistance, rather than channeling funds into initiatives that benefit society as a whole [17].

Additionally, corruption can also raise the expenses related to government projects, as corrupt officials may demand bribes to approve initiatives or grant contracts [18]. This can lead to the selection of less efficient suppliers or the execution of unnecessary or substandard projects. Corruption within government is acknowledged as a significant issue affecting the infrastructure of both developing and developed countries. The nature and forms of corruption have evolved over the course of time, complicating prosecutors' efforts to manage cases, which has fostered skepticism about the effectiveness of anti-corruption strategies

implemented by governments [19]. Furthermore, corruption in the governmental sectors impacts social stability and security, harms national and international reputations, and undermines democratic principles, ethics, and justice [20]. In our opinion, Huang has the point here and I personally agree with it. It is widely understood that corruption erodes public trust in government institutions, which, in turn, impacts the efficiency and effectiveness of public policies. In particular, corruption in public procurement compromises the proper use of public funds, as contracts may be awarded to companies that fail to provide the best prices or services, leading to an inefficient allocation of resources. Additionally, corruption can stifle competition in bidding processes, further diminishing the effectiveness of contract allocation and public fund utilization as a whole. Having discussed the critical aspects and nuances of corruption, it is essential to highlight some key measures and recommendations.

– Putting a lot of effort to consolidate transparency in local governments enhances civic engagement and accountability, helping to prevent corruption and mismanagement by making governmental actions and decisions accessible to the public;

– Implementing public education initiatives for civil servants to combat corruption is absolutely important, as these efforts are designed to boost transparency, remove conditions conducive to corruption, and reinforce the legal system;

– City officials can address corruption using electronic participation tools, which are most effective when supported by adequate physical resources such as funding and internet access, along with social capital and public demand for accountability;

– Digital technologies like e-government and open data effectively help us prevent public sector corruption by enabling contactless interactions between officials and citizens, thus it reduces the likelihood of bribery and gifts, formalizing procedures, and mitigating corruption risks through legal frameworks;

– Rule of law and anti-corruption measures are crucial for fostering open government and prosperity, particularly regarding social capital and environmental factors. However, open government initiatives alone will not fully enhance prosperity without ongoing efforts to develop or sustain these aforementioned mechanisms.

If we all try our utmost with adequate political and public will, we can root out deeply rooted corruption practices in both public and private sectors as a whole.

Conclusion

To conclude, education is crucial in the fight against corruption. Instilling ethical values from a young age and cultivating a culture of integrity can significantly reduce the likelihood of corruption in the future. It is vital for young individuals to grasp the significance of honesty, accountability, and respect for the law from an early age. As we know corruption poses a serious challenge that impacts numerous societies globally, addressing this issue necessitates a collaborative and strenuous effort among society, government, and institutions. It is promising to note that many nations have taken decisive steps to enhance oversight and prevent corruption. Establishing specialized anti-corruption agencies, bringing in stricter legislation, and promoting transparency in public administration are essential measures moving forward.

Nevertheless, much work remains to be done. It is critical for citizens to stay informed and actively participate in combating corruption as reporting any suspicious activities and holding public officials accountable are fundamental actions to build corruption-free society. Furthermore,

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governments must persist in strengthening control and sanctioning mechanisms while promoting transparency and ethical standards in public administration.

Ultimately, a comprehensive strategy encompassing education, citizen participation, and robust government action along with top-down mechanism is paramount to foster integrity, enhance transparency, and effectively address corruption as a whole. However, sustained commitment from leadership and the active involvement of civil society are crucial for desired results alongside long-term success. All the aforementioned measures and recommendations require time, resources, concerted effort, and significant legislative reforms in various countries.

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INSONNING QULAY ATROF-MUHITGA BO‘LGAN KONSTITUTSIYAVIY HUQUQI: XUSUSIYATLARI VA AMALGA OSHIRISH MEXANIZMLARI

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Annotatsiya. *Tabiatni muhofaza qilishdan asosiy maqsad inson salomatligi hamda uning hayot uchun qulay va sof tabiiy muhitga bo‘lgan ajralmas huquqini ta’minlashdan iborat. Ushbu maqolada insonning qulay atrof-muhitga bo‘lgan huquqining huquqiy va konstitutsiyaviy jihatlari tahlil qilinadi. Bu huquq global miqyosda mustaqil huquq sifatida tobora keng tan olinmoqda. Tadqiqotda mazkur huquqning asosiy xususiyatlari, qamrovi va amalga oshirish mexanizmlari ilmiy adabiyotlar, xalqaro huquqiy normalar hamda milliy va xorijiy davlatlarning qonunchiligi asosida ko‘rib chiqiladi. Maqolada qulay atrof-muhit huquqining rivojlanishi, uning fundamental inson huquqlari bilan bog‘liqligi va bilvosita ularning tarkibidan shakllanib chiqib, bugungi kunda 160 dan ortiq mamlakatlarning milliy konstitutsiyalari va qonunchiligida alohida tan olingan va sud orqali himoya qilinadigan mustaqil huquqqa aylanishi bo‘yicha bosib o‘tgan yo‘li tahlil qilinadi. Xususan, qulay atrof-muhit huquqining xalqaro miqyosda e’tirof etilishi global hamjamiyatning sog‘lom atrof-muhitga nisbatan yakdilligi va intilishini ko‘rsatadi. Shuningdek, maqolada mazkur huquqning boshqa asosiy inson huquqlari bilan o‘zaro bog‘liqligi alohida yoritilib, uning samarali amalga oshirilishi boshqa inson huquqlarining to‘liq ta’minlanishi uchun zarur ekani ta’kidlanadi. Maqola yakunida qulay atrof-muhit huquqi va uni amalga oshirish mexanizmlari hamda ularni samarali ro‘yobga chiqarishga qaratilgan taklif va fikr-mulohazalar berilgan.*

Kalit so‘zlar: *inson huquqlari, qulay atrof-muhit huquqi, amalga oshirish mexanizmlari, moddiy va protseduraviy huquqlar, o‘zaro bog‘liq huquqlar, barqaror atrof-muhit, O‘zbekiston*

КОНСТИТУЦИОННОЕ ПРАВО ЧЕЛОВЕКА НА БЛАГОПРИЯТНУЮ ОКРУЖАЮЩУЮ СРЕДУ: ОСОБЕННОСТИ И МЕХАНИЗМЫ РЕАЛИЗАЦИИ

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Аннотация. *Основной целью охраны природы является обеспечение здоровья человека и его неотъемлемого права на благоприятную и чистую природную среду. В данной статье анализируются правовые и конституционные аспекты права человека на благоприятную окружающую среду, которое на глобальном уровне всё чаще признаётся как самостоятельное*

право. В исследовании рассматриваются ключевые особенности, охват и механизмы реализации данного права на основе научной литературы, международных правовых норм, а также национального законодательства и законодательства зарубежных государств. В статье проводится анализ развития права на благоприятную окружающую среду, его взаимосвязи с фундаментальными правами человека и постепенного выделения его из их состава в качестве самостоятельного права, что на сегодняшний день признано и закреплено в конституциях и законодательствах более чем 160 стран, а также подлежит судебной защите. В частности, признание данного права на международном уровне демонстрирует единство и стремление мирового сообщества к обеспечению здоровой окружающей среды. Кроме того, в статье детально раскрывается взаимосвязь данного права с другими основными правами человека, подчёркивается, что его эффективная реализация является необходимым условием для полноценного обеспечения остальных прав человека. В заключительной части статьи представлены предложения и научные выводы по совершенствованию механизмов реализации права на благоприятную окружающую среду и обеспечению их эффективности.

Ключевые слова: *права человека, право на благоприятную окружающую среду, механизмы реализации, материальные и процедурные права, взаимосвязанные права, устойчивое развитие, Узбекистан*

THE CONSTITUTIONAL RIGHT OF A PERSON TO A FAVORABLE ENVIRONMENT: FEATURES AND IMPLEMENTATION MECHANISMS

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Abstract. *The main goal of nature protection is to ensure human health and the inalienable right to a favorable and clean natural environment. This article analyzes the legal and constitutional aspects of a person's right to a favorable environment. This right is increasingly recognized globally as an independent right. The study examines the main features, scope, and implementation mechanisms of this right based on scientific literature, international legal norms, and the legislation of national and foreign countries. The article analyzes the development of favorable environmental law, its connection with fundamental human rights, and the path it has taken to become an independent law, which is now recognized and protected by the courts in the national constitutions and legislation of more than 160 countries. In particular, the international recognition of the right to a favorable environment demonstrates the unity and commitment of the global community to a healthy environment. The article also highlights the interrelationship of this right with other fundamental human rights, emphasizing that its effective implementation is necessary for the full realization of other human rights. At the end of the article, proposals and comments are given on the law on a favorable environment and the mechanisms for its implementation, as well as their effective implementation.*

Keywords: *human rights, the right to a favorable environment, implementation mechanisms, material and procedural rights, related rights, sustainable environment, Uzbekistan*

Kirish

Insonning asosiy huquqlarini ta'minlash va amalga oshirish barqaror atrof-muhitga bog'liq bo'lib, bu hayotiy faoliyat uchun qulay va xavfsiz muhit, toza havo, sifatli suv va oziq-ovqat kabi bir qator masalalarni o'z ichiga qamrab oladi. Mazkur yo'nalishda oxirgi vaqtlarda insonning qulay atrof-muhitga bo'lgan huquqi alohida mustaqil huquq sifatida global miqyosda e'tirof etilayotganligini qayd etib o'tish lozim. Mazkur huquq ekologiyani muhofaza qilish va barqaror atrof-muhitga ega bo'lish orqali avvalo inson hayoti va sog'lig'ini himoya qilishga qaratil-

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gan. Qulay atrof-muhit huquqi nafaqat inson huquqlari buzilishi, balki atrof-muhitga zarar yetkazish va ifloslanishdan ham muhofaza qilishni qamrab oladi [1]. Tadqiqotlar insonning qulay atrof-muhitga bo‘lgan huquqini e’tirof etish va kafolatlash, atrof-muhit holatini yaxshilash, zararli ta’sirni kamaytirish va ekologiya muhofazasiga ijobiy ta’sir qilishini ko‘rsatmoqda.

Shaxsning ekologik huquqlarini kafolatlash uchinchi avlod inson huquqlariga taalluqlidir. Agar birinchi avlod fuqaroviy va siyosiy huquqlarga, ikkinchi avlod iqtisodiy, ijtimoiy va madaniy huquqlarga tegishli bo‘lsa, uchinchi avlod taraqqiyotga bo‘lgan huquq, qulay atrof-muhit va ekologiyaga oid huquqlarga taalluqli hamda avvalgi ikki avlodga mansub asosiy inson huquqlari bilan o‘zaro bog‘liq hisoblanadi [2].

Inson huquqlariga oid eng asosiy xalqaro bazaviy hujjatlar – Inson huquqlari umumjahon deklaratsiyasi (1948-yil), Fuqaroviy va siyosiy huquqlar to‘g‘risidagi xalqaro konvensiya hamda Iqtisodiy, ijtimoiy va madaniy huquqlar to‘g‘risidagi konvensiyada insonning ekologik huquqlari to‘g‘ridan to‘g‘ri e’tirof etilmagan bo‘lsa-da, insonning munosib va farovon hayot kechirishini ta’minlashga qaratilgan yashash, sog‘liq, oziq-ovqat, suv, uy-joy, munosib ish va o‘z taqdirini o‘zi belgilashga oid huquqlari belgilab berilgan.

Atrof-muhit muhofazasiga inson huquqlari orqali yondashuv natijasida hozirgi kunda shaxsning qulay atrof-muhitga bo‘lgan huquqi xalqaro va mintaqaviy hujjatlar, milliy konstitutsiyalar va qonunchilikda e’tirof etib kelinmoqda. Bugungi kunga kelib, dunyoning 160 dan ortiq davlatlar qonunchiligida, shu jumladan, 110 dan ortiq davlatlarning Konstitutsiyasida insonning qulay atrof-muhitga bo‘lgan huquqi e’tirof etilgan [3] bo‘lib, mazkur davlatlar soni muttasil oshib bormoqda.

Xususan, umumxalq referendumi asosida 2023-yilda yangi tahrirda qabul qilingan O‘zbekiston Respublikasi Konstitutsiyasida shaxsning qulay atrof-muhitga ega bo‘lish huquqi ilk bor konstitutsiya darajasida kafolatlandi. Mazkur huquq milliy qonunchilikda yangi norma emas, balki 30 yildan ortiq vaqt davomida mavjud bo‘lganligini e’tirof etish kerak. O‘zbekiston Respublikasining 1992-yil 9-dekabrda qabul qilingan “Tabiatni muhofaza qilish to‘g‘risida”gi 754–XII-son Qonunida tabiiy muhit sharoitlarini saqlashning, tabiiy resurslardan oqilona foydalanishning huquqiy, iqtisodiy va tashkiliy asoslari belgilangan, shuningdek, insonning qulay atrof-muhitga bo‘lgan huquqi mustahkamlangan. Biroq mazkur huquq tushunchasi, uning qamrov doirasi va amalga oshirish mexanizmlari yetarli darajada tadqiq qilinmagan va sharhlanmaganligini inobatga olgan holda, maqolada qulay atrof-muhit huquqi tushunchasi, uning o‘ziga xos jihatlari, uning tarkibiy elementlari va amalga oshirish mexanizmlari, xalqaro standartlar va milliy qonunchilik jihatlari ko‘rib chiqiladi.

Material va metodlar

Mazkur tadqiqotda ilmiy adabiyotlar tahlili, qiyosiy-huquqiy tahlil, normativ-huquqiy tahlil, huquqiy ekstrapolyatsiya va tizimli tahlil usullaridan foydalanildi. Tadqiqot usullari insonning qulay atrof-muhitga bo‘lgan huquqining tushunchasi, uning xususiyatlari, qamrov doirasi va amalga oshirish mexanizmlari, ushbu yo‘nalishdagi ilmiy adabiyotlar, xalqaro standartlar, milliy va xorijiy davlatlar qonunchiligini ko‘rib chiqish, qonunchilikdagi bo‘shliqlar va muammolarni tahlil qilish imkonini beradi. Shuningdek, tanlangan tadqiqot metodlari yangi vujudga kelgan mazkur huquqqa turli tomonlama kompleks yondashishni ta’minlaydi.

Tadqiqot natijalari

Fuqarolarning qulay (sog‘lom) atrof- muhitga ega bo‘lish huquqi bir qator olimlar tomonidan o‘rganib chiqilgan bo‘lib, ilmiy adabiyotlarda qulay atrof-muhit atamasi va tushunchasi, uning qamrov doirasi masalasida yagona yondashuv mavjud emas [4; 5]. Bunda milliy konstitutsiyalar va qonunchilikda

“qulay atrof-muhit” atamasi keng qo‘llangan bo‘lsa, xalqaro standartlarda insonning “toza, sog‘lom va barqaror atrof-muhitga bo‘lgan huquqi” atamasini qo‘llash tobora keng ommalashmoqda. Xususan, BMT va uning Inson huquqlari kengashi tomonidan dastlab mazkur huquq xavfsiz, toza, sog‘lom va barqaror atrof-muhitga bo‘lgan huquq sifatida qayd etilgan bo‘lsa, keyinchalik “toza, sog‘lom va barqaror atrof-muhit” atamasi orqali keng e’tirof etilmoqda. Mintaqaviy hujjatlar va davlatlarning milliy qonunchiligida esa “qulay yoki sog‘lom atrof-muhit” atamasidan ko‘proq foydalanilayotganligini ko‘rish mumkin. Mazkur huquq qanday atalishidan qat’i nazar, insonning yashashi va faoliyati uchun qulay, sog‘lom va barqaror atrof-muhitni ta’minlashga qaratilganligini qayd etib o‘tish lozim.

Tadqiqotlarda R. Ikramov mazkur huquqni ifodalashda “qulay atrof tabiiy muhit” atamasidan foydalanib, bu “inson yashashi, mehnat qilishi, dam olishi uchun zarur bo‘lgan atrof tabiiy muhit sifati, qonun, me’yorlar, standartlar va boshqa talablarga javob beradigan har bir insonni o‘rab turgan atrof tabiiy muhit” deya ta’rif bergan [6]. I. Krasnova qulay atrof-muhit nafaqat o‘rnatilgan normativlarga muvofiqlik, balki ekologik xavfsizlikni ta’minlash, tabiiy resurslarni saqlash va qayta tiklash, tabiatning estetik va boshqa nomoddiy qadriyatlarini muhofaza qilish kabi parametrlarni ham o‘z ichiga qamrab olishini qayd etgan [7].

A. Gulimov mazkur huquqni lo‘nda qilib “har bir insonning hayoti va sog‘lig‘iga salbiy ta’sir ko‘rsatmaydigan atrof-muhit” qulay atrof-muhit hisoblanishini [8] ko‘rsatib o‘tgan. M. Brinchukka ko‘ra, atrof-muhit holati ekologik qonunchilikda belgilangan talablar va normalarga, shu jumladan, tozalik (ifloslanmaganlik), resurslarning tejamkorligi, ekologik barqarorlik, biologik turlar xilma-xilligi va estetik qadriyat kabi ko‘rsatkichlarga muvofiq bo‘lsa, qulay atrof-muhit hisoblanadi [4, 48-b.].

S. Giorgetta xalqaro hujjatlar, jumladan, Orxus konvensiyasi qulay atrof-muhit huquqi tushunchasi yoki ta’rifini aniq bermagan holda mazkur huquqni tan olganligini qayd etadi. Mazkur yondashuv turlicha qarashlar sababli yagona ta’rif berish qiyinligi, turli xalqlar o‘rtasidagi madaniy xilma-xillikni inobatga olib, uni turlicha sharhlash, shuningdek, sudlar tomonidan ham sharhlash mumkinligi bilan izohlanadi [9, 187-b.]. Mazkur huquqni tanqid qiluvchilar uning juda mavhum, amaldagi inson huquqlari va ekologik qonunchilik uchun ortiqcha ekanligi, tatbiq etib bo‘lmasligi, sudlashuvlar soni oshib ketishi, samarasiz bo‘lishi ehtimoli yuqoriligini ta’kidlagan bo‘lsa-da, bu kabi xavotirlar o‘z tasdig‘ini topmagan [10].

Qulay atrof-muhit huquqiga olimlar tomonidan turlicha ta’riflar berilganligi, bu borada yagona to‘xtamga kelinmaganligi, ilmiy bahs-munozaralar hali davom etayotganligi, mazkur huquqning ta’rifi uning xususiyatlari va qamrov doirasini to‘liq ochib bermasligini ta’kidlash lozim. Shuni inobatga olib, mazkur maqolada ushbu huquqni ta’riflashdan tiyilgan holda uning o‘ziga xos xususiyatlari, elementlari va amalga oshirish mexanizmlari ko‘rib chiqilishiga alohida e’tibor qaratish orqali masalaga yondashiladi.

Bugungi kunda qulay atrof-muhit huquqi xalqaro, mintaqaviy va milliy darajada alohida mustaqil huquq sifatida e’tirof etilgan. Ushbu huquq boshqa inson huquqlari kabi universal, ajralmas, o‘zaro bog‘liq bo‘lib [11], ular bir-birini taqozo etadi. Qulay atrof-muhit huquqi boshqa huquqlar bilan chambarchas bog‘liq [12] bo‘lib, qulay atrof-muhit yashash va sog‘liq kabi inson huquqlarini amalga oshirishning birlamchi shartidir. Bunda barcha inson huquqlariga adolatli va teng tarzda, bir xil daraja va ahamiyat bilan qaralishi kerak [13]. Bu esa insonning biror huquqi boshqasidan ustun qo‘yilmasligi [14], barchasiga birdek qarash va ro‘yobga chiqarish lozimligi, shuningdek, sud orqali himoya qilish mum-

kin bo‘lgan huquqlardan hisoblanishini qayd etish lozim.

Qulay atrof-muhit huquqi dualistik huquq toifasiga kirib, ham inson huquqlari, ham atrof-muhitni muhofaza qilishga qaratilganligi [15, 5-b.] bilan ahamiyatli. Shuningdek, mazkur huquq ham individual, ham kollektiv huquq sifatida e’tirof etilgan [16]. Shundan kelib chiqib, Brayan Preston ushbu huquqni toifalashdan qochgan holda, uni “huquqlar klasteri” sifatida ifodalaydi hamda fuqaroviy va siyosiy huquqlar bilan birga, iqtisodiy, ijtimoiy va madaniy huquqlarni ham o‘z ichiga qamrab olishini ta’kidlaydi [14].

Ilmiy adabiyotlar, inson huquqlariga oid hujjatlarda qulay atrof-muhitga bo‘lgan huquq moddiy va protseduraviy huquqlarga ajratilgan. B. Preston mazkur huquq tarkibini moddiy, protseduraviy va vaqtlararo komponentlarga ajratadi [14]. Mazkur huquqning vaqtlararo jihati ushbu huquqni hozirgi va kelajak avlodlar tomonidan birdek amalga oshirish imkoniyatini nazarda tutadi. Axborotga ega bo‘lish, ekologik boshqaruvda (qarorlar qabul qilishda) ishtirok etish va odil sudlovni ta’minlash mazkur huquqning protseduraviy jihatlari hisoblanadi. Qulay atrof-muhit huquqi inson huquqlariga oid asosiy hujjatlar, shuningdek, Atrof-muhit va taraqqiyotga oid Rio deklaratsiyasi hamda Orxus konvensiyasida ham mustahkamlangan. Bunda axborotga ega bo‘lish huquqi ekologik ta’lim va xabardorlikni ham o‘z ichiga qamrab oladi.

Yashash, sog‘liq-salomatlik, barqaror atrof-muhit, toza havo, xavfsiz va yetarli suv, oziq-ovqat, barqaror ekotizim va bioxilmaxillik, zaharli kimyoviy moddalardan xoli muhit, turar-joyga bo‘lgan huquq mazkur huquqning moddiy tarkibini tashkil etadi. Bunda moddiy huquq elementlari har bir mintaqa va hudud xususiyatidan kelib chiqib farqlanishi, ahamiyati turlicha bo‘lishi, vaqt o‘tgan sari rivojlanib borish, yangi elementlar qo‘shish hisobiga rivojlanish xususiyatiga ega. Jumladan, BMT maxsus ma’ruzachisi 2024-yilgi hisobotida uning moddiy elementlari sifatida toza havo, xavfsiz iqlim, xavfsiz va yetarli suv hamda sanitariya, sog‘lom va barqaror oziq-ovqat, yashash, ishlash va dam olish uchun zararli (zaharli, kimyoviy) ta’sirdan xoli muhit, sog‘lom ekotizim va bioxilmaxillikni keltirib o‘tgan [17].

Prestonga ko‘ra, sog‘lom atrof-muhitga bo‘lgan huquq Inson huquqlari umumjahon deklaratsiyasida keltirilgan bir qator huquqlarni qamrab oladi. Yashash tarzi, buzilgan huquqlarni tiklash, shaxsiy, oilaviy hayot, uy-joy va yozishmalar daxlsizligi va ularga aralashmaslik, fikr va uni ifoda etish erkinligi, maqbul turmush darajasiga ega bo‘lish hamda jamiyatning madaniy hayotida ishtirok etish huquqi shular jumlasidandir. Mazkur huquqlarga qo‘shimcha ravishda Fuqaroviy va siyosiy huquqlar to‘g‘risidagi konvensiya odil sudlov, erkin namoyishlarga bo‘lgan huquq, Iqtisodiy, ijtimoiy va madaniy huquqlar to‘g‘risidagi konvensiya esa yetarli oziq-ovqat, turar-joy, suv va sanitariya, sog‘liqqa bo‘lgan huquqlarni o‘z ichiga oladi [14].

Ushbu huquq bir vaqtning o‘zida majburiyat keltirib chiqaradi [6, 12-b.]. B. Preston buni “korelativ majburiyat ” deb atab, bu hurmat qilish, himoya qilish va ro‘yobga chiqarish kabi uchta majburiyatni o‘z ichiga olishini ta’kidlagan [14]. Yuqoridagi majburiyatlar, o‘z navbatida, huquqning komponentlaridan kelib chiqib, to‘rt toifadagi (moddiy, protseduraviy, vaqtlararo va maxsus) majburiyatlarni keltirib chiqaradi. Maxsus majburiyat aholining zaif qatlamlari (bolalar, nogironlar, qariyalar, ayollar, tub aholi vakillari, kambag‘allar)ni qo‘shimcha muhofaza qilish choralarini ko‘rishni anglatadi. Mazkur majburiyatlar inson huquqlari va atrof-muhitga oid 16 ta asosiy tamoyillarda ham alohida qayd etib o‘tilgan [18].

Qulay atrof-muhit huquqining o‘ziga xos xususiyatlaridan yana biri mazkur huquqni fuqaroviy va siyosiy huquqlar kabi darrov tatbiq etish imkoniyatining yo‘qligidir. Shu jihatdan boshqa inson huquqlariga nisbatan

insonning qulay atrof-muhitga bo‘lgan huquqini amalga oshirish darajasi juda past [19]. Shunga ko‘ra, davlatlar zimmasiga mazkur huquqni progressiv tarzda (asta-sekin yoki bosqichma-bosqich), ya’ni har bir davlatdagi iqtisodiy va texnologik imkoniyatlardan kelib chiqib uni to‘liq amalga oshirish chora-tadbirlarini ko‘rish yuklatilgan [20].

BMT maxsus ma’ruzachisi hisobotida qulay atrof-muhitga bo‘lgan huquqning amalga oshirilishiga oid asosiy muammo va qiyinchiliklar sifatida joriy iqtisodiy modellar va nobarqaror rivojlanish, iqlim o‘zgarishi va atrof-muhit ifloslanishi, qonun ustuvorligi zaifligi, axborot ochiqligi, qaror qabul qilishda jamoatchilik ishtiroki va odil sudlovga oid to‘sqinliklar, urush va nizolar sanab o‘tilgan [17].

Qulay atrof-muhitga bo‘lgan huquq protseduraviy huquqlar orqali amalga oshirilib, bular quyidagi uchta asosiy elementdan tarkib topgan: axborotga ega bo‘lish, ekologik boshqaruvda (qarorlar qabul qilishda) ishtirok etish va odil sudlovni ta’minlash.

BMT hujjatlarida mazkur huquqlarni amalga oshirish bo‘yicha davlatlar va biznes sektor zimmasiga muayyan majburiyatlar yuklatilgan. Jumladan, inson huquqlari va atrof-muhitga oid 16 ta asosiy tamoyillarda davlat mazkur huquqlarni hurmat qilishi, himoya qilishi va ro‘yobga chiqarishiga oid bir qator majburiyatlar belgilangan. Xususan, mazkur majburiyatlar atrof-muhit masalasida so‘z erkinligi, jamoat tashkilotlariga birlashish va tinch namoyishlarga bo‘lgan huquqni hurmat va himoya qilish, ekologiya va inson huquqlari yo‘nalishida faoliyat yurituvchi shaxslar, guruhlar va tashkilotlarga to‘sqinliksiz ishlash imkoniyatini berishni nazarda tutadi. Shuningdek, hujjatda ekologik ta’lim va xabardorlikni oshirish, axborotga kirish imkonini berish, loyiha va siyosatning atrof-muhitga va inson huquqlariga ta’sirini baholashni amalga oshirish, qaror qabul qilishda jamoatchilik ishtirokini ta’minlash va ular fikrini inobatga olish, transchegaraviy ekologik ta’sir masalalarida hamkorlik qilish kabi majburiyatlar ko‘rsatilgan. Ushbu tamoyillarda odil sudlov yo‘nalishida inson huquqlari va ekologiyaga oid qonunbuzilishlar bo‘yicha samarali huquqiy vositalardan foydalanish imkoniyatini taqdim etish, ekologik standartlarga davlat va xususiy sektor tomonidan amal qilinishini ta’minlash, aholining zaif qatlamlari huquqlarini himoya qilish bo‘yicha qo‘shimcha choralarni ko‘rish nazarda tutilgan [18].

Mazkur huquqni amalga oshirish vaqt va resurslarni talab etishi sababli, B. Preston uni to‘rt elementga ajratadi. Bular daxlsizlik (ajratmaslik) elementi, minimal asosiy majburiyatlarni ta’minlash, progressiv (bosqichma-bosqich) amalga oshirish va mavjud resurslardan maksimal foydalanishni o‘z ichiga oladi.

Qulay atrof-muhit huquqining daxlsizlik elementi barcha holatlarda mazkur huquqni kafolatlash, unga daxl qilmaslik, buzmaslik, cheklamaslikni nazarda tutadi. Bu fuqaroviy va siyosiy huquqlarga taalluqli huquqlarni hech qanday to‘sqinsiz to‘liq amalga oshirishni nazarda tutadi. Iqtisodiy, ijtimoiy va madaniy huquqlarga nisbatan esa bu eng minimal asosiy majburiyatlarni belgilash orqali ro‘yobga chiqarishni ko‘zda tutadi. Bunda minimal asosiy majburiyatlarni ta’minlash uchun qulay atrof-muhitga oid moddiy huquq elementlari yetarli bo‘lishi, jismonan foydalanish imkoni bo‘lishi, qiymati (narxi) kishilarning moliyaviy imkoniyatlariga mos (maqbul) bo‘lishi, xavfsiz (sifatli) bo‘lishi qayd etilgan. Ba’zi olimlarga ko‘ra, kishilarning moliyaviy imkoniyatlariga mos narx uy-ro‘zg‘or daromad yoki xarajatlarning 2–6 foizini tashkil etsa, maqbul hisoblanadi [21]. Minimal asosiy majburiyatlar retrogressiyaga (orqaga qaytish, amaldagi huquq yoki standartlarni pasaytirish, zaiflashtirish) yo‘l qo‘ymaslik va turli xil belgilarga ko‘ra kamsitmaslikni nazarda tutadi. Retrogressiya tamoyili davlatlar zimmasiga atrof-muhit va inson salomatligi muhofazasini amaldagi da-

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rajadan bevosita yoki bilvosita zaiflashtirish, pasaytirish yoki yomonlashtirishni taqiqlaydi. Mazkur tamoyil Fransiya, Belgiya, Vengriya, Janubiy Afrika va ko‘plab Lotin Amerikasi mamlakatlarida mustahkamlangan [10].

B. Preston mazkur huquqlarni progressiv amalga oshirishni vertikal va gorizontal darajaga ajratadi. Gorizontal barcha insonlarga birdek tatbiq etishni nazarda tutsa, vertikal daraja sekinlik bilan uning sifat darajasini tepaga qarab oshirib borishni nazarda tutadi [14].

Majburiyatlarning to‘rtinchi turi mavjud resurslardan maksimal foydalanishni nazarda tutadi. Bu o‘z ichiga resurslarni aniqlab olish, ularning maksimal yetarliligini ta’minlash, ularni maksimal taqsimlash va ulardan maksimal foydalanishni qamrab oladi. Mazkur resurslarga moliyaviy, texnologik, institutsional, axborot, tabiiy va inson resurslari kiradi. Bunda minimal majburiyatlarni bajarishda davlatlar resurslar yetishmovchiligini ro‘kach qilmasdan masalaga yondashishi kerakligi ta’kidlangan [14].

Atrof-muhit muhofazasi va inson huquqlari aloqadorligi dastlab Stokgolm deklaratsiyasida (1972-yil) qayd etilgan. Hujjatda insonning munosib hayot sharoiti va sifatli atrof-muhitga bo‘lgan huquqlari e’tirof etiladi. Atrof-muhit va taraqqiyotga oid Rio deklaratsiyasi (1992-yil) esa inson huquqlari va atrof-muhit muhofazasi o‘rtasidagi bog‘liqlikni yanada mustahkamlaydi. Deklaratsiyada barqaror rivojlanishga oid xavotirlar markazida inson turishi va uning tabiat bilan uyg‘unlikda sog‘lom va farovon hayot kechirishga haqli ekanligi belgilangan.

BMT Bosh Assambleyasi tomonidan qabul qilingan *Barqaror rivojlanish maqsadlari*da (2015-yil) inson huquqlari va qulay atrof-muhitga ega bo‘lish huquqlari chambarchas bog‘liqlikda keltirilgan bo‘lib, mazkur maqsadlar insonning barcha huquqlarini ro‘yobga chiqarish, ularni hurmat qilish va qo‘llab-quvvatlashga qaratilgan. Jumladan, 3-maqsad fuqarolar sog‘lig‘i va farovonligi, 6-maqsad toza suv va sanitariya, 13–15-maqsadlar iqlim o‘zgarishi va atrof-muhit muhofazasi masalalariga bag‘ishlangan.

Qulay atrof-muhitga bo‘lgan huquq mintaqaviy hujjatlarda ham o‘z ifodasini topgan. Masalan, Inson va fuqaro huquqlari to‘g‘risidagi Afrika xartiyasida barcha insonlar rivojlanish uchun qulay atrof-muhitda yashash huquqiga egaligi belgilangan [22]. Orxus konvensiyasida hozirgi va kelajak avlodlarning sog‘lig‘i va farovonligi uchun munosib muhitda yashash huquqini ta’minlashga qaratilgan shaxsning protseduraviy huquqlari (axborotga ega bo‘lish, qaror qabul qilishda ishtirok etish va odil sudlov) kafolatlangan [23]. Mazkur konvensiyaga O‘zbekistonning qo‘shilishi kun tartibiga qo‘yilganidan 25 yil o‘tib, siyosiy iroda namoyon etilgan holda, O‘zbekiston Respublikasining 2025-yil 11-martdagi O‘RQ–1045-son Qonuniga muvofiq qo‘shilganligini e’tirof etish lozim.

Janubi-sharqiy Osiyo mamlakatlari assotsiatsiyasi (ASEAN) Inson huquqlari deklaratsiyasida esa insonning xavfsiz, toza va barqaror atrof-muhitga bo‘lgan huquqi e’tirof etilgan. Deklaratsiyada har bir insonning o‘zi va oilasi munosib yashash huquqiga egaligi, bu huquq oziq-ovqat, kiyim-kechak, uy-joy, tibbiy va zarur ijtimoiy xizmat, xavfsiz ichimlik suvi va sanitariya hamda xavfsiz, toza va barqaror atrof-muhitga bo‘lgan huquqni o‘z ichiga qamrab olishi ko‘rsatib o‘tilgan [24].

Qulay atrof-muhit huquqini global miqyosda e’tirof etishda BMT tomonidan 2012-yilda ekologiya va inson huquqlari masalalari bo‘yicha mustaqil ekspert – maxsus ma’ruzachi lavozimi ta’sis etilganligini qayd etish lozim. Keyinchalik 2024-yildan mazkur ma’ruzachining nomi insonning toza, sog‘lom va barqaror atrof-muhitga bo‘lgan huquqi bo‘yicha BMT maxsus ma’ruzachisi deb o‘zgartirilgan bo‘lib [25], hozirgi kunga qadar uning tomonidan insonning qulay atrof-muhitga bo‘lgan huquqlarini amalga oshirish bo‘yicha bir qator tavsiya, hujjat va hisobotlar ishlab chiqilmoqda. Xususan,

2018-yilda 16 ta prinsipdan iborat Inson huquqlari va atrof-muhitga oid asosiy tamoyillar qabul qilingan [18]. O‘sha paytdagi BMT maxsus ma’ruzachisi John H. Knox tomonidan BMT Bosh Assambleyasiga taqdim etilgan hisobotda insonning xavfsiz, toza, sog‘lom va barqaror atrof-muhitga bo‘lgan huquqini e’tirof etish vaqti kelganligini va uni xalqaro miqyosda tan olishga oid tavsiyalar berilgan [20]. Keyinchalik Inson huquqlari bo‘yicha Kengash 48/13-rezolyutsiyasi (2021-yil) va BMT Bosh Assambleyasining 76-sessiyasi rezolyutsiyasi (2022-yil) bilan insonning sof, sog‘lom va barqaror atrof-muhitga bo‘lgan huquqi xalqaro darajada tan olinadi [26]. Garchi BMT tomonidan mazkur huquq tushunchasiga aniq ta’rif berilmagan bo‘lsa-da, BMT maxsus ma’ruzachisi tomonidan ishlab chiqilgan hujjat va hisobotlarda uning tavsifi o‘z aksini topgan.

Stokgolm deklaratsiyasi qabul qilingandan keyin qulay atrof-muhitga bo‘lgan huquqni xalqaro darajada e’tirof etish uchun yarim asr talab etilgan bo‘lsa, milliy qonunchilikda mazkur huquqni e’tirof etish uncha ko‘p vaqt talab etmaganligini ko‘rish mumkin. Xususan, Portugaliya va Ispaniya 1976- va 1978-yillarda qulay atrof-muhit huquqini konstitutsiya darajasida tan olgan ilk davlatlar bo‘ldi. Portugaliyada hamma sog‘lom va ekologik barqaror muhitda yashash huquqiga egaligi [27], Ispaniyada esa shaxsning rivojlanishi uchun har bir inson qulay atrof-muhitga egaligi va uni muhofaza qilish majburiyati belgilangan [28]. Norvegiya Konstitutsiyasida har bir inson salomatligi uchun qulay atrof-muhitga ega bo‘lish huquqiga egaligi ko‘rsatilgan [29].

Fransiyada mazkur yo‘nalishda konstitutsiya maqomidagi va uning tarkibiga kiruvchi alohida Atrof-muhit xartiyasi qabul qilinganligini ta’kidlash lozim. Hujjatda har bir inson sog‘lig‘ini saqlash maqsadida muvozanatli atrof-muhitda yashash huquqiga egaligi belgilangan [30]. Xorijiy davlatlar qonunchiligida qulay atrof-muhit huquqini e’tirof etish bilan birga uni amalga oshirishga doir mexanizmlar ham belgilanganligini ko‘rish mumkin. Jumladan, yuqoridagi xartiyada mazkur huquqlarni amalga oshirish uchun axborotga ega bo‘lish va atrof-muhitga oid qarorlar qabul qilishda jamoatchilik ishtiroki ta’kidlangan.

Rossiya Konstitutsiyasida har bir inson qulay atrof-muhitga bo‘lgan huquqqa egaligi, shuningdek, mazkur huquqni amalga oshirish bo‘yicha axborotga ega bo‘lish va ekologik huquqbuzarlik natijasida sog‘lig‘i va mulkiga yetkazilgan zarar qoplanishini ta’minlash ko‘rsatilgan [31]. Qozog‘iston Konstitutsiyasida inson hayoti va sog‘lig‘i uchun qulay atrof-muhitni muhofaza qilish davlatning maqsadi sifatida belgilangan [32]. Gruziyada har bir inson sog‘liq uchun zararsiz muhitda yashash huquqiga egaligi, mazkur huquqni amalga oshirish uchun axborot olish, atrof-muhit muhofazasi haqida g‘amxo‘rlik qilish, qarorlar qabul qilishda jamoatchilik ishtiroki mustahkamlangan [33].

Moldovada har bir inson hayoti va sog‘lig‘i uchun ekologik xavfsiz muhitda yashash huquqiga egaligi belgilangan. Buning uchun xavfsiz oziq-ovqat va maishiy buyumlardan foydalanish, yashash va mehnat sharoitlari, oziq-ovqat va maishiy mahsulotlarning sifati haqida ishonchli ma’lumot olish huquqi kafolatlangan. Protseduraviy huquqlar sifatida axborotga ega bo‘lish, sog‘lig‘i va mulkiga yetkazilgan zarar uchun javobgarlik nazarda tutilgan [34].

Umuman olganda, qulay atrof-muhitga bo‘lgan huquqni xalqaro darajada e’tirof etishdan ko‘ra, uni milliy darajada tan olish tezroq amalga oshganligini qayd etish lozim. Bu jarayon mamlakatlardagi atrof-muhit masalalariga oid jamoatchilik e’tibori, faolligi va tashabbusi bilan chambarchas bog‘liq bo‘lib, aynan keng jamoatchilik hukumatlardan ekologiya masalalari bo‘yicha samarali choratadbirlarni ko‘rishga undagan. Xorijiy davlatlar konstitutsiyalarida mazkur huquqni tan olish bilan birga uni amalga oshirishga doir

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kerakli mexanizmlar ham belgilab qo‘yilgan. Bunday mexanizmlarga atrof-muhitga oid axborotga kirish, qarorlar qabul qilishda jamoatchilik ishtirokini ta’minlash hamda mazkur huquqni muhofaza qilishga qaratilgan mexanizmlar kiradi. Bularning barchasi atrof-muhitga bo‘lgan huquqlarni nafaqat tan olish, balki ularni amaliy jihatdan himoya qilish va rivojlantirishni maqsad qilgan.

Qulay atrof-muhitga bo‘lgan huquq 2023-yilda yangi tahrirda qabul qilingan Konstitutsiyaning 49-moddasida mustahkamlanganligini qayd etish lozim. Bunda ushbu huquqni konstitutsiya darajasida tan olishning bir qator afzalliklarini qayd etish lozim. Xususan, mazkur konstitutsiyaviy norma ekologik qonunchilik va siyosatni kuchaytirish va tatbiq etish holatini yaxshilash, ekologik natijadorlik, qarorlar qabul qilishda fuqarolar ishtirokini kengaytirish, mas’uliyatni oshirish, ekologik adolatni ta’minlash bilan birga, taraqqiyot, rivojlanish yoki sifatning pasayishi, regressiyasi yoki orqaga qaytishi (retrogressiya)ning oldini olish tamoyilini qamrab oladi. Jumladan, konstitutsiyada qulay atrof-muhit huquqining mustahkamlanishi 85 foiz davlatlarda ekologik qonunchilikni kuchaytirishga xizmat qilgan [10].

Milliy qonunchilikda qulay atrof-muhitga bo‘lgan huquq turlicha atamalar bilan ifodalanganligini ko‘rish mumkin. Konstitutsiyada “qulay atrof-muhit” huquqi qo‘llangan bo‘lsa, “Tabiatni muhofaza qilish to‘g‘risida”gi Qonunning o‘zida 3 xil atamadan foydalanilganligini ko‘rish mumkin. Bular qulay tabiiy muhit (4-modda), qulay atrof-muhit (9-modda, 2024-yil 29-avgustdagi O‘RQ–951-sonli tahrirda), qulay atrof tabiiy muhitga ega bo‘lish huquqi (12-modda) kabi atamalardan foydalanilgan.

Mazkur huquqni ta’minlash bilan bevosita bog‘liq bo‘lgan “Aholining sanitariya-epidemiologik osoyishtaligi to‘g‘risida”gi Qonunda “qulay yashash muhiti” atamasi qo‘llangan bo‘lib, bunga “insonning hayot faoliyati shart-sharoitlarini belgilaydigan obyektlar, hodisalar va atrof-muhit omillari majmui” sifatida izoh berilgan. Insonning qulay yashash muhiti sanitariya-epidemiologik osoyishtalik bilan bevosita bog‘liq. Qonunda aholining sanitariya-epidemiologik osoyishtaligi aholi sog‘lig‘ining holati sifatida qayd etilgan bo‘lib, bunda “insonga yashash muhiti omillarining zararli ta’siri mavjud bo‘lmaydi va uning hayot faoliyati uchun qulay shart-sharoitlar ta’minlanadi” deb tarif berilgan. Aholining sanitariya-epidemiologik osoyishtaligini ta’minlash obyektlarini rejalashtirish, loyihalashtirish va qurish, qayta jihozlash, hududlarni, inshootlarni, binolarni saqlash, uskunalar va transport vositalaridan foydalanish, kimyoviy va radioaktiv moddalar bilan ishlash, turar joyda yashash, oziq-ovqat xomashyosi va mahsulotlar xavfsizligi, ichimlik suvi sifati, ta’lim olish, mehnat shart-sharoitlari kabi masalalarda sanitariya qoidalari, normalari va gigiyena normativlariga rioya etishni o‘z ichiga qamrab olishi belgilangan.

Yangi tahrirdagi Shaharsozlik kodeksining 4-moddasida hayotiy faoliyat uchun qulay muhit yaratish, fuqarolar salomatligini muhofaza qilish, atrof-muhitga, tabiiy resurslarga va madaniy merosga ehtiyotkorlik bilan munosabatda bo‘lish shaharsozlik faoliyatining asosiy prinsipi sifatida belgilangan. Agar eski tahrirdagi kodeksda “qulay yashash va faoliyat ko‘rsatish muhiti” atamasi qo‘llangan bo‘lsa, yangi tahrirdagi kodeksda har bir fuqaro “qulay hayot faoliyati muhiti”ga bo‘lgan huquqqa egaligi belgilangan.

Inson huquqlari bo‘yicha O‘zbekiston Respublikasining Milliy strategiyasida “qulay tabiiy muhitda yashash huquqi” atamasidan foydalanilgan bo‘lib, mazkur huquqni ta’minlash maqsadida “yer, suv, o‘rmon, yerosti boyliklari, atmosfera havosini, o‘simlik va hayvonot dunyosini muhofaza qilish, ulardan samarali foydalanish hamda cho‘llanishga qarshi kurashish, yerlarning degradatsiya jarayonlarini hamda biologik xilma-xillikning yo‘qotilishini to‘xtatish” nazarda tutilgan. 2030-yilgacha bo‘lgan davrda

Atrof-muhitni muhofaza qilish konsepsiyasi maqsadlari sifatida aholining hayoti va salomatlik darajasini yaxshilashning zarur sharti sifatida “atrof-muhitning qulay holatini ta’minlash” belgilangan.

Boshqa bir hujjatda ekologik ahvol, insonlarning mehnat, yashash va dam olish sharoitlarini yaxshilash – qulay atrof-muhitni yaratish sifatida qayd etilgan. Hozirda o‘z kuchini yo‘qotgan boshqa bir hujjatda aholi “yashashi uchun qulay sharoitlar yaratish” sifatli ichimlik suvi, oqova suvlarni tozalash, maishiy va sanoat chiqindilarini zararsizlantirish va yo‘q qilish, sanoat korxonalari va transport ishini yaxshilash orqali zararli tashlandiqlar va oqovalarni, toksik sanoat chiqindilarini kamaytirish, oziq-ovqat mahsulotlarining ekologik sifatini oshirish, nurlanish xavfsizligini ta’minlash kabi chora-tadbirlar ko‘rsatilgan.

Ko‘rib chiqqanimizdek, milliy qonunchilikda qulay atrof-muhit huquqi turlicha atamalar bilan ko‘rsatilib, normativ huquqiy hujjatlarda turlicha izohlangan. Bizningcha, qonunchilikda qo‘llanayotgan mazkur atamalarni maqbullashtirgan holda yagona “qulay atrof-muhit huquqi” atamasini qo‘llash maqsadga muvofiq. Aynan mazkur tushuncha ushbu huquqning mazmunini to‘laroq ifodalaydi, keng doiradagi munosabatlarni tartibga solish va turli kontekstda mazkur yagona atamani qo‘llash imkonini beradi. Shuningdek, Konstitutsiyada qulay atrof-muhit huquqi atamasi qo‘llanganligini inobatga olib, barcha normativ huquqiy hujjatlardagi terminologiyani konstitutsiyaga muvofiqlashtirish maqsadga muvofiq.

Tadqiqot natijalari tahlili

Milliy qonunchilikda insonning qulay atrof-muhitga ega bo‘lishga oid huquqlarini amalga oshirish va ta’minlashga oid bir qator mexanizmlar belgilangan. Xususan, Konstitutsiyaning 49-moddasida qulay atrof-muhit holati to‘g‘risida ishonchli axborotga ega bo‘lish, shaharsozlik hujjatlari loyihalarini jamoatchilik muhokamasidan o‘tkazish kabi mexanizmlar nazarda tutilgan.

O‘zbekiston Respublikasining “Tabiatni muhofaza qilish to‘g‘risida”gi Qonunida axborotni talab qilish va olish huquqi, jamoat tashkilotlariga birlashish huquqi, tabiatni muhofaza qilish faoliyatining samaradorligini oshirish hamda ekologik dasturlar amalga oshirilishida ishtirok etish, barcha turdagi ta’lim muassasalarida ekologiya o‘quvining majburiyligi kabi mexanizmlar nazarda tutilgan.

Ayni paytda qonunchilikda davlatning atrof-muhitni muhofaza qilish bo‘yicha ko‘rilayotgan chora-tadbirlar to‘g‘risida fuqarolarni xabardor qilish, ekologik xavf va ofatlarning oldini olish, atrof-muhitni yaxshilash, tiklash va muhofaza qilishga oid majburiyatlari ham belgilangan.

O‘zbekiston Respublikasining “Aholining sanitariya-epidemiologik osoyishtaligi to‘g‘risida”gi Qonunida mazkur huquqni amalga oshirish uchun axborot olish, sanitariya-gigiyena va epidemiyaga qarshi tadbirlarni ishlab chiqishda ishtirok etish, sanitariya-epidemiologik osoyishtalikni yaxshilash bo‘yicha takliflar kiritish, sog‘lig‘i va mol-mulkiga yetkazilgan zararning qoplanishi, sanitariya nazoratini amalga oshiruvchi organlar qarorlari yoki mansabdor shaxslarining harakatlari (harakatsizligi) ustidan yuqori turuvchi organ yoki sudga shikoyat qilish, jamoatchilik nazoratini amalga oshirish kabi mexanizmlar belgilangan.

Shaharsozlik kodeksida hududlarni va aholi punktlarini rivojlantirishni shaharsozlik jihatidan rejalashtirish, shaharsozlik faoliyatini amalga oshirishda ishtirok etish, davlat va jamoatchilik nazorati, yetkazilgan hamda ularning hayot faoliyati muhiti yomonlashishiga sabab bo‘lgan zararlarni kompensatsiya qilish, shuningdek, fuqarolarning hayoti, sog‘lig‘i va mol-mulkiga yetkazilgan zararning o‘rnini qoplash orqali amalga oshirilishi ko‘rsatilgan.

Atmosfera havosini muhofaza qilish sohasida fuqarolar o‘z hayoti va sog‘lig‘i uchun qulay atmosfera havosidan foydalanish, axborot olish, o‘z sog‘lig‘iga va mol-mulkiga

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ziyon yetkazilgan hollarda zararning o‘rni qoplanishi, jamoatchilik fikrini o‘rganish va jamoatchilik ekologik ekspertizasida ishtirok etish kabi huquqlari mustahkamlangan. Radiatsiyaviy xavfsizlikni ta’minlash yo‘nalishida fuqarolar hayoti, sog‘lig‘i va mol-mulkiga yetkazilgan zarar qoplanishi, axborot olish va radiatsiyaviy xavfsizlikni ta’minlash masalalari muhokamasida ishtirok etish huquqiga egaligi hamda ayrim toifadagi fuqarolarning ijtimoiy himoyasiga oid qo‘shimcha kafolatlar belgilanganligini ko‘rish mumkin.

O‘zbekiston Respublikasi Vazirlar Mahkamasining 2019-yil 15-yanvardagi “O‘zbekiston Respublikasi Ekologiya va atrof-muhitni muhofaza qilish davlat qo‘mitasi to‘g‘risidagi Nizomni tasdiqlash haqida”gi 29-son qaroriga muvofiq, fuqarolarning qulay atrof-muhitga bo‘lgan huquqlarini ta’minlash Ekologiya, atrof-muhitni muhofaza qilish va iqlim o‘zgarishi vazirligi zimmasiga yuklatilgan. Biroq qulay atrof-muhit huquqi nafaqat ekologiya idoralari, balki aholining sanitariya-epidemiologik osoyishtaligi, shaharsozlik faoliyati, radiatsiyaviy xavfsizlik kabi bir qator soha va yo‘nalishlarda mas’ul bo‘lgan davlat boshqaruvi organlari tomonidan ham amalga oshirilishini ta’kidlash lozim.

Yuqorida qayd etib o‘tilganidek, sohaviy qonunlarda qulay atrof-muhit huquqini amalga oshirishga oid bir qator mexanizmlar belgilangan. Bunda aksariyat hujjatlarda axborotga ega bo‘lish, tegishli yo‘nalish bo‘yicha dastur va loyihalarni ishlab chiqishda ishtirok etish, jamoatchilik nazorati va yetkazilgan zarar uchun javobgarlik kabi mexanizmlar belgilanganligini ko‘rish mumkin. Milliy qonunchilikda mustahkamlangan yuqoridagi mexanizmlar Orxus konvensiyasi, shuningdek, sohaga oid ilmiy adabiyotlarda keltirib o‘tilgan mexanizmlarga muvofiq keladi.

Mazkur mexanizmlar atrof-muhitga oid axborotning ochiqligi, qarorlar qabul qilishda jamoatchilik ishtiroki va nazoratini kengaytirish hamda odil sudlovni ta’minlashga oid majburiyatlarni belgilaydi. Biroq mazkur huquqni amalda ta’minlashda jiddiy muammolar saqlanib qolayotganligini qayd etish lozim. Xususan, mazkur yo‘nalishdagi tadqiqotlar ekologik axborotning ochiqligi, atrof-muhitga oid qarorlar qabul qilishda jamoatchilik ishtiroki darajasi pastligi [35], uni ro‘yobga chiqarishda muammolar mavjudligini ko‘rsatmoqda. Shu sababli, endigi navbat mazkur huquqlarning amalda to‘laqonli ro‘yobga chiqarilishini ta’minlash, amalga oshirish mexanizmlari va huquqni qo‘llash amaliyotini takomillashtirishga qaratilishi zarur.

Xulosalar

Ilmiy adabiyotlar tahlili insonning qulay atrof-muhitga bo‘lgan huquqini ta’minlash bugungi kunda muhim va dolzarb masala bo‘lib qolayotganligini ko‘rsatmoqda. Iqlim o‘zgarishi va atrof-muhitning ifloslanishi sharoitida mazkur huquqni ro‘yobga chiqarish yanada dolzarb masalalardan bo‘lib, uning qanchalik samarali ro‘yobga chiqarilishi, o‘z navbatida, iqlim bo‘yicha migratsiya ko‘rsatkichlarida o‘z aksini topadi. Markaziy Osiyo mintaqasi davlatlari atrof-muhit muhofazasi va barqaror rivojlanish choralarini kuchaytirmas ekan, bu vaziyatda iqlim o‘zgarishi tufayli majburiy migratsiya holatlari kuchayishi, aholi salomatligi bilan bog‘liq inqiroz yuzaga kelishi mumkin.

Yuqoridagilarni inobatga olib, mazkur huquqni samarali amalga oshirish uchun quyidagilar taklif etiladi:

Birinchidan, milliy qonunchilikda qulay atrof-muhit huquqining protseduraviy mexanizmlarini yanada takomillashtirish va amalga oshirish yo‘llarini aniq belgilash zarur. Mazkur choralar milliy qonunchilikni Orxus konvensiyasiga uyg‘unlashtirish doirasida ham talab etiladi. Ayni paytda, protseduraviy mexanizmlarni amalga oshirish huquqning moddiy komponentlariga nisbatan kamroq vaqt va resurs talab etadi. Buning uchun insonning qulay atrof-muhitga bo‘lgan huquqini ta’minlashda ochiqlikni amalga oshirish, qaror qabul qilishda jamoatchilik ishtirokini

kengaytirish, fuqarolarning ta’lim va xabardorligini oshirishga jiddiy ahamiyat qaratish zarur [36].

Ikkinchidan, qulay atrof-muhitga bo‘lgan huquq tushunchasi va uning moddiy komponentlariga oid normalarni takomillashtirish zarur. Bunda milliy qonunchilikda mazkur huquqni ifodalash uchun hozirda qo‘llanayotgan turli atamalarni maqbullashtirgan holda yagona “qulay atrof-muhit huquqi” atamasini qo‘llash maqsadga muvofiq.

Ayni paytda har bir davlatning o‘z taraqqiyot holatidan kelib chiqib, qulay atrof-muhit huquqini ta’minlashda minimal asosiy majburiyatlarni belgilash va ularning darajasini bosqichma-bosqich oshirib borish zarur. Hozirda mamlakatimizda toza havo, xavfsiz va sifatli suv bilan ta’minlash dolzarb masala ekanligini hisobga olgan holda, davlatning bu bo‘yicha minimal majburiyatlarini aniq belgilash juda zarur.

Uchinchidan, inson huquqlari va ekologiyaga oid qonunchilikka, shu jumladan, O‘zbekiston Respublikasining “Tabiatni muhofaza qilish to‘g‘risida”gi Qonuni 4-moddasiga retrogressiyaga yo‘l qo‘ymaslik (atrof-muhit va inson salomatligi muhofazasini hozirgi darajadan tushirmaslik) tamoyilini kiritish taklif etiladi. Bunday yondashuv insonning qulay atrof-muhitga bo‘lgan huquqini ta’minlash bilan birga hozirgi va kelajak avlodlar uchun atrof-muhitni muhofaza qilish va uning barqarorligini ta’minlashni kafolatlab, yakunda har bir insonning hayotiy faoliyat sifatini yaxshilashga xizmat qiladi.

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DAVLATNING BOLALARNI ZARARLI AXBOROTLARDAN HIMOYA QILISH FUNKSIYASI: QONUN VA AMALIYOT TAHLILI

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Annotatsiya. *Maqolada jamiyatda zararli axborotning tarqalishi va ijtimoiy tarmoqlardagi muloqotlarning zo'ravonlik shakliga aylanishi masalalari nazariy va amaliy jihatdan yoritilgan. Shuningdek, ijtimoiy tarmoqlarda zo'ravonlik, tahqirlash va kiberbulling kabi holatlarning ko'payishi hamda ularning oldini olish yo'llari o'rganilgan. Hozirgi kunning dolzarb muammolaridan biri – bolalarni zararli axborotlardan himoya qilish va axborot xavfsizligini ta'minlash masalasiga alohida e'tibor qaratilgan. Mazkur yo'nalishda davlat organlarining faoliyati va ularning amalga oshirayotgan amaliy choralari tahlil qilingan. Shuningdek, yoshlarni zararli axborotlar ta'siridan asrash hamda ijtimoiy tarmoqlarda zo'ravonlikka duchor bo'lish xavfini kamaytirish masalalari ko'rib chiqilgan. Maqolada zararli axborotning turlari va uning inson ruhiyatiga salbiy ta'siri tahlil qilingan. Zararli axborotlarning yosh toifalari bo'yicha tasnifi keltirilgan. Shuningdek, bolalarni himoya qilish maqsadida davlat tomonidan ishlab chiqilgan tegishli qonunlar va normativ-huquqiy hujjatlar tahlil qilinib, ularning ahamiyati ko'rsatib o'tilgan. Maqolada ushbu muammolarning oldini olish bo'yicha samarali usullar hamda ularni takomillashtirish bo'yicha tavsiyalar berilgan. Tadqiqot natijalariga asoslangan holda, jamiyatda sog'lom axborot muhitini shakllantirishga doir amaliy tavsiyalar ilgari surilgan.*

Kalit so'zlar: *zararli axborotlar, raqamli texnologiya, ommaviy axborot, yosh ko'rsatkichlari, inson huquqlari, maxfiy axborot*

ФУНКЦИЯ ГОСУДАРСТВА ПО ЗАЩИТЕ ДЕТЕЙ ОТ ВРЕДНОЙ ИНФОРМАЦИИ: АНАЛИЗ ЗАКОНОДАТЕЛЬСТВА И ПРАКТИКИ

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Аннотация. *В статье с теоретической и практической точек зрения освещаются вопросы распространения вредной информации в обществе и превращения общения в социальных сетях в формы насилия. Исследуются случаи насилия, оскорблений и кибербуллинга в социальных сетях, а также пути их предотвращения. Особое внимание уделено одной из*

актуальных проблем современности – защите детей от вредной информации и обеспечению информационной безопасности. Проанализирована деятельность государственных органов в данном направлении и реализуемые ими практические меры. Также рассмотрены вопросы защиты молодёжи от влияния вредной информации и снижения риска столкновения с насилием в социальных сетях. В статье дана классификация видов вредной информации и её негативного влияния на психику человека, а также представлена возрастная градация такой информации. Проанализированы действующие законы и нормативно-правовые акты, разработанные государством с целью защиты детей, указано их значение. В статье приведены эффективные способы предотвращения данных проблем, а также рекомендации по их совершенствованию. По итогам исследования предложены практические меры по формированию здоровой информационной среды в обществе.

Ключевые слова: *вредная информация, цифровые технологии, средства массовой информации, возрастные показатели, права человека, конфиденциальная информация*

STATE FUNCTION TO PROTECT CHILDREN FROM HARMFUL INFORMATION: ANALYSIS OF LAW AND PRACTICE

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Abstract. *The article theoretically and practically covers the issues of the spread of harmful information in society and the transformation of communication on social networks into a form of violence. The increase in cases of violence, humiliation, and cyberbullying on social networks, as well as ways to prevent them, were also studied. One of the pressing problems of today is the protection of children from harmful information and ensuring information security. The activities of state bodies in this area and the practical measures they are implementing are analyzed. Issues of protecting young people from the influence of harmful information and reducing the risk of violence on social networks were also considered. The article analyzes the types of harmful information and its negative impact on the human psyche. The classification of harmful information by age categories is given. Also, in order to protect children, relevant laws and regulatory legal acts developed by the state were analyzed, and their significance was indicated. The article provides effective methods for preventing these problems and recommendations for their improvement. Based on the research results, practical recommendations for the formation of a healthy information environment in society have been put forward.*

Keywords: *harmful information, digital technology, mass media, age indicators, human rights, confidential information*

Kirish

Butun dunyoda globallashuv jarayonining jadal rivojlanishi axborotning ochiqligi va oshkoraligini taqozo etmoqda. Axborot turlaridan kelib chiqib, uni tartibga soluvchi normativ-huquqiy hujjatlar majmui mavjud. Axborot-kommunikatsiya texnologiyalarining rivojlanishi va axborot turlarining o‘zgarishi bilan bog‘liq ravishda ushbu jarayon Konstitutsiya, fuqarolik, jinoiy va soliq kodekslari hamda ma’muriy javobgarlik to‘g‘risidagi kodeks bilan tartibga solinadi.

Ma’lum yoshdagi bolalar o‘rtasida tarqatilishi cheklangan axborotlarga quyidagilar kiradi: 1) shafqatsizlik, jismoniy va (yoki) ruhiy zo‘ravonlik, jinoyat yoki boshqa g‘ayriijtimoiy harakatlar tasviri yoki tavsifi shaklida taqdim etilgan ma’lumotlar; 2) bolalarda qo‘rquv, dahshat yoki vahima uyg‘otuvchi axborot, jumladan, zarar yetka-

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zishi yoki yetkazish ehtimoli bo'lgan zararli fikr va yomon odatlar targ'iboti; 3) urushni targ'ib qilish, milliy, irqiy yoki diniy adovatni qo'zg'atishga qaratilgan axborot, shuningdek, uni tarqatganliklari uchun jinoiy yoki ma'muriy javobgarlik nazarda tutilgan boshqa ma'lumotlar.

Material va metodlar

Tadqiqot jarayonida zararli axborot turlari, axboriy tajovuz shakllari va bu yo'nalishdagi xorijiy tajribalarni o'rganishda tahlil, sintez, taqqoslash, umumlashtirish, qiyosiy tahlil hamda shaxsga yo'naltirilgan metodlardan foydalanildi. Ushbu metodlar amaliyot va qonunlar uzviyligini ta'minlash zarurligi haqidagi asosiy xulosaga olib keldi.

Davlatning bolalarni zararli axborotlardan himoya qilish funksiyasi jamiyatning barqaror rivojlanishi va axloqiy qadriyatlarni saqlash nuqtayi nazaridan muhim ahamiyat kasb etadi. Bu funksiyani turli jihatlardan tahlil qilish mumkin.

Huquqiy bazani shakllantirish

Davlat bolalarni zararli axborotlardan himoya qilish uchun tegishli qonunlar va normativ-huquqiy hujjatlar ishlab chiqishi hamda ularni amalda nazorat qilishi lozim. Axborot va OAV sohasidagi qonunlar, bolalar huquqlarini himoya qilish to'g'risidagi xalqaro konvensiyalarga muvofiq keladigan milliy qonunchilik va internet foydalanuvchilari uchun senzura yoki kontent filtrlash mexanizmlarini joriy etish dolzarb sanaladi [1].

Ma'muriy va nazorat funksiyalari

Davlat tegishli organlari (masalan, O'zbekiston Respublikasi Raqamli texnologiyalar vazirligi, ta'lim tizimi va boshqa nazorat idoralari) orqali zararli axborot tarqatuvchilarga nisbatan nazoratni yanada kuchaytirish muhimdir. Bunda quyidagi chora-tadbirlarni amalga oshirish zarur: internetdagi zararli kontentni aniqlash va bloklash, bolalar uchun zararli deb topilgan kontentni tarqatganlik uchun jazo choralarini kuchaytirish, shuningdek, bolalar kontentiga mos yoshga oid reyting tizimini joriy etish.

Ta'lim va targ'ibot

Davlat bolalarning axborot xavfsizligini ta'minlash maqsadida raqamli muloqot saviyasini oshirish bo'yicha ta'lim dasturlari ishlab chiqishi lozim. Maktablarda axborot madaniyati va xavfsizligi bo'yicha ta'lim berish, ota-onalarni bolalarni internet xavflaridan himoya qilishga o'rgatish hamda axborot madaniyatini targ'ib etish orqali zararli kontentga qarshi immunitet shakllantirish mumkin [2].

Texnik vositalar joriy etish

Kontent filtrlari va qo'shimcha dasturlar ishlab chiqish va o'rnatish, bolalar uchun xavfsiz platforma va veb-saytlar yaratish zararli axborotlarga qarshi turish uchun texnik yechimlar sanaladi.

Samaradorlikni baholash

Davlat o'tkazayotgan chora-tadbirlar natijadorligini doimiy baholash orqali ularni takomillashtiradi; zararli axborot tarqatilishi darajasini kuzatadi; bolalarning ruhiy holatiga zararli axborotning ta'sirini o'rganadi; xalqaro tajribani tahlil qiladi va o'zlashtiradi [2, 3].

Tadqiqot natijalari

So'nggi yillarda zararli axborot turlari, ularning ta'sir doirasi, shakl va uslublari jadal o'zgarib bormoqda. Butun dunyoda olib borilayotgan ongga majburiy axborot ta'siri, raqamli muloqotlarda zo'ravonlikning har xil ko'rinishda tus olishi ongdagi "qisqa tutashuv"larga sabab bo'lmoqda. Ushbu holatlarning nazariyotchi olimlar tomonidan tahlil qilinishi asnosida zo'ravonlikning yangidan yangi turlari vujudga kelayotgani ta'kidlanmoqda. Jumladan, bulling, rosting, trolling, fleyming, auting, freyping, kiberstalking, ketfishing va boshqalar.

Xorijiy tajribaga nazar soladigan bo'lsak, jumladan, quyidagi holatlarga guvoh bo'lamiz. Fransiyada bolalarni ularning sog'lig'iga zarar yetkazuvchi ma'lumotlardan himoya qilish bir qator qonunchilik tashabbuslarini o'z ichiga oladi. Bu mamlakatda 2024-yilning fevral oyida bolalar huquqlarini mustahkamlovchi 2024-120-sonli qonun qabul qilindi va internetda bolalarni himoya

qilish laboratoriyasi tashabbusi bilan ularni muhofaza qilish yuzasidan faol ish olib borilmoqda. Ushbu yondashuv asosida bolalarga nisbatan bulling va zo'ravonlikning boshqa har qanday turiga qarshi kurashish uchun jinoiy va fuqarolik choralarini birlashtirish orqali yaxshi samaralarga erishilyapti.

Zamonaviy bolalar uchun axborot muhitini yaratish jarayonida o'yinlarga moyil bo'lgan yangi avlod shakllandi. Bunday bolalar ko'pincha boshqalarning azob-uqubatlari va og'rig'iga nisbatan hissiy befarqlik, nazoratsiz tajovuzkorlik va o'ynash imkoniyati bo'lmasa, depressiv holatlarga tushish kabi xatti-harakatlarni namoyon qilmoqda [4, 5].

Raqamli texnologiyalar (kompyuter va nokompyuter o'yinlari, o'yinchoqlar, telefilmlar va seriallar) orqali turli yoshdagi bolalar beixtiyor qahramonlar bilan tanishib, jinoiy jargon, tashqi ko'rinish va uslubni idrok etib, ularni o'zlashtirishga moyil bo'lib bormoqda. Haqiqiy va virtual jinoiy muhit vakillarining kiyinish uslubi, shafqatsiz usullari, hujum strategiyalari, zaiflarni qo'rqitish kabi xatti-harakatlari bolalarga ta'sir ko'rsatmoqda. Natijada ular zo'ravonlik, qotillik va o'z joniga qasd qilish sahnalarining guvohi bo'lish orqali bunday hodisalarga nisbatan befarqlashishi yoki ularni o'z xatti-harakatlarida aks ettirishi mumkin [6].

Niderlandiyada bolalar qonunchilik, davlat siyosati va muntazam monitoring orqali ularning sog'lig'iga zarar yetkazuvchi ma'lumotlardan himoyalangan [3]. Mamlakatda bolalarning internet tarmog'idagi huquqlarini hurmat qilish va himoya etish bo'yicha choratadbirlar faol amalga oshirilmoqda. Niderlandiya Bola huquqlari to'g'risidagi konvensiya tamoyillariga rioya qiluvchi bolalar uchun eng xavfsiz mamlakatlardan biri hisoblanadi. U yerda zo'ravonlikning oldini olish bo'yicha himoya mexanizmlarini faollashtirish asosiy vazifalardan biri sifatida belgilangan.

Tadqiqot natijalari tahlili

O'zbekiston Respublikasi Konstitutsiyasiga muvofiq, har kim axborotni erkin izlash, olish, tekshirish, tarqatish, undan foydalanish va saqlash huquqiga ega. Biroq foydalanilayotgan axborot hech kimga zarar yetkazmasligi va uning ishlatilishi oshkora bo'lishi lozim. Bu tamoyillar "Axborot erkinligi prinsiplari va kafolatlari to'g'risida"gi Qonun bilan himoyalangan. Mazkur qonunning 4-moddasida "Axborot olish faqat qonunga muvofiq hamda inson huquq va erkinliklari, konstitutsiyaviy tuzum asoslari, jamiyatning axloqiy qadriyatlari, mamlakatning ma'naviy, madaniy va ilmiy salohiyatini muhofaza qilish, xavfsizligini ta'minlash maqsadida cheklanishi mumkin", deb belgilangan.

Maxfiy axborot – bu foydalanilishi qonun hujjatlariga muvofiq cheklab qo'yiladigan, hujjatlashtirilgan axborot demakdir. Bunday axborotdan foydalanish uchun maxsus ruxsatnomaga ega bo'lish zarur. Ushbu axborotga fuqarolarning huquq va erkinliklari, ularni ro'yobga chiqarish tartibi to'g'risidagi, shuningdek, davlat hokimiyati va boshqaruv organlari, fuqarolarning o'zini o'zi boshqarish organlari, jamoat birlashmalari va boshqa nodavlat notijorat tashkilotlarining huquqiy maqomini belgilovchi qonun hujjatlari; ekologik, meteorologik, demografik, sanitariya-epidemiologik, favqulodda vaziyatlar to'g'risidagi ma'lumotlar hamda aholi punktlari, ishlab chiqarish obyektlari va kommunikatsiyalari xavfsizligini ta'minlash uchun zarur bo'lgan boshqa axborotlar kirmaydi.

Ommaviy axborot cheklanmagan doiradagi shaxslar uchun mo'ljallangan hujjatlashtirilgan axborot, bosma, audio, audiovizual hamda boshqa xabarlar va materiallar hisoblanadi. Ammo undan hamma erkin foydalanishi mumkinligi ta'minlangan va haqqoniy bo'lishi kerak [7].

Umuman, jarayonlarni yaxshilab tushunib olish uchun axborotlarni shartli ravishda 5 turga bo'lish mumkin.

1. Birinchi turdagi axborotlar bu foydali axborotlardir. Masalan, tabiiy fanlar, texnologiyalar, to'g'ri tarbiya va odob-axloqqa oid bo'lgan bilimlar.

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2. Ikkinchi turdagi axborotlar bu foydasiz axborotlardir. Masalan, qaysidir qo'shiqchining tushlikda nima tanovul qilishi kimgadir qiziq, kimgadir umuman foydasiz bo'lishi mumkin.

3. Uchinchi turdagi axborotlar bu zararli axborotlardir. Masalan, giyohvandlik, psixotrop moddalar iste'mol qilish, ekstremizm, odamlar yoki hayvonlarga nisbatan shafqatsizlik qilish mumkinligini asoslaydigan axborotlar. Odatda, bu kabi axborotlar boshqa turdagi axborotlardan oson ajratib olinadi.

4. To'rtinchi turdagi axborotlar barcha uchun zararli bo'lmasa-da, u axborot keng tarqalmagan boshqa hudud yoki millatlar uchun zararli bo'lishi mumkin. Masalan, submadaniyatlar, ya'ni jamiyat madaniyatining keskin farqlanuvchi jihatlarini boshqa jamiyatlarga tarqatish.

5. Beshinchi turdagi axborotlar bevosita zararli yoki aqidaparastlik g'oyalari bilan yo'g'rilmagan bo'lsa-da, zararli va aqidaparastlik axborotlarini tarqatuvchi manbalardan (sayt, ijtimoiy tarmoq, shaxslar va tashkilotlar) tarqalayotgan axborotlardir. Masalan, aqidaparastlik materiallarini tarqatuvchi sayt ota-onaga yaxshilik qilish haqida maqola e'lon qilishi ham mumkin [2].

Uchinchi turdagi zararli axborotlarni tartibga solish maqsadida 2018-yil 10-martda O'zbekiston Respublikasining "Bolalarni ularning sog'lig'iga zarar yetkazuvchi axborotdan himoya qilish to'g'risida"gi Qonuni kuchga kirdi.

Ushbu qonunning 16-moddasida bolalar o'rtasida tarqatilishi taqiqlangan axborot mahsulotlari tasniflab berilgan. Maxsus vakolatli davlat organining bolalarni ularning sog'lig'iga zarar yetkazuvchi axborotdan himoya qilish sohasidagi vakolatlari belgilab qo'yilgan. 17-moddada axborot mahsulotining yoshga oid tasnifi va yosh toifalarini belgilash masalalariga alohida e'tibor qaratilgan. Endilikda ommaviy axborot vositalari, shu jumladan, internet jahon axborot tarmog'idagi veb-saytlar, blogerlar, reklama vositalari hamda boshqa turdagi axborot kanallari orqali tarqatilayotgan axborotlarda bolalarni ularning sog'lig'iga zarar yetkazishi mumkin bo'lgan axborotdan himoya qilish maqsadida 0+, 7+, 12+, 16+, 18+ yozuvlari aks ettirilishi shart [8].

Qonunga ko'ra, yoshga oid tasnifni belgilash axborot mahsulotini ishlab chiqaruvchilar va tarqatuvchilar tomonidan, shu jumladan, ekspertlarni jalb etgan holda, mamlakat hududida tarqatish boshlangunga qadar amalga oshiriladi.

Zararli axborotlar mazmun-mohiyati, zarar yetishi va tajovuzkorona harakatlar turlari muhiti, vaziyati, tarqatayotgan axborot turidan kelib chiqib, bir necha xil bo'ladi.

Bulling yoki zo'ravonlik (ingliz tilida – bezorilik) boshqalarga zarar yetkazish niyatining paydo bo'lishi bilan tavsiflangan xatti-harakatlarning patologik shakli hisoblanadi. Tajovuzkorning asosiy vazifasi jabrlanuvchini xafa qilish, qayta-qayta va muntazam ravishda tahqirlashdir [9, 10].

Bulling ko'pincha mobbing bilan taqqoslanadi, ammo bu tushunchalar bir-biridan farq qiladi. Bulling holatida tajovuzkorlik, asosan, bir kishi tomonidan sodir etiladi, mobbing esa jamoaviy bezorilik hisoblanadi. Bu holatni jamoalarda keng kuzatish mumkin. Bu kabi holatlarni armiyadagi yangi chaqirilganlarga munosabatda, maktablardagi darslarda, universitetlardagi oqimlarda, tashkilotlardagi bo'limlarda kuzatish mumkin. Bulling qurbonlari orasida bolalar, kam ta'minlangan oilalar o'smirlari, qishloqdan kelgan mehmonlar, iqtidorli (tashqi ko'rinishi, tafakkuri va harakatlari bilan bir-biridan farq qiladigan) bolalar ko'p uchraydi.

Xulosalar

Raqamli muloqot ta'sirida kuzatilayotgan zo'ravonlik turlarining ilmiy-nazariy tahlili hamda bu boradagi xorijiy davlatlar tajribalarini tadqiq etgan holda, quyidagi xulosalarga kelish mumkin: axborotni olish, qayta ishlash va undan foydalanish davrida, albatta, qonuniylik, adolatlilik va ochiqlikka rioya qilinishi shart. Axborot turlarining o'zgarib

borishi ularga nisbatan munosabatning ham o'zgarishiga olib kelmoqda. Hozirgi kunda dolzarb bo'lgan raqamli axborotning alohida tartibga solinishi talab qilinmoqda. Olingan rasmlar, videolar ijtimoiy tarmoqlarda tarqatilishi yoki ommaviy axborot vositalarida berilishi masalasida qat'iy talablar o'rnatilishi kerak. Bu borada yuqorida eslatilgan qonunda ko'zda tutilgan qoidalarga amal qilish har doim ham nazoratda bo'lishiga kafolat berilmayapti. Buning uchun qonunda belgilab qo'yilgan vakolatli organlar va ota-onalar birgalikda bolalar himoyasini ta'minlashda kurashishi zarur.

Vazirlar Mahkamasining 2022-yil 8-iyundagi 317-son qarori asosida my.gov.uz portalida "Bolalar sog'lig'iga zarar yetkazuvchi axborotdan himoya qilish bo'yicha ekspertlarni akkreditatsiya qilish" xizmati yo'lga qo'yildi. Ushbu interaktiv xizmat orqali bolalar sog'lig'iga zarar yetkazuvchi axborotdan himoya qilish sohasi ekspertlari akkreditatsiyadan o'tish uchun elektron ariza berish imkoniyatiga ega bo'ldi.

Talabgorlar oliy ma'lumotli, pedagogika, yoshga oid psixologiya va fiziologiya, bolalar psixiatriyasi sohalarida zarur bilimlarga (diplom yoki sertifikatga) ega bo'lishi kerak.

Ekspertlarni akkreditatsiya qilish O'zbekiston Respublikasi Prezidenti huzuridagi Axborot va ommaviy kommunikatsiyalar agentligi tomonidan amalga oshiriladi. Akkreditatsiyadan muvaffaqiyatli o'tgan ekspertlarga guvohnoma beriladi. Guvohnomaning amal qilish muddati – 5 yil [11].

Olib borilayotgan bu amaliyot o'z natijasini berishi uchun uni barcha bolalar bilan ishlaydigan mutaxassislarga qo'llash va ularni zararli axborotlar toifalari bilan muntazam tanishtirib borish lozim.

"Bolalarni ularning sog'lig'iga zarar yetkazuvchi axborotdan himoya qilish to'g'risida"gi Qonunning 4-moddasi asosiy tushunchalarni o'z ichiga olgan. Biroq "bolalarning sog'lig'i" atamasiga berilgan ta'rifda "psixologik ta'sir" tushunchasi kiritilmagan. Vaholanki, hozirgi kunda axborot zo'ravonligi ta'siridagi psixologik tajovuzlar jismoniy, ruhiy va ijtimoiy jihatdan sog'lomlik holatiga nisbatan ko'proq kuzatilmoqda.

Bundan tashqari, qonun matniga "bolalarga xos bo'lmagan imij" tushunchasi kiritilishi lozim. Bu atama bolalarning jismoniy, ruhiy, psixologik va ijtimoiy sog'lomlik holatiga ta'sir qiluvchi omillarni anglatadi. Ayniqsa, ota-onalarning farzandlarga xos bo'lmagan imij yaratishga urinishlari bolalarni zo'ravonlik qurboniga aylantirish xavfini oshiradi.

Bu holat bullingning bir turi sifatida baholanishi to'g'ri bo'ladi. Shuning uchun bolalarning yaqin qarindoshlari ushbu holatning oldini olish va uning oqibatlari uchun javobgarlikka tortilishi lozim.

Amaldagi "Bolalarni ularning sog'lig'iga zarar yetkazuvchi axborotdan himoya qilish to'g'risida"gi Qonunning 7-moddasida bolalarni ularning sog'lig'iga zarar yetkazuvchi axborotdan himoya qilishni amalga oshiruvchi organlar va tashkilotlar tizimi keltirilgan. Amalda bolalarni sog'lig'iga zarar yetkazuvchi axborotdan himoya qilishni amalga oshiruvchi muhit, birinchi navbatda, oila bo'lishi lozim. Shundan kelib chiqib, bu borada bolalarning yaqin qarindoshlariga ko'proq mas'uliyat va javobgarlik yuklatilishi zarur. Ushbu moddada "organlar va tashkilotlar tizimi" deb keltirilgani tufayli bu masalada qo'shimcha modda kiritilishi maqsadga muvofiqdir.

Qonunning 16-moddasida bolalarning sog'lig'iga zarar yetkazuvchi axborot tasniflangan [12]. Unda bolalarning sog'lig'iga zarar yetkazuvchi axborot jumlasiga bolalar o'rtasida tarqatilishi taqiqlangan axborot mahsuloti, shuningdek, muayyan yosh toifalaridagi bolalar o'rtasida tarqatilishi cheklangan axborot mahsuloti sanab o'tilgan.

Muayyan yosh toifalaridagi bolalar orasida tarqatilishi cheklangan axborot mahsulotlari qatoriga hozirgi kunda dolzarb bo'lgan va zararli axborotlar ichida yetakchi o'rin egallayotgan, milliy mentalitetimizga yot g'oyalarni targ'ib etuvchi oqimlar va axborot xurujlarini kiritish ham muhim talablardan biri hisoblanadi.

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