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SOCIAL POLICY AND SOCIAL PROTECTION IN EU COUNTRIES: CURRENT STATUS AND TRENDS

Лариса Наливайко. СОЦІАЛЬНА ПОЛІТИКА ТА СОЦІАЛЬНИЙ ЗАХИСТ В КРАЇНАХ ЄС: СУЧАСНИЙ СТАН ТА ТЕНДЕНЦІЇ. Стаття присвячена актуальним питанням соціального захисту громадян. Розглянуто систему соціального захисту після розпаду СРСР в умовах економічного спаду та її подальшу трансформацію під час переходу України до ринкової економіки. Наголошується на важливості вдосконалення системи соціального захисту як для забезпечення стабільного розвитку суспільства, так і для виконання вимог до членства в ЄС. Обговорюються соціальні проблеми сьогодення України, зокрема безробіття, бідність тощо. Пропонується впроваджувати досвід країн Європейського Союзу для розробки в нашій державі ефективних механізмів соціальної політики, які б забезпечували наближення до таких європейських стандартів, як: рівень життя населення, підвищення рівня зайнятості, зменшення нерівності в доходах, посилення соціального захисту, подолання бідності. У статті узагальнено досвід країн Європейського Союзу щодо соціальної допомоги населенню, зокрема питання переходу від благодійності до соціальної політики на основі оптимальної системи соціальної підтримки та соціального захисту громадян. Основні висновки полягають у тому, що зусилля соціальної політики не повинні спрямовуватися лише на надання соціальної допомоги. Підкреслюється важливість забезпечення зайнятості та зниження рівня безробіття, оскільки в країнах зі слабкою економікою ризик бідності тісно пов'язаний із безробіттям. Зазначається, що збільшення економічної складової права людини на соціальний захист призводить до того, що працівники змушені відраховувати більший відсоток свого доходу в систему соціального забезпечення. Таким чином, мережа соціального захисту має бути збалансованою, не надто щедрою чи надто пасивною.

Ключові слова: *права і свободи, інституційний механізм, гарантії, соціальна політика, органи державної влади, соціальна підтримка, соціальні стандарти, політика ЄС, воєнний стан, європейська інтеграція.*

Relevance of the study. In the Constitution of Ukraine, the social protection of citizens is defined as the primary purpose of the state. During the economic downturn, the social security system created in the Soviet Union failed to protect the poorest sections of society adequately. Although Ukrainian society's primary goal is to build a market economy oriented to social needs, this is impossible without significant improvement of the social protection system. After all, even to become a member of the EU, a country must meet specific economic and social standards. Currently, there are many acute social problems in Ukraine: unemployment, poverty, etc. Taking into account the experience of the countries of the European Union can positively affect the development of effective social policy in our country.

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The social policy of the member states of the European Union is aimed at ensuring a stable standard of living for the population, increasing employment, reducing income inequality, strengthening social protection, and overcoming poverty. Employment and the reduction of unemployment are usually the main goals of anti-poverty policies because, in countries with fragile economies, the risk of poverty is closely linked to unemployment.

This article aims to summarize the experience of the countries of the European Union regarding social assistance to the population. The experience of implementing social policy in the EU has shown that these countries have moved from charity to social policy that guarantees an optimal system of social support and social protection of citizens.

The generalization and study of the European experience of Ukraine are that social policy efforts should not be focused only on providing social assistance. Ultimately, the availability and ease of these benefits can lead to a demand-side effect. The human right to social protection negatively affects workers who have to pay a higher percentage of their income into the social security system. The social protection system should not create a system that is too generous or too passive.

In the Constitution of Ukraine, the social protection of citizens is defined as the primary purpose of the state [1]. During the economic downturn, the social security system created in the Soviet Union failed to protect the poorest sections of society adequately. Although Ukrainian society's primary goal is to build a market economy oriented to social needs, this is impossible without significant improvement of the social protection system. After all, even to become a member of the EU, a country must meet specific economic and social standards. Currently, there are many acute social problems in Ukraine: unemployment, poverty, etc. Taking into account the experience of the countries of the European Union can positively affect the development of effective social policy in our country [2].

Recent publications review. Several scientists, including V. Andrushchenko, V. Beh, V. Volovich, M. Holovatom, V. Yevtukh, I. Zvereva, V. Ivanov, O. Ivanova, A. Kapska, M. Lukashevich, S. Maksymenko, I. Mygovich, M. Obozov, G. Osipov, P. Pavlenok, M. Panasyuk, V. Patrushev, I. Pinchuk, V. Skurativskyi, S. Tolstoukhova, M. Tulenkov, F. Filonenko, T. Shibutani and others, are engaged in the study of the social policy abroad.

The article's objective is to summarize the experience of the countries of the European Union regarding social assistance to the population.

Discussion. The experience of implementing social policy in the EU has shown that these countries have moved from charity to social policy that guarantees an optimal system of social support and social protection of citizens [9].

Today, four main trends have a significant impact on the development of social policy in EU countries:

1) Significant demographic changes, the essence of which is the general ageing of the population in the member states of the European Union and the increase in the number of older people;

2) Activation of women's participation in the labour market and changes in the gender balance;

3) Existence of a relatively high level of unemployment, especially among older people;

4) Faster growth in the number of households compared to population growth, particularly an increase without working persons [10].

The social policy of the member states of the European Union is aimed at ensuring a stable standard of living for the population, increasing employment, reducing income inequality, strengthening social protection, and overcoming poverty. Employment and reduction of unemployment are usually the main goals of anti-poverty policies because the risk of poverty in transition economies is closely related to unemployment [2].

The European Union has assumed the main directions of national policy in the social sphere. Therefore, the European Commission recommends that Member States follow these guidelines [3]:

− to improve employment prospects of the population thanks to increased investments in professional training, to implement lifelong learning programs and to ensure access to education for everyone;

− promote a more intensive impact on economic growth, using: flexible labour organization that meets the needs of production and is acceptable to employees; wage policy, which would promote investment in creating new jobs (the level of wage growth should not exceed the level of labour productivity growth); job creation, especially at the regional and

local levels;

− reduce side costs associated with unskilled labour;

− implement a more effective policy on the labour market due to the improvement of employment services;

− take measures to prevent unemployment among certain social groups, for example, young people (by providing jobs or opportunities for professional education) [11].

These rules determine the methods of implementing the provisions of the European Social Charter (1989). The document lists the fundamental rights of the labour force in the labour market: the right to receive unemployment benefits, work in any EU country on equal terms, the right to vocational training, etc. In addition, national bodies have several social functions; they are intended, firstly, for the harmonization and coordination of the social policy of the member states of the Union, and secondly, for the use of available financial resources to finance joint social programs [4].

This is important because, for the first time, social policy was included in the list of basic state measures (in the Maastricht Treaty of 1992). Moreover, 11 states participated in the protocol and the Agreement on social policy as annexes to the agreement. In 1997, the final version of the Treaty on European Union included Chapter XI – "Social Policy: Education, Training and Youth". About one trillion euros was allocated to finance vocational training and employment of young people under the age of 20, assistance to the most vulnerable sections of the population in the labour market, provide employees with equal opportunities in the labour market and help in adapting to structural changes in the field of labour and industry [5].

In November, 1997, the Council of Europe initiated a strategy to increase the level of employment in the member states of the European Union. The Council of Europe paid particular attention to the need for a coordinated European strategy to increase engagement. The main employment tasks are creating new jobs at small and medium-sized enterprises. In addition, both passive (social protection programs) and active (retraining, subsidies to enterprises that undertake to maintain a certain number of jobs) employment policy programs are used. However, passive employment programs are now being superseded by active ones [12].

Furthermore, the requirements for receiving social assistance have become stricter. For example, an unemployed person who refused to work or study was subject to financial sanctions in Austria, the Netherlands, Great Britain and Sweden. In Germany, a resolution was adopted which obliges the monthly registration of the unemployed in the employment agency. In England, since October, 1996, unemployment benefits depend on a report that unemployed people submit to the government describing their attempts to find work. It is important to note that when developing strategic goals in the field of employment and the labour market, which are common to all member states of the European Union, the Council of Europe proceeds from the need to consider the labour market situation in each specific country.

In Europe, significant progress has been made in the labour market, employment and job creation over the past two decades. The unemployment rate in the EU decreased from 9.1 % in 1999 to 8.2 % in 2000. In addition, the number of unemployed decreased by 1.5 million people. Notably, over 60 % of jobs in this period were in high-tech and science-intensive sectors of the economy [4]. In addition, the European Union's labour markets have yet to recover from several obstacles and structural weaknesses fully. Despite the positive results in the field of employment, the unemployment rate remains relatively high. In June, 2000, the countries of the European Union adopted a new social program aimed at solving work, labour market and other social policy issues. This initiative is aimed at increasing the level of employment and applying a comprehensive approach to employment policy. The program assumes that the employment policy's goals should be to increase the number of jobs and improve the quality of work. Developing a more effective employment policy also involves receiving fair remuneration for work performed and organizing work that meets the needs of corporations and individuals. Furthermore, the increase in employment should be based on a high level of labour qualification, an adequate level of labour protection, and stimulate labour mobility in the labour market. Means of ensuring the Social Program in the field of population employment include:

− improving people's qualifications, investing in the educational process (lifelong learning), and using the latest technologies;

− promoting entrepreneurship as a means of creating new jobs by creating favorable conditions for starting and developing new types of entrepreneurship, mainly medium and small enterprises;

− creation of favorable conditions for business development in the service sector;
− emphasis on equal opportunities for all;
− implementation of economic reform aimed at economic growth;
− development of the education system [4].

In France, the restructuring of the labour market began – taxes on the income of part of the employees were reduced, and in Spain, a wage indexation mechanism was introduced. Nevertheless, collective agreements remain the primary means of wage regulation today, so the supranational bodies of the European Union try to influence the level of wages precisely within the framework of social partnership. The organizations that make up the EU trade unions are the European Trade Union Confederation, the Association of Entrepreneurs and the Organization of Employees of State Enterprises, as well as the European Union of Small and Medium Enterprises [6].

In education, European countries have achieved universal access to the population with secondary education and are currently increasing access to higher education. France and the Mediterranean countries play a central role in the national education system, the German-speaking countries and Belgium play a regional role, and the Scandinavian countries have local control. In the United Kingdom, the power to manage education has been delegated to the private sector, but the central government still has considerable control over the system [7].

In addition, continuous education is being introduced in European countries, which interprets the improvement of the professional and educational level as an economically profitable business for a person throughout his life. The European Commission has implemented several initiatives to internationalize the provision and receipt of higher education. However, increased spending on other social programs has constrained education budgets, prompting countries to increase budget efficiency by using it more effectively. As you know, healthcare financing systems in Europe are divided into two main types:

1) Publicly funded public health systems that provide services to patients in public health facilities (Great Britain, Scandinavia and Southern Europe);

2) Healthcare financing is carried out through the insurance system and the provision of medical services by both public and private institutions (France and Germany).

These countries, particularly Italy and Spain, changed their healthcare systems in the early 1970^{s}, including private elements [5].

In addition, all European countries have the problem of rising costs caused by an ageing population, technological progress and societal expectations that are higher than they should be. However, different healthcare systems have different approaches to this issue. The costs of medical institutions in the state are limited by the failure to provide high-level medical services and the need to stand in queues for procedures. Furthermore, health insurance systems can only withstand rising medical costs if they contract with physician associations and hospitals. As a result, the solution is to set maximum expenses and fees for medical services and increase competition among providers [13]. Pension insurance has a unique role in the general social protection system and as a means of stimulating employment. All EU countries have public pensions and supplementary guaranteed income for older people, but the level of these benefits varies from country to country [14]. The governments of the participating countries preferred partial reforms, in particular, replacing the dependence of pension payments on income, increasing the retirement age, introducing an accumulation component and, especially worth noting, the transition from the "defined costs" system to the "defined contribution" system [15].

Many European countries have social assistance programs, which are national social security networks. It is important to note that the governments of European countries are trying to reduce the number of payments, especially to the unemployed, and to maintain incentives for employment. Despite a complex system of social protection and provision of various types of assistance, the prevailing norm in EU countries is that young people and older adults, as well as women, must participate in the labour market to receive help. Although a greater degree of assistance and a longer duration of assistance reduce the willingness of workers to look for work or accept an offer, it does not increase the unemployment rate [16].

As a result, promoting employment in the formal economy is a crucial goal of any strategy to reduce Ukraine's poverty. This approach should be aimed at transferring jobs from the illegal economy to the legal one and creating new jobs in the legal economy. Recognizing that any repressive elements (police, tax authorities, etc.) must play a secondary role in this strategy. The strategy's primary goal is to increase the number of attractive jobs. This goal is usually achieved by combining the following components:

− changes in tax policy in the direction of tax reduction;

− incentives for participation in the official economy;

− liberal regulatory environment, in particular labour legislation, etc.

However, the Ukrainian government cannot maintain the level of taxes of the European Union and, at the same time, have the high growth rates necessary to reduce poverty. As a result, universal social security systems standards in Western Europe should be avoided [8].

There is no single proven method of solving the problems of unemployment and poverty. The decision is influenced by the specifics of the economy, the country's history, and the people's mentality. Therefore, it is essential to study the experience of EU member states to determine lessons for the construction and implementation of social security reforms in our country. After all, the goal of the state policy of the EU member states is not only economic growth and efficiency; the policies they pursue aim to equalize life opportunities, social justice, social protection, unity and stability.

Conclusions. The generalization and study of the European experience of Ukraine are that efforts should not be focused only on providing social assistance when developing social policy. Ultimately, the availability and ease of these benefits can lead to a demand-side effect. The human right to social protection negatively affects workers who have to pay a higher percentage of their income into the social security system. The social protection system should not create a system that is too generous or too passive.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

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ABSTRACT

The article deals with the actual issues of social protection the citizens. The system of social protection after the collapse of the USSR in the conditions of economic recession and its further transformation during the transition of Ukraine to a market economy are considered. The importance of improving the social protection system is emphasized both to ensure the stable development of society and to meet the requirements for EU membership. The social problems of Ukraine today are discussed, including unemployment, poverty, etc. It is proposed to implement the experience of the European Union countries to develop effective social policy mechanisms in our country that would ensure the approximation of such European standards as: a stable standard of living for the population, an increase in employment, reducing income inequality, strengthening social protection, overcoming poverty. The article summarizes the experience of the countries of the European Union in relation to social assistance to the population, in particular the issues of transition from charity to social policy based on the optimal system of social support and social protection of citizens. The main conclusions are that the efforts of social policy should not be directed only to the provision of social assistance. The importance of providing employment and reducing unemployment is emphasized, since in countries with fragile economies, the risk of poverty is closely related to unemployment. It is noted that the increase in the economic component of the human right to social protection leads to the fact that workers have to deduct a higher percentage of their income into the social security system. Thus, the social safety net must be balanced, not too generous or too passive.

Keywords: *rights and freedoms, institutional mechanism, guarantees, social policy, public authorities, social support, social standards, EU policy, martial law, European integration*.

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CURRENT PROBLEMS OF ADMINISTRATIVE AND LEGAL PROCUREMENT OF NATIONAL SECURITY

Дмитро Припутень. АКТУАЛЬНІ ПРОБЛЕМИ АДМІНІСТРАТИВНО-ПРАВОВОГО ЗАБЕЗПЕЧЕННЯ НАЦІОНАЛЬНОЇ БЕЗПЕКИ. Стаття присвячена вивчення сучасного стану адміністративно-правового забезпечення національної безпеки і на цій основі вироблення пропозицій та рекомендацій щодо вдосконалення зазначеної сфери і підвищення ефективності діяльності органів публічної адміністрації.

У статті зазначається, що забезпечення національної безпеки є для нашої держави позачерговим і головним завданням, успішна реалізація якого обумовлює саме існування України. Обґрунтовується, що питання адміністративно-правового забезпечення національної безпеки – це справа не лише органів публічної адміністрації, але й суспільства в цілому і кожного громадянина зокрема. Звертається увага на те, що сьогодні інститути громадянського суспільства відіграють важливу роль у захисті державності та національних інтересів нашої країни, а іноді вони беруть на себе й виконання деяких окремих функцій влади, отримуючи при цьому іноді навіть більший рівень довіри у населення. Зазначається, що одним із шляхів удосконалення сучасного стану адміністративно-правового забезпечення національної безпеки має стати створення багаторівневої та багатофункціональної системи взаємодії між державою та інститутами громадянського суспільства в усуненні та нейтралізації загроз національній безпеці. Що, в свою чергу, потребує внесення змін та доповнень до відповідного законодавства.

Робиться висновок, що важливим кроком підвищення ефективності адміністративно-правового забезпечення у сфері національної безпеки України має стати перегляд деяких стратегічних цілей державної політики у цій сфері з врахуванням військової агресії (загрози безпеки та захищеності об'єктів критичної інфраструктури, здатність ефективно реагувати на неконтрольоване масове переміщення людей тощо), подальша розбудова системи національної незламності та стійкості (тут важливого значення мають такі напрямки, як забезпечення на державному рівні безперервності урядування та спроможності повноцінного функціонування системи органів публічної адміністрації, їх організаційна стійкість), підвищення рівня координації та взаємодії, у тому числі й інформаційної, між усіма суб'єктами сектору безпеки та оборони, підтримка тих реформ, які довели свою ефективність, створення системи адаптованого адміністрування (гнучкого менеджменту), здатної швидко та ефективно реагувати на кризові ситуації.

Ключові слова: *безпека, національна безпека, забезпечення, адміністративно-правове забезпечення, стратегія, публічна адміністрація.*

Relevance of the study. Ensuring national security is an urgent and main task for our state, the successful implementation of which determines the very existence of Ukraine. Protection of the sovereignty of Ukraine and its state borders, repelling military aggression, restoration of territorial integrity, reunification of temporarily occupied and uncontrolled territories, restoration of peace are important priorities for our state. The fulfillment of these tasks directly depends on the effective functioning of the national security system, which necessitates the creation of a qualitatively new model of state national security policy, reforming and improving the management system in this area. The study of the problems of administrative and legal ensuring of national security has not only great theoretical, but also important practical significance, as it is aimed at improving the legislation on national security

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and the activities of public administration bodies in this area, determining the optimal means, ways and methods of effective provision of national security.

Recent publications review. The problems of national security and its administrative and legal ensuring attracted the attention of many scientists, among whom we can single out the works of such as O. Bandurka, M. Vikhlyaev, I. Golosnichenko, S. Kuznichenko, V. Lipkana, T. Minky, A. Starodubtseva, H. Yarmaki et al. At the same time, in the conditions of military aggression and global challenges, the issue of researching the problems of administrative and legal ensuring of national security becomes urgent.

The article's objective is to study the current state of administrative and legal provision of national security and, on this basis, to develop proposals and recommendations for the improvement of the specified area and increase the efficiency of public administration bodies.

Discussion. In articles 1, 2, 17, 18 and 92 of the Constitution of Ukraine, the legal bases, goals and basic principles of state policy in the field of national security, vectors of development of legislation and activities of public administration in this field are defined, which in general allows to protect society, the state and people from threats and challenges [1].

National security acts as an important function of every state, which is designed to guarantee favorable conditions for life and productive activities of citizens and state institutions, to protect the vital interests of people and society from external and internal threats. National security, as specified in Art. 1 of the Law of Ukraine "On the National Security of Ukraine" acts as "the protection of vital interests of man and citizen, society and the state, which ensures the sustainable development of society, timely detection, prevention and neutralization of real and potential threats to national interests" [1-2]. The protection of a person and a citizen, society and the state is ensured by appropriate activities that reduce or avert possible threats and increase protective and mobilization functions in times of danger. At the heart of this activity is the defense and implementation of the national interest of a certain country – a global, all-encompassing integral interest, the implementation of which makes it possible to realize the vital private, group and public interests of the vast majority of citizens. Therefore, national security is a kind of synthesis of the interests and needs of all social subjects [3, p. 240-244; 4].

Along with this, the modern security environment is characterized by a high degree of variability and unpredictability. The dramatic events currently taking place in the world, first of all, the war waged by the russian federation, a state that possesses nuclear weapons and is still a permanent member of the UN Security Council, against Ukraine, which at one time gave up nuclear weapons in exchange for international security guarantees, test the strength and viability of the existing mechanisms for ensuring peace and security, test the effectiveness of international organizations and alliances in practice, intensify the search for new mechanisms for ensuring global, regional and national security. The uncertainty of the situation significantly complicates the formation of national security policy by states, requires diversification of measures, strengthening of traditional security mechanisms with measures in the field of building national stability [5]. The above actualizes the issue of creating an effective state mechanism for ensuring national security in Ukraine.

Program documents, such as the National Security Strategy [6] and the Military Security Strategy of Ukraine [7] adapt to the changes taking place, balancing all types of security and changing the priority of implementing specific tasks of a regulatory, organizational, communicative, ideological, and functional nature. The main tasks are to achieve a new quality of stable development, even in the presence of an armed conflict and taking into account all existing or potential threats [8]. Along with this, the basis for the further development of the security environment is the need to reorient the entire system of public administration bodies, subjects of administrative and legal support of national security to unconditional observance of the principles of the rule of law, equality of all before the law, and transparency of government. After all, non-compliance with these principles contributes to the existence of facts of violation and non-compliance of human rights, the increase of corruption, violations in the field of humanitarian aid. Achieving this goal requires a decisive cleansing of the government from corrupt officials, agents of foreign states and non-professionals; radical reorganization of the state apparatus:

1) Reforming the civil service institute, creating effective state management bodies, forming a highly qualified, patriotic corps of civil servants, corresponding reform of the system of training and retraining of personnel, implementation of modern ethical norms of behavior of civil servants, military personnel, law enforcement officers, formation of a new security

culture;

2) Balanced decentralization of state functions and budgetary resources, strengthening of financial capabilities of local self-government bodies;

3) Concentration of the activities of executive authorities, local self-government bodies, prosecutor's offices and courts on the tasks of effective protection of the rights, freedoms and legitimate interests of citizens, national security of Ukraine;

4) Ensuring the openness and transparency of the functioning of state bodies, in particular, through the introduction of electronic government technologies [4].

Administrative and legal enssuring of national security directly depends on the priorities of the national security policy, which is the national security strategy of Ukraine, which reforms the institutions of the security sector – the Ukrainian army, other military organizations and law enforcement agencies to ensure readiness to perform national defense missions. In the context under consideration, the implementation of this strategic work is carried out in the following areas: support of the armed forces of Ukraine and other military organizations with high combat capabilities, combat and mobilization readiness, approximation of the composition, management system, training, equipment level to NATO standards; ensuring the budget funds for the security sector as a whole system within the limits of sufficient opportunities for reforming and developing the national security and defense sector; determination of the optimal structure and personnel of security sector agencies based on the urgent needs of national security [9, p. 10].

The restoration of the territorial integrity of the Ukrainian state, the rule of law throughout its territory, the reintegration of temporarily occupied and uncontrolled territories are the top priorities of the national security policy [10, p. 9-12].

The fundamental national interests of Ukraine are: state sovereignty and territorial integrity, democratic constitutional system, non-interference in Ukraine's internal affairs; sustainable development of the national economy, civil society and the state to ensure the growth of the population's level and quality of life; integration of Ukraine into the European political, economic, security, and legal space, acquisition of membership in the European Union and the North Atlantic Treaty Organization, development of equal and mutually beneficial relations with other states [11, p. 52-53].

Therefore, the effectiveness of the administrative and legal ensuring the national security directly depends on determining the characteristics of the security environment and determining the main sources of threats to national security. The further development of administrative and legal support in this area, methods of response, countermeasures and prevention of these threats will depend on how threats to national security will be defined and characterized.

First, corruption in the field of humanitarian aid is an urgent modern task that directly threatens national security. Therefore, the implementation of a principled and consistent anti-corruption policy, the priority directions of which should be the improvement of legislation and the procedure of verification and control in the field of humanitarian aid, the creation of effective control mechanisms for its receipt and use.

Secondly, the creation of an effective security and defense sector of Ukraine is a key task of forming a new model of guaranteeing national security. It should functionally unite military formations, law enforcement, intelligence agencies and special state bodies and services that protect national interests from external and internal threats through the use of weapons, special measures or legal coercion within the limits of their powers[4] the activities of all state bodies should be focused on forecasting, timely detection, prevention and neutralization of external and internal threats to national security, protection of the sovereignty and territorial integrity of Ukraine, security of its border area, promotion of the country's economy, provision of personal security, constitutional rights and freedoms of man and citizen, eradication of crime, improving the system of state power, strengthening law and order and preserving social and political stability of society, strengthening Ukraine's position in the world, maintaining its defense potential and defense capability at the appropriate level [11, p. 52-53].

Thirdly, in order to guarantee the effective functioning of the security and defense sector, it is necessary to create a system of strategic forecasting and planning in order to ensure an adequate response to real and potential threats to national security, to define a complex of political, military, economic, social, informational and other measures to prevent the emergence threats to national security, their neutralization and comprehensive

countermeasures; ensuring the professionalization of the security and defense sector, raising the professional level of personnel, creating an integrated system of personnel training; improvement of the system of democratic civilian control over the security and defense sector of Ukraine [4].

Fourth, it is necessary to define normatively and enshrine in the National Security Strategy of Ukraine and other normative acts the threat of the destruction of the Ukrainian nation, people and state of Ukraine in order to mobilize all available resources to achieve victory over the aggressor-occupier, since there is no other way to survive in we simply do not exist [12-13]. Unfortunately, today the National Security Strategy and the Military Doctrine of Ukraine do not contain provisions regarding threats caused by military aggression.

Fifth, it is objectively necessary to develop and introduce effective civil control over the country's national security system into social practice, which corresponds to the forms, content and practice adopted in democratic countries of the world. The lack of political and legal justification and effective mechanisms (including legal) of such control leads to the fact that key decisions vital for the state and the nation are made behind the scenes, by a narrow, often unconstitutional circle of representatives of the executive power, and are "closed" to the general public, and most often even for the parliament and its committees [14; 15, p. 30]. Thus, the state's strategic orientations in the field of ensuring national security are that Ukraine should form sufficient own capabilities as a basis for ensuring its security and stability [5].

The creation and implementation of the system for ensuring national stability will contribute to: increasing the efficiency of the system for ensuring national security and public administration of Ukraine; ensuring the appropriate level of readiness of the state and society to respond to threats to national security and crisis situations of various origins at all stages of their deployment; establishment of effective interaction between all subjects of ensuring national stability; increasing the effectiveness of crisis management in the state; reducing the amount of human, material and financial losses as a result of the realization of threats, the onset of crisis situations of all kinds; consolidation of society, increasing the level of trust in the authorities; strengthening the potential of local communities, developing local self-government in the context of preventing and countering threats and crisis situations; savings of state and society resources due to their consolidation and effective use; international cooperation and exchange of experience in the field of strengthening national stability and integration of Ukraine into the Euro-Atlantic security system [16; 17, p. 384].

Conclusions. Summarizing, it should be stated that experience proves that the issue of administrative and legal ensuring of national security is a matter not only of public administration bodies, but also of society as a whole and of each citizen in particular. Today, civil society institutions play an important role in the protection of statehood and national interests of our country and sometimes they also take over the performance of some separate functions of the government, while sometimes gaining even a higher level of trust among the population. Therefore, one of the ways to improve the current state of administrative and legal ensuring the national security should be the creation of a multi-level and multifunctional system of interaction between the state and institutions of civil society in the elimination and neutralization of threats to national security. Which, in turn, requires changes and additions to the relevant legislation.

An important step in improving the effectiveness of administrative and legal ensuring in the field of national security of Ukraine should be the revision of some strategic goals of state policy in this field, concidering military aggression threats to the safety and security of critical infrastructure facilities, the ability to effectively respond to uncontrolled mass movement of people etc.), further development of the system of national inviolability and stability (here, such areas as ensuring the continuity of government and the ability of the system of public administration bodies to function fully are important here, their organizational sustainability), increasing the level of coordination and interaction, including information, between all subjects of the security and defense sector, supporting those reforms that have proven their effectiveness, creating a system of adapted administration (flexible management), capable of quickly and effectively responding to crisis situations.

Conflict of Interest and other Ethics Statements
The author declares no conflict of interest.

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ABSTRACT

The article deals with the study of the current state of administrative and legal provision of national security and, on this basis, the development of proposals and recommendations for the improvement of the specified sphere and the improvement of the effectiveness of public administration bodies. The article states that ensuring national security is an urgent and main task for our state, the successful implementation of which determines the very existence of Ukraine.

It is justified that the issue of administrative and legal provision of national security is a matter not only of public administration bodies, but also of society as a whole and of each citizen in particular. Attention is drawn to the fact that today civil society institutions play an important role in the protection of statehood and national interests of our country. and sometimes they also take over the performance of some separate functions of the government, while sometimes gaining even a higher level of trust among the population. It is noted that one of the ways to improve the current state of administrative and legal provision of national security should be the creation of a multi-level and multifunctional system of interaction between the state and institutions of civil society in the elimination and neutralization of threats to national security. Which, in turn, requires changes and additions to the relevant legislation.

It is concluded that an important step in improving the effectiveness of administrative and legal support in the field of national security of Ukraine should be a review of some strategic goals of state policy in this field, taking into account military aggression (threats to the safety and security of critical infrastructure objects, the ability to respond effectively to uncontrolled mass movement of people, etc.), further development of the system of national indomitability and stability (important here are areas such as ensuring at the state level the continuity of governance and the full functioning of the system of public administration bodies, their organizational stability), increasing the level of coordination and interaction, including information, between all subjects of the security and defense sector, supporting those reforms that have proven their effectiveness, creating a system of adapted administration (flexible management) capable of quickly and effectively responding to crisis situations.

Keywords: *security, national security, provision, administrative and legal provision, strategy, public administration.*

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ADMINISTRATIVE AND LEGAL PROVISION OF STATE CONTROL OVER HUMANITARIAN AID

Роман Голобутовський. АДМІНІСТРАТИВНО-ПРАВОВЕ ЗАБЕЗПЕЧЕННЯ ДЕРЖАВНОГО КОНТРОЛЮ ЗА ГУМАНІТАРНОЮ ДОПОМОГОЮ. Стаття присвячена з'ясуванню змісту та особливостей державного контролю за гуманітарною допомогою та вироблення пропозицій щодо його вдосконалення. У статті вказується на те, що сьогодні існують чисельні проблеми, які пов'язані з порушеннями законодавства, що регулює порядок надання та забезпечення гуманітарною допомогою, що, в свою чергу, актуалізує питання ефективності та системності державного контролю у цій сфері. Аналіз стану нормативно-правового регулювання та діяльності органів публічної влади, волонтерів, громадських об'єднань свідчить про необхідність впровадження жорсткої системи державного контролю за гуманітарною допомогою. Звертається увага на те, що контроль, як функція управління, пов'язаний з необхідністю постійної перевірки результатів будь-якої діяльності з тим, щоб своєчасно усунути порушення законодавства, підвищити ефективність діяльності публічної адміністрації та їх посадових і службових осіб у тій чи іншій сфері. Виокремлено види, форми та напрямки державного контролю за гуманітарною допомогою.

Робиться висновок про те, що державний контроль за гуманітарною допомогою характеризується певними недоліками організаційно-правового регулювання, що в цілому призводить до нецільового та неефективного використання коштів, самої гуманітарної допомоги, відсутністю законодавчого підґрунтя здійснення контрольних заходів, нормативного визначення змісту державного контролю за гуманітарною допомогою, його предмету та об'єкту, вимог до проведення, а також недосконалістю запроваджених форм і методів контролю, що в цілому слугує підґрунтям для зловживань у цій сфері. Тому має бути створений ефективний механізм державного контролю за гуманітарною допомогою. Обґрунтовується, що механізм державного контролю за гуманітарною допомогою має бути безперервним процесом чіткого функціонування всіх суб'єктів державного контролю на підставі спеціального законодавства, яке має визначати предмет та об'єкт державного контролю, завдання, процедури його проведення, види, форми та методи, систему суб'єктів, які мають його здійснювати з чітким розподілом повноважень між ними. Запропоновано прийняти Закон України «Про державний контроль за гуманітарною допомогою».

Ключові слова: *гуманітарна допомога, державний контроль, органи публічної адміністрації, діяльність, адміністративно-правове забезпечення, механізм державного контролю.*

Relevance of the study. Humanitarian aid stands out for its effectiveness and efficiency among the means of support for the military and the civilian population during the war. To support the military and the population and ensure their basic household needs, the international community, volunteers, various organisations and citizens provide various assistance, one of which is humanitarian assistance.

Along with this, information about abuses in this area, illegal and untargeted use of humanitarian aid appears in the mass media and social networks. In connection with this, the issue of creating an effective and efficient mechanism of state control over the receipt, distribution and accounting of humanitarian aid, combating offenses in this area becomes urgent.

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Recent publications review. In administrative law science, state control issues were studied quite widely by such scientists as: O. Andriyko, I. Golosnichenko, V. Harashchuk, K. Kolpakov, T. Minka, L. Nalyvaiko, V. Pohorilko and others. Along with this, the problems of state control over humanitarian aid in Ukraine have yet to receive the necessary scientific understanding. However, certain questions regarding administration and responsibility in this area have been highlighted in their works by such scientists as: O. Bida, Yu. Harust, O. Kryshevich, N. Koval, M. Khavronyuk. Therefore, a separate study requires insufficient study and comprehension by legal science of the content, tasks, forms, and methods of state control over humanitarian aid.

The article's objective. The article aims to clarify the content and features of state control over humanitarian aid and develop proposals for its improvement.

Discussion. In the vast majority of research approaches, state control is understood as "a special function of the state, which is expressed in the activities of its bodies, aimed at obtaining and analysing information about processes and phenomena occurring in society, establishing violations and deviations from normative and individual prescriptions, as well as at putting forth demands for the elimination of detected violations to protect the rights and freedoms of man and citizen, the constitutional system, and maintaining the regime of legality" [1, p. 294].

The approach of V. Harashchuk, in his monograph "Control and view in public administration", defines control as "the main way of ensuring legality and discipline in public administration", as "one of the factors that discipline the behaviour of civil servants and citizens in the sphere of public administration, which makes "transparent", for the society the activity of the state, and for the state – intra-societal relations, the state of work of individual state and other entities [2, p. 36].

Thus, state control is a tool that ensures the regime of legality under humanitarian aid, and the activity of public authorities in this area becomes transparent and open.

Along with this, one cannot fail to pay attention to the fact that today there are numerous problems associated with violations of the legislation regulating the procedure for providing and providing humanitarian aid, which in turn actualises the issue of effectiveness and systematic state control in this area.

The multitude of state entities involved in the process of recording, searching and distributing humanitarian aid, constant changes to the regulatory framework, lack of quality interaction, coordination and standardised approaches in working with humanitarian aid, and low level of accountability and transparency are only part of the problems, which were found based on the results of the analysis. Surveys of respondents – representatives of various state authorities and representatives of local authorities – proved that most of the processes related to humanitarian aid are unsystematised, not properly regulated, and are based largely on informal agreements [3].

The state tried to solve the inappropriate use of humanitarian aid by introducing criminal liability measures. On April 3, 2022, the Law of Ukraine No. 2155-IX of March 24, 2022, "On Amendments to the Criminal Code of Ukraine Regarding Liability for Illegal Use of Humanitarian Aid" [4] entered into force, supplemented by Article 2012 "Illegal use of humanitarian aid for profit, charitable donations or free assistance". Along with this, today, there are numerous discussions among specialists regarding the low level of rule-making technique, which is inherent in the legislative act which amended the Criminal Codex of Ukraine.

In this regard, M. Havroniuk notes that if Article 201-2 of the Criminal Code did not exist, then the sale of goods (items) of humanitarian aid or the use of charitable donations, or the conclusion of other transactions regarding the disposal of such property, committed obtaining profit and in the amount of more than 434,175 UAH., would qualify, based on this amount, taking into account point 3 of the note to Art. 185 of the Criminal Code, according to parts 4 or 5 of Art. 191 of the Criminal Code [5] as embezzlement of someone else's property, which was entrusted to a person or was in his care, or as embezzlement or appropriation of someone else's property by abuse of his official position by an official. Due to a mistake of the legislator, a more serious crime – embezzlement in significant amounts – should be punished more mildly (according to Article 201-2 of the Criminal Code) than embezzlement in amounts which, according to Article 201-2 of the Criminal Code are not significant (according to Article 191 of the Criminal Code) [6].

The possibility of liability for violations of the legislation on humanitarian aid is also

defined in the Basic Laws of Ukraine "On Humanitarian Aid" [7] and "On Charitable Activities and Charitable Organizations" [8]. Along with this, the specified legislative acts contain general wording and determine that state authorities and local self-government bodies bear civil, administrative, disciplinary and criminal liability for violations of legislation in this area. Regarding the mechanism of state control, the relevant forms and methods are not clearly defined by the specified legislation.

Creating an effective and efficient mechanism of state control over humanitarian aid remains relevant today. As noted by O. Andriyko, control in management has an independent meaning. It is an element, a part of other management functions, checking the implementation of management functions carried out at the final stages of the process [9, p. 92].

Control, as a management function, is associated with the need to constantly check the results of any activity to promptly eliminate law violations and increase the effectiveness of public administration and their officials and officials in one or another area.

In state administration, control is closely related to other management functions and, at the same time, is designed to assess the compliance of the implementation of these functions with the tasks facing management. The control function in the state administration consists of analysing and comparing the actual situation in one field with the requirements set before them, deviations in the performance of assigned tasks and the reasons for these deviations, as well as evaluating the activity and feasibility of this particular path. According to O. Andriyko, this specificity of the purpose of control makes it possible to distinguish it from other management functions, to create special bodies that do not perform or almost do not perform other, except for control, state functions, to determine the competence of these bodies [9, p. 95].

Speaking about state control over humanitarian aid, it should be noted that it aims to ensure the effectiveness and legality of the activities of central executive bodies, local self-government bodies, volunteers and public associations. State control in this area should be implemented in the following forms: control over compliance with the legislation on humanitarian aid; control over the conscientious performance of official duties; control over the use of financial, material and labour resources; control over compliance with the rights and interests of citizens in the process of providing humanitarian aid.

In addition, state control over humanitarian aid should be carried out in the following directions: forecasting the needs for humanitarian aid, analysis and processing of information about humanitarian aid that is transmitted to identify possible trends of deviations and violations of legal requirements; monitoring, i.e. systematic observation of the fulfilment of the mandatory requirements of the legislation on humanitarian assistance, the purpose of which should be the continuous collection of information on compliance with the legality regime; active application of state coercion measures to stop and eliminate the consequences of detected violations (administrative measures of prevention, termination and recovery). It seems that the measures of administrative punishment applied due to bringing guilty persons to administrative responsibility are not included by the legislator in the concept of "state control" [10].

Thus, the imperfect mechanism of determining real needs on the ground leads to the fact that some of these needs remain partially or completely unsatisfied. The multiplicity of entities that simultaneously carry out needs accounting, search for sources of receiving humanitarian aid and delivery of such aid and do not coordinate their actions with other bodies that perform the same tasks has the consequence of duplication of requests and the impossibility of qualitative systematisation and generalisation of the needs of the population. Complex organisational and logistical chains, combined with the non-transparency of processes at most stages, lead to the fact that both domestic and international donors are more inclined to cooperate not with official state representations (central or local authorities) but with non-governmental organisations or volunteer organisations initiatives that are trusted [3].

Therefore, the analysis of the state of regulatory and legal regulation and the activities of public authorities, volunteers, and public associations indicates the need to implement a strict system of state control over humanitarian aid.

State control over humanitarian aid should be embodied in "a form of exercise of state power that ensures compliance with laws and other normative acts issued by state authorities" [11, p. 112]. This indicates the collective nature of state control since its implementation involves the activity of the state apparatus, which organises the control system in controlled structures. Accordingly, relevant institutions carry out state control that ensures its effectiveness in various spheres and branches of public administration [12].

Depending on the field of activity, state control over humanitarian aid may be;

departmental (which is carried out by ministries and departments within the relevant organisational structure and related to the tasks facing ministries and departments. In accordance with this, independent intra-departmental control structures should be created and function in the central bodies of executive power; inter-departmental control is carried out by an inter-branch body of competence, which ensures control over the implementation of mandatory rules operating in the relevant field, has the right to check the interdepartmental control body, on issues that are narrow, special, facing this body; supra-departmental control is carried out by bodies of general competence – the Cabinet of Ministers of Ukraine, local state administrations on issues of economic, socio-cultural and administrative-political construction, regardless of the departmental subordination of objects of control in the form of inspections (survey and study of certain areas of financial and economic activity, according to the results of which a reference or report is made), audit (documentary control of financial and economic activity, based on the results of which an act is drawn up), demand for reports, etc. [11, p. 131; 13].

In general, the solution to the issue of improving state control over humanitarian aid is possible by improving the state of departmental, inter-branch and supra-departmental control. Implementing these types of control can be embodied in a normative legal act, which, for example, can become the Law of Ukraine "On State Control of Humanitarian Aid".

The subject and object of state control over humanitarian aid also need clear legal regulation. Clear legal regulation of the subject and object of state control as a public activity carried out by public administration bodies helps to determine its scope, criteria, nature and essence [14-15]. It should be noted that the legislation currently lacks a definition of such concepts as the subject and object of state control over humanitarian aid, which generally leads to uncertainty about the nature and content of state control in this area. Attention should also be paid to the fact that the legislation does not systematise, and in general, there is no clear list of subjects of state control over humanitarian aid. That is why, to more fully cover control measures in the field of humanitarian aid, we propose to establish the concept of the subject and object of state control over humanitarian aid in the legislation, as well as to regulate a clear list of entities that carry it out with a definition of their scope powers

Conclusions. Thus, summarising the above, it can be noted that state control over humanitarian aid is characterised by certain shortcomings of organisational and legal regulation, which in general leads to non-targeted and ineffective use of funds, humanitarian aid itself, in the absence of a legislative basis for the implementation of control measures, normative definition of the content of state control over humanitarian aid, its subject and object, requirements for implementation, as well as the imperfection of the introduced forms and methods of control, which in general serves as a basis for abuses in this area. Therefore, an effective mechanism of state control over humanitarian aid should be created. The mechanism of state control over humanitarian aid should be a continuous process of clear functioning of all subjects of state control based on special legislation, which should define the subject and object of state control, tasks, procedures for its implementation, types, forms and methods, a system of subjects, which should carry it out with a clear division of powers between them. To solve these issues, we propose to adopt the Law of Ukraine "On State Control of Humanitarian Aid".

Conflict of Interest and other Ethics Statements
The author declares no conflict of interest.

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ABSTRACT

The article is devoted to clarifying the content and features of state control over humanitarian aid and making proposals for its improvement. The article points out that today there are numerous problems associated with violations of the legislation regulating the procedure for providing and providing humanitarian aid, which in turn actualises the issue of efficiency and systematic state control in this area. An analysis of the state of legal regulation and the activities of public authorities, volunteers, and public associations indicates the need to implement a strict system of state control over humanitarian aid. Attention is drawn to the fact that power, as a management function, is associated with the need to constantly check the results of any activity to promptly eliminate violations of the law and increase the effectiveness of public administration and their officials and officials in one or another area. Types, forms and directions of state control over humanitarian aid are highlighted.

It is concluded that state control over humanitarian aid is characterised by certain shortcomings of organisational and legal regulation, which in general leads to non-targeted and inefficient use of funds, humanitarian aid itself, from the essence of the legislative basis for the implementation of control measures, normative definition of the content of state control over humanitarian aid, it's subject and object, requirements for performance, as well as imperfection of the introduced forms and methods of power, which in general serve as grounds for abuses in this area. Therefore, an effective mechanism of state control over humanitarian aid should be created. It is justified that the tool of state control over humanitarian aid should be a continuous process of apparent functioning of all subjects of state control based on special legislation, which should determine the subject and object of state control, tasks, procedures for its implementation, types, forms and methods, system subjects who have to implement it with a clear division of powers between them. It is proposed to adopt the Law of Ukraine "On State Control of Humanitarian Aid".

Keywords: *humanitarian aid, state control, public administration bodies, activity, administrative and legal support, mechanism of state control.*

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UKRAINIAN LANGUAGE AS STATE LANGUAGE: GENERAL AND LAW DISCOURSE

Андрій Кучук, Катерина Ветошко. УКРАЇНСЬКА МОВА ЯК ДЕРЖАВНА: ЗАГАЛЬНОПРАВОВИЙ ДИСКУРС. Актуальність дослідження обумовлюється необхідністю висвітлення значимості української мови як державної у творенні та подальшій розбудові української держави. Вказується, що до російської агресії питання правового статусу української мови не стало предметом комплексного дослідження правничої науки, а окремі аспекти функцій української мови в державі були предметом гносеології переважно філологів. Метою дослідження є акцентування уваги на необхідності сприйняття мови через її державотворчу роль, на значимості виконання вимог забезпечення функціонування української мови в усіх сферах діяльності суспільства. Наголошується на окремих положеннях рішень Конституційного Суду України у справах, пов'язаних з статусом української мови як державної та забезпеченням її функціонування в Україні. Наводяться приклади порушення мовного законодавства окремими суб'єктами політичної діяльності. Вказується на позитивний досвід європейських держав щодо забезпечення функціонування державної мови, формування дискурсу про важливу роль мови в державотворенні.

Резюмується, що виконання органами публічної влади завдання утвердження української

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мови як державної в українському суспільстві виявився недостатньо ефективним. Ми могли спостерігати, як відбувається процес звуження її використання, що стало одним з факторів соціальної напруги та вплинуло на забезпечення національної безпеки Української держави. На сьогодні, саме на органах державної влади лежить важливий обов'язок донести ту роль української мови, яка відзначення у рішенні Конституційного Суду України. Без української мови не може бути й української держави.

Ключові слова: *державна мова, державотворення, Конституційний Суд України, публічна влада, українська мова.*

Relevance of the study. The issue of the state language is one of the crucial issues of state formation. The themes gained special importance, mostly without causing social discussions, during the formation of national states. For Ukrainian society, the issue of language did not arise at the time of the declaration of independence of the Ukrainian state, but 23 years after its declaration, reaching its peak in 2022 with the beginning of russia's full-scale armed aggression against Ukraine. The aggressor used the language factor as one of the justifications for military actions. Although this argument was groundless, it was the russian president who emphasized it. Let us emphasize that according to the russian doctrine, the sphere of interests of russia ends with the territory of using the the russian language by population.

Let us add that the issue of the Ukrainian language status was permanently used by subjects of political activity mainly during the period of elections to state authorities and local self-government (in particular, to manipulate voters).

According to the provisions of the Constitution of Ukraine, the state language in Ukraine is Ukrainian [1]. Herewith, according to Part 2 of Art. 10 of the Constitution of Ukraine "The state ensures the comprehensive development and functioning of the Ukrainian language in all spheres of social life throughout the territory of Ukraine" [1]. It should be noted that, in our opinion, public authorities mostly did not fulfill (improperly fulfilled) the above constitutional breve. The confirmation of this is the state of functioning of the Ukrainian language in Ukraine. Thus, even today, when the provisions of the Law of Ukraine "On Ensuring the Functioning of the Ukrainian Language as a State Language" [2], in particular, regarding the use of the state language in the sphere of mass media and consumer service, it is necessary to demand that service providers switch to Ukrainian language everywhere. Even today (at the time of war), it is the journalists who use russian language on the central TV channels. So, on this occasion, we will recall the recent address of P. Hrytsenko, doctor of philological sciences, professor, director of the Institute of the Ukrainian Language of the National Academy of Sciences of Ukraine, to the President of Ukraine. "It is unacceptable that media workers do not know how to say two sentences in Ukrainian language: a military man, a general is sitting for an interview. Previously, everyone said: the military does not know the Ukrainian language. And the correspondent is sitting, and asking questions. The general speaks a refined selected Ukrainian language, and he is consistently asked only in russian" [3].

Recent publications review. As we noted, the issue of the Ukrainian language and its functioning in various social spheres became relevant with the beginning of Russia's armed aggression against Ukraine. Let us add that the Law of Ukraine "On Ensuring the Functioning of the Ukrainian Language as a State Language" was adopted only in 2019, and in 2021 this law was recognized as constitutional (a number of people's deputies considered this Law to be inconsistent with the Constitution of Ukraine, establishing guarantees specifically for proper functioning of the Ukrainian language).

That is why the issue of the perception of the state language as the basis of the constitutional system in legal discourse, was mostly not the subject of systematic research. Until 2014, these themes had, in particular, a purely philological significance (within the scientific discourse). For example, let us mention the dissertation study on the topic "Ukrainian Language in Social and Linguistic Aspect" [4], the author of which rightly notes that at that time one of the two tasks of the Ukrainian linguistics (although this part should be disagreed with, since this is the task of the entire Ukrainian society and, in particular, of public authorities), there is a necessity to "develop the scientific foundations of the state language policy aimed at introducing the state language, and expanding the spheres of its use" [4, p. 29].

Certain aspects of the state-building function of language are covered by S. Yermolenko (however, precisely through the subject of philology) [5, p. 77-115].

G. Yankovska studied the functions of the state language (within the linguistic discourse) [6, p. 23-27]. In legal science, only individual scientific papers were published on this topic. Thus, let's mention the study by V. Shyshkin, dedicated to the very language state-

building function. The jurist's thesis that "if according to the prescription of the part 2 of Article 3 of the Basic Law of Ukraine, the state is responsible for its activities to people, then it must also be responsible for the full-fledged functioning of the Ukrainian language, the bearers of which are people – citizens of the titular nation" [7].

We cannot leave behind the dissertation by S. Kravchenko, in which, however, language is not considered through the prism of its significance for state-building and not as a component of the constitutional system, but only as a means of normative prescriptions' formal reflection. "The very idea of the law embodiment into linguistic form is the starting point of the materialization of the law and the basis for the law's entry into force" [8].

However, even today, as we indicated above, the problems of perception the language as a factor of state-building does not lose its relevance and this fact has determined our study.

The article's objective. Aim of study is to focus attention on the necessity to perceive the language through its state-building role as well as on the importance of fulfilling the requirements for ensuring functioning of the Ukrainian language in all spheres of society.

Discussion. Language is usually perceived as a means of transmitting information from one person to another. According to the well-known expression by E. Kant, "a person communicates with his own kind, because that way he feels more like a person" [9]. Language is used as a means of uniting individuals into certain communities, nations, and peoples. The population in the state is consolidated with the help of a language. Each state has an immanent language of state communication, that is, the state language. The state language is a language established by tradition or legislation, the use of which is mandatory in state administration and administrative agencies, public institutions and organizations, at enterprises, in state institutions of education, science, culture, and in the fields of communication and IT [10, p. 126].

The fact that Ukrainian language is now recognized as the state language in Ukraine is a great achievement of the Ukrainian people. Throughout the entire historical development, the Ukrainian people and their language were oppressed. However, despite all the obstacles, the Ukrainian language is currently legislated as the state language. According to Art. 10 of the Constitution of Ukraine, adopted by the Verkhovna Rada on June 28, 1996, Ukrainian language is the state language. Accordingly, the state must ensure the comprehensive development and functioning of the Ukrainian language in all spheres of public life throughout the territory of Ukraine [1].

Let us note that the legal (as a kind of official) interpretation of the status of the state language was given by the Constitutional Court of Ukraine in the corresponding decision: "Ukrainian language as the state language is a mandatory means of communication throughout the territory of Ukraine in the exercise of powers by state authorities and local self-government (the language of acts, work, record keeping, and documentation, etc.), as well as in other public spheres of public life determined by law" [11]. In the cited decision of the constitutional control agency, it was also explained why such a special status was given to the Ukrainian language: "The Constitution of Ukraine granted state status to the Ukrainian language. This fully corresponds to the state-building role of the Ukrainian nation, which is stated in the Preamble of the Constitution of Ukraine, the nation that historically lives on the territory of Ukraine, constitutes the absolute majority of its population and gave the official name to the state" [11]. However, in Ukraine, there are cases when judges, ministers, and people's deputies use the russian language in official discourse. Demonstrative in this context is the case when during a court session the suspect makes remarks to the judge, making him to use the state language [12].

An example of a complex language situation is the case of one of the ex-ministers. It concerned the violation of Art. 10 of the Constitution of Ukraine by a civil servant: the minister's speech (at that time) was published on the YouTube platform in russian language. It was on this occasion that in August 2015, public activist S. Litynsky appealed to the court. The plaintiff pointed to the minister's violation of language legislation and demanded to provide an authentic translation of this video recording of the minister. The court found it illegal to refuse to issue a translation of the minister's speech [13]. It is appropriate to emphasize that instead of implementing the court's decision, the central executive body filed an appeal against this decision, trying to cancel the obligation for the minister to use the state language in his activities. This appeal was subsequently withdrawn.

There are a number of similar situations: from violations of language legislation by public service workers to non-implementation by public authorities. Therefore, the language situation is quite complicated, as language legislation is violated even by civil servants, who should be an example for citizens. Thus, in accordance with the current legislation, the duties

of civil servants include, in particular, the following: "it is mandatory to use the state language during the performance of official duties, to prevent discrimination against the state language and to oppose possible attempts to discriminate against it" [14].

Despite the difficult path of establishing the Ukrainian language as the state language, even after its status was established in the Constitution of Ukraine and the relevant law, the Ukrainian language is still subject to restrictions. We emphasize that we do not consider the reasons for such a state of ensuring the functioning of the Ukrainian language within the Ukrainian society, since this goes beyond the scope of our knowledge and should be the subject of a separate study.

Let us emphasize that Ukraine has declared the European integration course, and in connection with which the corresponding changes were made to the Constitution of Ukraine. For European states the statement on the importance of the state language, which is considered as the basis of statehood and as the foundation of statehood, is quite obvious, and European states really ensure the comprehensive development of their own state language. In each of the European states, citizens develop the principle of respect for the state language, and the use of the state language is not considered as something that humiliates a person and a factor of a person's belonging to a lower class, etc. Especially if we are talking about civil servants, for whom the issue of language does not even arise.

In this context, the example of Latvia regarding the recognition of occupation as part of the Soviet state and the separation of two legal statuses, namely: citizens and non-citizens, is indicative. The latter do not have the same rights as the former, in particular, regarding participation in a political life and some other rights; which they can get only by becoming a citizen of Latvia. Herewith, one of the requirements for acquiring citizenship is knowledge of the Latvian language.

We cannot but mention the example of France, where the French language is directly fixed in Art. 2 of the Constitution as the language of France. At the same time, the breve is the first in the section dealing with sovereignty. Let us point out that the Constitutional Court of Ukraine in one of its decisions indicated the following: "The Ukrainian language is an inseparable attribute of the Ukrainian statehood... As a determining factor and the fundamental sign of the identity of the Ukrainian nation... the Ukrainian language, by virtue of the nation-making principle embedded in it, is a basic systemic component of the Ukrainian statehood and its basis. ...The threat to the Ukrainian language is equivalent to the threat to the national security of Ukraine, the existence of the Ukrainian nation and its state, since the language is a type of nation code, and not just a means of communication" [15].

Thus, both a significant part of Ukrainians and the majority of public authorities should realize the importance of the Ukrainian language for the preservation and further development of the Ukrainian state. The fundamental task of the state at the current stage of society's functioning, along with countering russia's armed aggression, is "ensuring the comprehensive development and functioning of the Ukrainian language in all spheres of public life throughout the territory of Ukraine" [1].

We should also note the fact that the public authorities did not carry out appropriate work to convey the important role of the Ukrainian language in the formation of the Ukrainian state to the population, and this fact strengthened the influence of russian narratives about the Ukrainian language's unimportance, etc., and was later used by russian politicians to justify their criminal actions against Ukraine and Ukrainians.

That is why Ukrainians must understand that language is important; we can and must protect it. In this context, it is worth pointing out the necessity to improve the activities of the Commissioner for the Protection of the State Language, including by increasing the number of employees who will monitor compliance with the requirements of language legislation (however, this issue requires a separate study).

Conclusions. It is quite logical to conclude that the public authorities' performance of the task of establishing the Ukrainian language as the state language within Ukrainian society was not effective enough. We could observe the process of narrowing its use, which became one of the factors of social tension and affected the provision of national security of the Ukrainian state. Today, it is the state authorities that have an important duty to convey the role of the Ukrainian language, which was noted in the decision of the Constitutional Court of Ukraine. There can be no Ukrainian state without the Ukrainian language.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

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ABSTRACT

The topicality of the study is determined by the necessity to cover the importance of the Ukrainian language as the state language in building and further development of the Ukrainian state. It is indicated that before the russian aggression, the issue of the legal status of the Ukrainian language did not become the subject of a comprehensive study of jurisprudence, and certain aspects of the Ukrainian language's functions within the state were the subject of epistemology mainly of philologists.

The purpose of the study is to focus attention on the necessity to perceive the language through its state-building role, on the importance of fulfilling the requirements for ensuring the functioning of the Ukrainian language in all spheres of society.

Emphasis is placed on certain provisions of the Constitutional Court of Ukraine decisions in cases related to the status of the Ukrainian language as the state language and ensuring its functioning in Ukraine. Examples of language legislation violations by individual subjects of political activity are given.

It is pointed out the positive experience of European states in ensuring the functioning of the state language, forming a discourse on the important role of language in state building. For European states, the position on the importance of the state language, which is considered as the basis of state building, as the foundation of statehood, is quite obvious.

It is argued that the recognition of the Ukrainian language as the state language in Ukraine is a great achievement of the Ukrainian people (based on the nation-building and state-building function of the language). Throughout the entire historical development, the Ukrainian people and their language were oppressed. However, despite all the obstacles, the Ukrainian language is currently legislated as the state language. Accordingly, the state must ensure the comprehensive development and functioning of the Ukrainian language in all spheres of public life throughout the territory of Ukraine.

It is summarized that the implementation of the task of establishing the Ukrainian language as the state language by public authorities in Ukrainian society turned out to be insufficiently effective. We could observe the process of narrowing its use, which became one of the factors of social tension and affected the provision of national security of the Ukrainian state. Today, it is the state authorities that have an important duty to convey the role of the Ukrainian language, which was noted in the decision of the Constitutional Court of Ukraine. There can be no Ukrainian state without the Ukrainian language.

Keywords: *state language, state-building, Constitutional Court of Ukraine, public authorities, Ukrainian language.*

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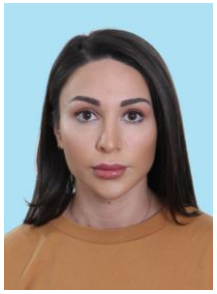

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LEGAL FRAMEWORK FOR THE RIGHT TO GOOD GOVERNANCE

Ляман Ілгар кизи Аббасли. ЮРИДИЧНІ ЗАСАДИ ПРАВА НА НАЛЕЖНЕ ВРЯДУВАННЯ. Досліджено правові питання щодо формування та закріплення у нормативних правових актах права на належне врядування. Окрім того, що стаття 41 Хартії Європейського Союзу про основні права певним чином містить авторитетне визначення права на належне врядування, вона не є нововведенням. Ні мета, ні зміст принципу належного врядування не є новими для адміністративного права. Новаторська цінність статті 41 полягає, серед іншого, у проголошенні нею належного врядування як суб'єктивного права.

Реалізуючи це суб'єктивне право громадяни можуть покладатися на належне врядування у своїх відносинах з державними органами так само, як і на інші закріплені в Хартії суб'єктивні права. Так само, як вони можуть ставитись до права на свободу думки, совісті та релігії, вони можуть претендувати на право отримати підстави для адміністративного рішення. В обох випадках громадянам надається інструмент для забезпечення виконання їхніх вимог щодо адміністративних органів.

Наукова новизна статті пов'язана з вищевикладеним, у тому числі з подальшим розвитком національного законодавства Азербайджанської Республіки. Визначення належного врядування надається (хоч і не вичерпним чином) пунктами 2-4 статті 41 так: право бути заслуханим до вжиття будь-якого індивідуального заходу, який торкнеться сторони; право кожної особи мати доступ до свого досьє з урахуванням законних інтересів конфіденційності та професійної і ділової таємниці; обов'язок органу надати підстави для прийняття рішень щодо тієї чи іншої особи. Результати статті можуть бути використані у майбутніх наукових дослідженнях, у тому числі при подальшому розвитку міжнародних та національних нормативно-правових засад стосовно права на належне врядування.

***Ключові слова**: права людини, право на хороше управління, Хартія ЄС про основні права, резолюцію Ради Європи, Європейський омбудсмен, Європейський суд з прав людини*.

Relevance of the study. The way in which the right to good governance is set out in Article 41 of the EU Charter of Fundamental Rights does not give a complete picture of its content. In fact, it was seen as a compendium, albeit incomplete, of individual rights developed by the court, and, moreover, as a formulation of the general right to good government. This requires some explanation. First, the rights listed in Article 41 of the Charter may include or incorporate other administrative principles not expressly set forth in its paragraphs. The first paragraph defines good governance as the right to impartial, fair and timely adjudication of cases. It does not mention the principle of prudence or due diligence, which includes the duty to respond to requests, the duty to act in a timely manner, to collect sufficient information and to consider the request.

However, they were considered to fall under the broader principle of good governance and should be included within the scope of Article 41(1) [3, p. 257]. Secondly, article 41 is a general provision. Since the sub-rules referred to in Article 41(2) are not listed exhaustively, the scope of the right to good governance is not limited to the rights directly listed. Thus, it may include rights other than those specifically listed in Article 41(2), i.e. other than the right to be heard, to have access to one's file and the duty of the administration to give reasons for its decision.

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In this regard, it should be noted that principles relating to important substantive administrative law, such as the principles of proportionality and legal certainty, are not mentioned in article 41. This leads to the third paragraph, which is a reminder that article 41 includes both procedural and substantive – legal requirements that provide individuals with the means to use them in their dealings with public authorities. The same applies to their relations with the EU institutions dealing with these issues [9, p. 244].

Recent publications review. Issues of legal basis of the right to good governance were considered in the works by S. Cassese, N. Foster, X. Groussot, C. Harlow, M. Hertogh, R. Kirkham, K. Kańska, R. Levin, E. Gellhorn, T. Mcgarity, J. Reichel and others.

The research paper's objective is to characterize the current structure and identify trends for future changes in the field of the right to good governance.

Discussion. The original intention of the Swedish government representative in the Convention on the Future of Europe was to ensure that the right to good governance had a specific legal basis in Part III of the treaty. The right to good governance is enshrined in Article 41 of the Charter of Fundamental Rights of the European Union. The European Ombudsman also called on the Convention to include a Charter of Fundamental Rights in the Constitution and to create a clear legal framework for an open, accountable and service-oriented administration. When the Presidium presented the draft treaty, the term "good governance" was dropped and replaced by the phrase "open, efficient and independent governance". Thus, the current Article III-398 states that: 1. In the fulfilment of their tasks, the institutions, branches, branches and agencies of the Union shall be supported by an open, efficient and independent European administration. 2. In accordance with the provisions on personnel and terms of employment adopted on the basis of Article III-427, European laws establish the relevant provisions [2, p. 702].

In 1977, the Council of Europe, in its resolution 77 (31) TP4 PT, argued that since the development of the modern state has led to an increase in the importance of public administration, administrative procedures more often affect individuals). The main task of the Council of Europe is to protect the fundamental individual's rights and freedoms, and therefore it intends to make efforts to improve the procedural position of the individual in relation to the administration by promoting the adoption of rules that will ensure fairness in the relationship between the citizen and the administrative authorities. The following principles were stated: I – right to be heard; II – access to information; III – help and representation; IV – reasoning reasons; IV – justification of remedies.

In order to limit the scope of the principles, the Council stated that the proposed principles apply to "the protection of individuals or legal entities in administrative proceedings in respect of any individual action or decision taken in the exercise of public authority and of a nature which directly affects the rights, freedoms or interests of individuals or legal entities". The term "administrative procedures" excludes litigation from its scope, while the term "individual measures or decisions" excludes administrative acts of a more general nature, and finally, this term expressly excludes those who are only indirectly affected by an administrative act.

In hindsight, this resolution was an important first step towards establishing good administration as an operational legal concept, as it established a number of principles that today are generally regarded as central to the right to good governance. However, the term "good governance" is actually used in the Resolution as a limiting requirement for the implementation of the principles, and not as an individual right. The principles should be implemented with due regard to the "requirements of good and efficient management" [10].

European courts have highlighted the importance of due process as opposed to administrative discretion. The Court of Justice further recognized a set of general administrative principles, for example: the general principle of legal administration; the principle of non-discrimination; the principle of proportionality; the principle of legal certainty; protecting legitimate expectations; the right to be heard before an unfavorable public decision is made.

The obligation to present the grounds for decisions is fixed in the treaty in article 253 (former article 190): rules, directives and decisions ... set out the grounds on which they are based and refer to any suggestions or opinions that should have been received in accordance with this Agreement. The Court of Justice of the European Union and the European Court of Human Rights have made this article a fundamental right of individuals, thus creating an unwritten administrative law based on case law. Such reasoning of the EU Court of Justice and the Court of First Instance can be interpreted as an evolution from the French administration-

oriented tradition to a more individual view of the administrative procedures of the community [4, p. 3].

The right to good governance, as well as the right to access documents, was included in the EU Charter of Fundamental Rights, which was signed and proclaimed in Nice on 7 December 2000. Article 41 contains the right to good government:

1. Everyone has the right to impartial, fair consideration of his case within a reasonable time by the institutions and bodies of the European Union.

2. This right provides, in particular: the right of each person to express his opinion, before measures are personally applied to him, which may entail adverse consequences for him; the right of every person to have access to materials concerning him, while respecting the legitimate interests of confidentiality, as well as professional and commercial secrets; the duty of administrative bodies to motivate the decisions made.

3. Everyone has the right to compensation by the Community for damage caused by its institutions or by its employees in the performance of their duties, in accordance with the general principles of the law of the Member States.

4. Each person may apply to the EU institutions in one of the official languages of the treaties and must receive a response in the same language.

Article 42 contains the right to documentation access: Every EU citizen, or any individual or legal entity residing or having an official registered seat in one of the Member States, has the right of access to the documents of the European Parliament, the Council and the European Commission. Article 41 is based on case law, which enshrined various principles of good governance. It should be noted that the right to good governance is considered as a category of rights, and not as an independent right. It is a group of rights listed in paragraphs 2-4. This list is not intended to be exhaustive and therefore the right to good governance may include rights other than those listed in this article. It still leaves grounds for the court to add new principles to the concept of the right to good governance [6, p. 325].

In accordance with the Maastricht Treaty, the Institute of the European Ombudsman was established with the aim of combating administrative violations in the activities of institutions and bodies of the community. Before the Ombudsman, there was only the Petitions Committee, which received complaints from the public. The committee still exists today, but plays a minor role in the work of good governance. Over the years, the Ombudsman has been continuously working on a general law on good governance as a means of preventing abuse. The Ombudsman has developed a code of good administrative conduct, containing 27 articles, which are intended in various ways to serve as rules of good administrative conduct.

The introduction states that by promoting good governance, the Ombudsman should help strengthen relations between the EU and its citizens. According to the Ombudsman's definition in his 1997 annual report, "Bad governance occurs when a public authority fails to act in accordance with a rule or principle that is binding on it". The European Parliament approved this definition [5, p. 138].

Future developments in the area of the right to good governance may follow some next trends. The eventual success of the new paradigm of administrative law as a member of the social sciences, interested not only in detecting and controlling illegal behavior through judicial review, but also in promoting better decision-making and better governance in the service of the common interest, will have an impact on epistemology and methodology, used by administratives in the future [1, p. 605]. A different approach to the general interest, a change in the idea that it already exists and can be found through bureaucratic expertise and a transition to understanding it as a combination of public and private interests that must be taken into account during the administrative procedure. This will lead to a conflict of interests and the role of the lobby in the executive branch. In this sense, the decision of the general court in case T_286/09 of June 12, 2014 is interesting in that it links good governance with transparency, objectivity and the need to register unofficial contacts.

More difficult is the regulation of procedures and organizations to promote good governance, using scientific developments about the human mind. It is likely that in the future we will be able to draw on cognitive psychology to identify cognitive illusions, better structure the administrative procedure, and propose an appropriate standard of judicial review regarding the duty of due care. In this sense, a derivative of good governance, so-called better or prudent regulation, relies more and more on the development of the behavioral sciences (especially psychology and economics). In relation to rulemaking, the doctrine of the rigid view is also referred to as the test of adequate consideration. Lower courts routinely apply it as the basis for

concluding that an agency rule is arbitrary and capricious because the agency did not "adequately" address remarks criticizing its proposed rule, potential alternatives to that rule, and studies inconsistent with the actual predicates for that rule. Since the 1970^{s}, the courts have required institutions to include in their statements of reason and purpose a detailed discussion of their reasons, confirming the exercise of discretionary powers and indicating due care in considering the findings and observations presented during public hearings under article 553 of the APA [7]. Some authors have stressed that there is judicial activity and that the necessary restraint required by the principle of separation of powers has disappeared. Several professors argue that judicial review causes delays and is a waste of time and money, paralyzing public policy in some sectors and threatening public interests such as public health and the environment. This phenomenon is known as ossification or paralysis by analysis [8, p. 1385].

On the other hand, other opinions hold that the benefits of a hard look approach outweigh the costs, although they are not denied. This is the case of Shapiro (2003), who argues that the new judicial requirements "made rulemaking more time-consuming and costly, but the costs seemed worthwhile not only in terms of democratic benefits, but also in terms of increased rationality of the outcomes. An administrator faced with legal requirements for transparency and participation will almost automatically complete the regulatory cost-benefit analysis required by the rationality school". With regard to the overall results of the study, it should be noted that before the passing of the new constitutional treaty, the concept of good governance was codified in two documents with different status. First, in the EU Charter of Fundamental Rights, which has only the ambiguous status of "solemn proclamation" by the three most important institutions of the Union. Second, the meaning of this concept has been clarified in the Ombudsman's Code of Good Administrative Conduct, which is also non-binding. Thus, the legal status of the right to good governance will be significantly strengthened if the new constitutional treaty with Article III-398 is ratified.

In most EU Member States, there is also a clear trend towards strengthening the procedural rights of persons affected by administrative decisions. Over the past 15-20 years, a number of laws on administrative procedures have been adopted or reformed, indicating a greater degree of regulation of administrative procedure, as well as a greater emphasis on ethical frameworks. The following rights and obligations are part of Articles 41 and 42 of the Charter, and naturally should be considered as a central part of the concept of good governance: impartial and fair consideration of one's cases within a reasonable time (Article 41.1); be heard before any individual action is taken that will adversely affect the citizen (Article 41.2); have access to his or her file regarding any individual measure that could affect him or her (Article 41.2); the obligation to state in writing the reasons for all decisions (Article 41.2); the right of access to documents (Article 42).

Conclusions. With regard to the special results of the study, if we compare the provisions regarding the right to good governance in the legislation of the Republic of Azerbaijan with the analysis carried out, we can state the following:

– although the right to good governance is not established by a separate article in any legislative act of the Republic of Azerbaijan, if taken as a whole, all elements of this right can be found in national legislation. The main elements of the right to good governance are: the right to apply; a fair and impartial approach; consideration of cases within a reasonable time; to be heard and receive legal assistance in general; freedom of access to information. Article 60 of the Constitution of the Republic of Azerbaijan, entitled "Administrative and judicial protection of rights and freedoms", article 61, entitled "Right to receive legal assistance", article 32, establishing the right to personal inviolability, can be singled out as constitutional norms that include these elements, we can mention Article 57 entitled "Right of appeal". We consider it a serious need to adopt a separate legislative act on "good governance" as a mechanism of legal protection, including a number of constitutional rights;

– in general, the legislation of the Republic of Azerbaijan provides for giving special priority to human rights. Here we are talking about "the recognition, observance and protection of the rights and freedoms of man and citizen". This issue is also known as the responsibility of the state. On the basis of the Basic Law (Constitution) of the Republic of Azerbaijan, it can be argued that the functional goal of the state's fulfillment of its obligations in the field of human rights is to create the necessary (political, legal, economic, etc.) conditions for ensuring universally recognized standards in the field of human rights. On the one hand, the national features of the state-legal regulation of relations between the state and the individual are associated with historical and cultural traditions. On the other hand, in accordance with

Articles 10, 12, 71, 148 of the Constitution of the Republic of Azerbaijan, international human rights act as a limiting factor of state sovereignty and require the implementation of the rights and freedoms proclaimed in the Constitution (their implementation). In other words, it requires "good governance";

– one of the structural elements of the right to good governance is the right to appeal. Thus, the normative definition and effective implementation of the right to appeal allows the optimal implementation of the right to good governance in general. We believe that the legislation of the Republic of Azerbaijan has not fully taken into account the requirements of international legal acts in this area when determining the subject composition of the right to appeal. The fact is that if in international legal acts this right extends to "everyone", then in the Constitution of the Republic of Azerbaijan, where the right to appeal extends to "citizens", a restriction is applied to the circle of subjects of this right. In Article 57 of the Constitution of the Republic of Azerbaijan, the right to appeal is specifically established in relation to "citizens". Taking into account the provisions of the main international legal instruments on human rights, it is more correct to assume that the right to apply also applies to foreigners and stateless persons;

– one of the most important elements of the right to good governance "compensation for damages" is of particular importance. There are both legal and psychological problems here. The legal issue is that the state is trying to maintain a certain legal balance, creating an opportunity for a person whose rights have been violated to demand compensation for material damage. The psychological question is that if a person is not able to compensate for the material damage caused to him in the event of a violation of his/her rights, or if he/she is deprived of this opportunity, no matter how severe the decision against the perpetrator, the person may not be satisfied. For example, the possibility of filing a claim for compensation for material damage to the person who committed the crime;

– issues related to obtaining legal assistance, which are important elements of the right to good governance, are regulated in detail by the Constitution and sectoral legislation of the Republic of Azerbaijan. Article 61 of the Constitution of the Republic of Azerbaijan directly recognizes this right and guarantees its implementation. The mentioned article states that everyone has the right to receive quality legal assistance. In our republic, this right is mainly used by lawyers. In this regard, the relevant issues are specified in the Law on Advocates and Advocacy. The law defines the basic principles of advocacy, the legal status of lawyers and the basis of their self-government to provide quality legal assistance to individuals and legal entities in the Republic of Azerbaijan. The main tasks of a lawyer are to protect the rights, freedoms and interests of individuals and legal entities and to provide them with high-quality legal assistance. In addition, the right to protection is a guarantee of the legitimate interests of a person, as well as a guarantee of the interests of justice, is a social value. Since the legal relations arising in connection with ensuring the right of everyone to receive legal assistance reflect public interests, they testify to the fulfillment by the state of constitutional obligations in this area. This requires the state to take more positive action to protect human rights when necessary;

– one of the important elements of the right to good governance are "legality" and "reasonableness". In general, this element is based on the principle of legality. In accordance with the principle of legality, public authorities, local self-government bodies, officials, citizens and their associations are obliged to comply with the Constitution and laws of the Republic of Azerbaijan. The principle of legality is of great importance in the field of management. This importance is due to many factors. First of all, compliance with the law is the guarantor of the effective functioning of the management system. Secondly, to ensure the normal, lawful behavior of the subjects of the management system interacting with each other, it is necessary to comply with this principle, that is, an official must comply with the law when providing services to citizens, and a citizen, guided by the requirements of this principle, can appeal against illegal decisions and actions. official. At the same time, a citizen should not exceed the requirements of the law in relation to state bodies and officials, should not allow abuse.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

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ABSTRACT

The article deals with the study of the legal issues of the formation and consolidation of the right to good governance in regulatory legal acts. Apart from the fact that Article 41 of the Charter of Fundamental Rights of the European Union contains, to a certain extent, an authoritative definition of the right to good administration, it is not new.

The scientific novelty of the article is directly related to the above, including the further development of the national legislation of the Republic of Azerbaijan. Good governance is defined (although not exhaustively) by paragraphs 2-4 of Article 41 as follows: the right to be heard before taking any individual measure that affects a party; the right of every person to have access to his file, taking into account the legitimate interests of confidentiality and professional and business secrecy; the obligation of the body to give grounds for making decisions in relation to a particular person. The results of the article can be used in future scientific research, including in the further development of the international and national normative-legal foundations of good governance.

Keywords: *human rights, right to good administration, European Union Charter of Fundamental Rights, Council of Europe Resolutions, European Ombudsman, European Court of Human Rights.*

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THE CONSTITUTION OF UKRAINE AS THE MOST IMPORTANT LEGAL GUARANTEE OF SOVEREIGNTY AND TERRITORIAL INTEGRITY OF THE NATION

Ігор Сердюк. КОНСТИТУЦІЯ УКРАЇНИ ЯК НАЙВАЖЛИВІША ЮРИДИЧНА ГАРАНТІЯ СУВЕРЕНІТЕТУ ТА ТЕРИТОРІАЛЬНОЇ ЦІЛІСНОСТІ ДЕРЖАВИ. При підготовці цієї статті автор визначив за мету з'ясувати роль Основного Закону Української держави як важливої юридичної гарантії законності і правопорядку, у забезпеченні її суверенітету та територіальної цілісності. Під юридичними гарантіями законності в юридичній науковій літературі розуміють передбачені законодавством спеціальні засоби впровадження, охорони і, в

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разі порушення, відновлення законності. Збройна агресія російської федерації проти України актуалізувала проблему захисту суверенітету та територіальної цілісності нашої держави не лише у практичній, але й науково правовій площині. Одним із важливих аспектів цієї проблеми є ефективність юридичних гарантій законності і правопорядку, з-поміж яких особливо важливе значення має Конституція України.

Конституція України, як документ установчого характеру, не лише юридично підтверджує сам факт існування України як суверенної, незалежної, демократичної, соціальної і правової держави (Ст. 1), територія якої в межах існуючого кордону є цілісною і недоторканною (Ч. 2 Ст. 2), але й засновує найважливіші державні інститути, на які покладаються юридичні обов'язки із забезпечення її суверенітету та територіальної цілісності (Розділи IV-VI), визначає принципи їх діяльності (Розділ I), а також наділяє ці інститути необхідними державно-владними повноваженнями, включно з правом застосування сили (примусу).

Здійснений автором аналіз норм Конституції України стосовно предмета дослідження свідчить про її винятково важливу роль у забезпеченні суверенітету та територіальної цілісності держави, адже саме цей юридичний документ як юридична гарантія законності і правопорядку не просто легалізує, але й легітимізує необхідні, хоча й подеколи непопулярні, юридично значущі дії різних державних і соціальних інститутів.

Ключові слова: *Конституція України (Основний Закон Української держави), юридичні гарантії законності і правопорядку, захист суверенітету та територіальної цілісності України, Збройні Сили України, Верховна Рада України, Президент України.*

Relevance of the study. The armed aggression of the russian federation against Ukraine actualized the problem of protecting the sovereignty and territorial integrity of our state not only in the practical, but also in the scientific and legal plane. One of the important aspects of this problem is the effectiveness of legal guarantees of law and order, among which the Constitution of Ukraine is of particular importance.

Recent publications review. The concept of legal guarantees of legality and law and order, their types and significance for legal practice are traditional issues that are comprehensively considered within the scope of scientific monographs, dissertations, articles, textbooks and training manuals on the theory of the state and law. In the focus of attention of representatives of the doctrine of constitutional law are the issues of the concept of the constitution, its legal properties, varieties and importance in ensuring the constitutional human rights and freedoms person. Such domestic scholars as S. Bobrovnyk [1], V. Vasetskyi [2], M. Kelman, O. Murashin [3], A. Kolodiy [4], O. Kurakin [6], P. Rabinovych [7], L. Serdiuk [8], O. Skrypniuk [9], O. Sovhyria, N. Shuklina [10], Yu. Todyka [11] etc. have made a significant contribution to the study of the outlined problems. At the same time, in their writings, lawyers did not focus on the Constitution of Ukraine as the most important legal guarantee of the sovereignty and territorial integrity of our state.

The research paper's objective is to clarify the role of the Basic Law of the Ukrainian state as an important legal guarantee of legality and law and order in ensuring its sovereignty and territorial integrity.

To achieve the declared goal, we will use the cognitive capabilities of the hermeneutic methodological approach and the special legal method of cognition, which will allow us to reveal the content of the provisions of the Constitution of Ukraine, the need to involve them for scientific analysis is determined by the subject of the study, its tasks and the author's creative intention.

From a methodological point of view, the aspect of knowing the constitution is also important. The latter will be considered by us as the most important legal guarantee of law and order. Such significance of the Basic Law of the state is due to its contractual nature. Despite the official name, this legal document contains legal norms that express the joint, agreed expression of the will of the main beneficiaries of the social contract – citizens of Ukraine of all nationalities, who are united in the social community – the Ukrainian people [1].

Discussion. It should be noted that in the theory of law, legal guarantees of legality are understood as special means of implementation, protection and, in case of violation, restoration of legality provided by legislation [2, p. 177].

The analysis of the above judgment of P. Rabinovych on the legal guarantees of legality in the aspect of the Constitution of Ukraine shows that the latter, as a document of a constituent nature, not only legally confirms the very fact of the existence of Ukraine as a sovereign, independent, democratic, social and legal state (Article 1) , the territory of which within the existing border is integral and inviolable (part 2 of article 2), but also establishes the most important state institutions, which are entrusted with legal obligations to ensure its sovereignty

and territorial integrity (Chapters IV-VI), defines the principles their activities (Chapter I), and also endows these institutions with the necessary state powers, including the right to use force (coercion).

In support of this thesis, we cite specific constitutional and legal prescriptions:

Protecting the sovereignty and territorial integrity of Ukraine, ensuring its economic and information security, shall be the most important function of the State and a matter of concern for all the Ukrainian people (Part 1 of Art. 17).

The defence of Ukraine and protection of its sovereignty, territorial integrity and inviolability shall be entrusted to the Armed Forces of Ukraine (Part 2 of Art. 17).

Ensuring the security of the State and protecting the State borders of Ukraine shall be entrusted to respective military formations and law enforcement bodies of the State, whose organisation and operational procedure shall be determined by law (Part 3 of Art. 17).

The Armed Forces of Ukraine and other military formations shall not be used by anyone to restrict the rights and freedoms of citizens or with the intent to overthrow the constitutional order, subvert the public authorities or obstruct their activity (Part 4 of Art. 17).

The State shall ensure social protection of citizens of Ukraine who serve in the Armed Forces of Ukraine and in other military formations as well as members of their families (Part 5 of Art. 17).

Establishment and operation of any armed formations not envisaged by law are prohibited in the territory of Ukraine (Part 6 of Art. 17).

The location of foreign military bases in the territory of Ukraine shall not be permitted (Part 7 of Art. 17).

No one shall be obliged to execute directions or orders that are manifestly criminal. For the issue or execution of a manifestly criminal ruling or order, legal liability shall arise (Part 1-2 of Art. 60).

Under the conditions of martial law or a state of emergency, specific restrictions on rights and freedoms may be established with the indication of the period of effect for such restrictions. The rights and freedoms stipulated in Articles 24, 25, 27, 28, 29, 40, 47, 51, 52, 55, 56, 57, 58, 59, 60, 61, 62 and 63 of this Constitution shall not be restricted (Part 2 of Art. 64).

Alterations to the territory of Ukraine shall be resolved exclusively by the All-Ukrainian referendum (Art. 73).

Prior to assuming office, people's deputies of Ukraine shall take the following oath before the Verkhovna Rada of Ukraine: "I swear allegiance to Ukraine. I commit myself with all my deeds to protect the sovereignty and independence of Ukraine, to provide for the good of the Motherland and for the welfare of the Ukrainian people. I swear to abide by the Constitution of Ukraine and the laws of Ukraine, to discharge my duties in the interests of all fellow-citizens" (Part 1 of Art. 79).

The Verkhovna Rada of Ukraine shall have the following powers:

– to declare war, upon the recommendation made by the President of Ukraine, and make peace, approve a decision of the President of Ukraine on the use of the Armed Forces of Ukraine and other military formations in the event of armed aggression against Ukraine (clause 9 of Part 1 of Art. 85);

– to approve the general structure, and number of staff of the Security Service of Ukraine, the Armed Forces of Ukraine, and other military formations established in accordance with the laws of Ukraine, as well as of the Ministry of Interior of Ukraine, and specification of the functions of the same (clause 22 of Part 1 of Art. 85);

– to approve decisions on military assistance to other states, on dispatching the Ukrainian Armed Forces units to another states or on admitting units of armed forces of other states to the territory of Ukraine (clause 23 of Part 1 of Art. 85);

– to approve, within a two day period from the date of submission by the President of Ukraine of the decrees on introduction of martial law or the state of emergency in Ukraine or in its particular areas, on total or partial mobilisation, and on declaring particular areas as zones of ecological emergency situations (clause 31 of Part 1 of Art. 85);

– to approve decisions on military assistance to other states, on dispatching the Ukrainian Armed Forces units to another states or on admitting units of armed forces of other states to the territory of Ukraine (clause 23 of Part 1 of Art. 85).

13. They are determined exclusively by the laws of Ukraine:

– the fundamentals of national security, the formation of the Armed Forces of Ukraine

and ensuring public order (clause 17 of Part 1 of Art. 92);

– the legal regime of the state border (clause 18 of Part 1 of Art. 92).

– the legal regime of martial law and state of emergency, zones of ecological emergency situations (clause 19 of Part 1 of Art. 92).

14. The following matters shall be established exclusively by laws of Ukraine:

– a procedure for dispatching units of the Armed Forces of Ukraine to other states; and a procedure for admitting and the terms for stationing units of armed forces of other states on the territory of Ukraine (clause 2 of Part 2 of Art. 92).

15. The President of Ukraine shall be the guarantor of the state sovereignty and territorial integrity of Ukraine, the observance of the Constitution of Ukraine, human and citizen rights and freedoms. The President of Ukraine shall be the guarantor of the implementation of the strategic course of the State to acquire full membership of Ukraine in the European Union and the North Atlantic Treaty Organization (Part 2-3 of Art. 102).

16. The President of Ukraine shall take the following oath:

"I, (name and surname), elected by the will of the people as the President of Ukraine, assuming this high office, do solemnly swear allegiance to Ukraine. I pledge with all my undertakings to protect the sovereignty and independence of Ukraine, to provide for the good of the Motherland and the welfare of the Ukrainian people, to protect the rights and freedoms of citizens, to abide by the Constitution of Ukraine and laws of Ukraine, to exercise my duties in the interests of all compatriots, and to enhance the prestige of Ukraine in the world" (Part 3 of Art. 104).

17. The President of Ukraine shall:

– ensure the independence, national security, and legal succession of the State (clause 1 of Part 1 of Art. 106);

– represent the State in international relations, administer the foreign political activity of the State, conduct negotiations and conclude international treaties (clause 3 of Part 1 of Art. 106);

– adopt decisions on the recognition of foreign states (clause 4 of Part 1 of Art. 106);

– appoint and dismiss heads of diplomatic missions of Ukraine to other states and to international organisations; accept credentials and letters of recall of diplomatic representatives of foreign states (clause 5 of Part 1 of Art. 106);

– submit the proposal to the Verkhovna Rada of Ukraine regarding the appointment of the Minister of Defence of Ukraine and the Minister of Foreign Affairs of Ukraine (clause 10 of Part 1 of Art. 106);

– submit to the Verkhovna Rada of Ukraine the proposal regarding appointment or dismissal of the Head of the Security Service of Ukraine (clause 14 of Part 1 of Art. 106);

– be the Commander-in-Chief of the Armed Forces of Ukraine; appoint and dismiss the high command of the Armed Forces of Ukraine and other military formations; administer the national security and defence of the State (clause 17 of Part 1 of Art. 106);

– be the Head of the National Security and Defence Council of Ukraine (clause 18 of Part 1 of Art. 106);

– submit to the Verkhovna Rada of Ukraine a declaration of a state of war, and adopt a decision on the use of the Armed Forces and other military formations established in compliance with laws of Ukraine in the event of armed aggression against Ukraine (clause 19 of Part 1 of Art. 106);

– adopt, in accordance with law, a decision on the general or partial mobilisation and the introduction of martial law in Ukraine or in its particular territories, in the event of a threat of aggression, or danger to the independence of Ukraine (clause 20 of Part 1 of Art. 106);

– confer high military, high diplomatic, and other high special ranks and class orders (clause 24 of Part 1 of Art. 106);

– confer state awards; establish presidential distinctions and confer them (clause 25 of Part 1 of Art. 106);

18. The President of Ukraine shall issue decrees and directives mandatory for the execution on the territory of Ukraine on the basis and in pursuance of the Constitution and laws of Ukraine (Part 3 of Art. 106);

19. The National Security and Defence Council of Ukraine shall co-ordinate and control the activity of executive power bodies in the area of national security and defence.

The President of Ukraine shall be the Head of the National Security and Defence Council of Ukraine.

The President of Ukraine shall form the personal membership of the National Security and Defence Council of Ukraine.

The Prime Minister of Ukraine, the Minister of Defence of Ukraine, the Head of the Security Service of Ukraine, the Minister of Internal Affairs of Ukraine, and the Minister of Foreign Affairs of Ukraine, shall be ex officio members of the National Security and Defence Council of Ukraine.

The Chairman of the Verkhovna Rada of Ukraine may participate in the meetings of the National Security and Defence Council of Ukraine.

Decisions of the National Security and Defence Council of Ukraine shall be put into effect by decrees of the President of Ukraine (Parts 2-7 of Art. 107).

20. The Cabinet of Ministers of Ukraine shall:

– ensure the state sovereignty and economic independence of Ukraine, the implementation of domestic and foreign policy of the State, and the execution of the Constitution, laws of Ukraine, and acts of the President of Ukraine (clause 1 of Art. 116);

– ensures the implementation of the state's strategic course towards full membership of Ukraine in the European Union and the North Atlantic Treaty Organization (clause 1-1 of Art. 116);

– take measures to ensure human and citizen rights and freedoms (clause 2 of Art. 116);

– take measures to ensure the defence potential and national security of Ukraine, public order, and fight against crime (clause 7 of Art. 116).

21. Ukraine can recognize the jurisdiction of the International Criminal Court under the conditions defined by the Rome Statute of the International Criminal Court (Part 6 of Art. 124).

22. Article 157. The Constitution of Ukraine shall not be amended, if the amendments foresee the abolition or restriction of human and citizen rights and freedoms, or if they are aimed at the liquidation of the independence or violation of the territorial integrity of Ukraine.

The Constitution of Ukraine shall not be amended under the conditions of martial law or a state of emergency (Parts 1-2 of Art. 157).

23. A draft law on making amendments to the Constitution of Ukraine shall be considered by the Verkhovna Rada of Ukraine upon the availability of an opinion of the Constitutional Court of Ukraine on the conformity of such draft law with the requirements of Articles 157 and 158 of this Constitution (Art. 159).

Conclusions. The analysis of the above norms of the Constitution of Ukraine shows its exceptionally important role in ensuring the sovereignty and territorial integrity of the state, because this legal document, as a legal guarantee of legality and law and order, not only legalizes, but also legitimizes the necessary, albeit sometimes unpopular, legally significant actions of various state and social institutions.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

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ABSTRACT

When preparing this article, the author set the goal of clarifying the role of the Basic Law of the Ukrainian State, as an important legal guarantee of legality and law and order, in ensuring its sovereignty and territorial integrity. The author's analysis of the norms of the Constitution of Ukraine, which touch on the subject of the study, proved the extremely important role of the Basic Law of the Ukrainian state in ensuring its sovereignty and territorial integrity, because this legal document, as a legal guarantee of legality and law and order, not only legalizes, but also legitimizes the necessary, albeit sometimes unpopular, legally significant actions of various state and social institutions.

Keywords: *Constitution of Ukraine (Basic Law of the Ukrainian State), legal guarantees of law and order, protection of sovereignty and territorial integrity of Ukraine, Armed Forces of Ukraine, Verkhovna Rada of Ukraine, President of Ukraine.*

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CONTENT OF THE PRINCIPLE OF ACCOUNTABILITY AND RESPONSIBILITY OF LOCAL GOVERNMENT BODIES: FOREIGN EXPERIENCE

Юрій Голик. ЗМІСТ ПРИНЦИПУ ПІДЗВІТНОСТІ ТА ВІДПОВІДАЛЬНОСТІ ОРГАНІВ МІСЦЕВОГО САМОВРЯДУВАННЯ: ЗАРУБІЖНИЙ ДОСВІД. У статті досліджено зміст принципу підзвітності та відповідальності органів місцевого самоврядування крізь призму законодавства та наукових досліджень зарубіжних країн. Наголошено, що після підписання Угоди про асоціацію з Європейським Союзом та отримання статусу кандидата на членство у співдружності, інтеграція України до ЄС і НАТО як загальнонаціональний консенсус вийшла на більш якісний рівень. Реформа децентралізації влади, що є частиною євроінтеграційного курсу, об'єктивно пов'язана із рецепцією кращих практик функціонування місцевої влади в зарубіжних країнах. Акцентовано увагу на тому, що на відміну від моделей місцевого врядування та діяльності органів, що його представляють, зарубіжний досвід реалізації принципу підзвітності та відповідальності органів місцевого самоврядування у вітчизняній і зарубіжній науці досліджено на недостатньому рівні.

Зауважено, що однією з важливих передумов реалізації різноманітних місцевих інтересів є формування дієздатних територіальних громад, законодавче визначення їх статусу і компетенції, впровадження принципів ефективного самоврядування. Україна перебуває на визначальному етапі реформи децентралізації, що має принципово змінити підходи до соціального призначення місцевого самоврядування, законодавчого регулювання діяльності органів місцевого самоврядування відповідно до європейських стандартів. З огляду на це має відбутися посилення функціональної ролі органів місцевого самоврядування у поєднанні із підзвітністю та відповідальністю за свою діяльність.

Зроблено висновок про наявність спільних позицій у трактуванні підзвітності та відповідальності місцевої влади у наукових працях зарубіжних авторів та законодавстві країн-членів ЄС. Підзвітність передбачає, що органи і посадові особи місцевого самоврядування повинні звітувати про свою діяльність із врахуванням пропозицій громадськості шляхом надання інформації через відповідні засоби так, щоб була можливість для внутрішнього та зовнішнього моніторингу. Підкреслено, що підзвітність має розглядатися у поєднанні із відповідальністю та розкрито її зміст.

Ключові слова: *підзвітність, відповідальність, місцеве самоврядування, децентралізація, євроінтеграція.*

Relevance of the study. After signing the Association Agreement with the European Union and receiving the status of a candidate for membership in the common wealth, the integration of Ukraine into the EU and NATO as a national consensus reached a higher quality level. The reform of decentralization of power, which is part of the European integration course, is objectively connected with the reception of the best practices of the functioning of local authorities in foreign countries, especially those related to European associations, where political and legal values have axiological foundations of a democratic system. The combination of tools for implementing local self-government reform with elements of foreign experience helps determine the optimal model of local self-government for Ukraine. This is an urgent scientific, theoretical and practical task. The quality of using territorial communities' economic and social potential and the activation of population participation in solving issues of

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local importance depends on its solution.

Recent publications review. The foreign experience of implementing the principle of accountability and responsibility of local self-government bodies, in contrast to the models of local government and the activities of the bodies representing it, has been studied at an insufficient level in domestic and foreign science.

Thus, in the theory of law, such domestic legal scholars as H. Atamanchuk, O. Baranov, M. Baimuratov, P. Vorona, M. Kashchyshyn, O. Kuzmenko, A. Lazor, S. Lysenkov addressed specific aspects of this issue. M. Orzih, O. Fritskyi, O. Chernezhenko, O. Chernetska and others. Various forms of accountability and responsibility of local authorities in foreign science were studied by K. Alba, A. Vetter, G. Woolman, N. Gillard, J. Stocker, J. Hesse, F. Fukuyama, L. Sharp and others. A significant number of publications by domestic and foreign authors are devoted to general issues of applying the principles of local self-government. However, the unfamiliar experience of legal consolidation and implementation of the principle of accountability and responsibility of local self-government bodies requires a more thorough study, as it is relevant for the decentralization reform in Ukraine.

The famous political scientist F. Fukuyama in their work "Political order and political decline. From the Industrial Revolution to the Globalization of Democracy" (2019), traces the logic of establishing democratic governments characterized by responsibility and accountability. The author claims that institutions are the essential condition of any political life. Institutions are "stable, important, repeated patterns of behavior that persist even after changing persons occupying key positions. They can be called stable rules that set, limit and direct people's behavior" [1, p. 15]. Among such key institutions, F. Fukuyama singles out democratic accountability. According to O. Petryshyn's apt statement, "one of the key factors of successful local self-government throughout the world is its constant reformation and adaptation to new problems and directions of development of state and world politics in general. Local self-government together with the central administration form a successful scheme of work of any democratic state" [2, p. 79]. Therefore, the "successful formula" of local self-government in Ukraine should be sought in the implementation of the principles of the establishment of this institution, taking into account the best foreign practices, in particular, in matters of accountability and responsibility of local authorities.

The article's objective. The article aims to reveal the content of the principle of accountability and responsibility of local self-government bodies through the prism of legislation and scientific research of foreign countries.

Discussion. The concept of reforming local self-government and territorial organization of power in Ukraine, the action plan developed for its implementation, one of the main tasks of reforming local self-government is determining the achievement of the optimal distribution of powers between local self-government bodies and executive power bodies and the creation of effective territorial communities as the primary link of the administrative-territorial system [3]. As part of this reform, fundamentally new processes of activating and improving forms of accountability and responsibility of local self-government bodies have begun in Ukraine. However, despite successful examples of the implementation of legal and organizational tools to improve the quality of local government activity, not all issues of implementation of the principle of accountability and responsibility of local self-government bodies defined by the Law of Ukraine "On Local Self-Government in Ukraine" remain resolved.

Accountability is a concept that underlies effective local government in providing quality services in the population's most important areas of life. Accountability is the adherence to processes, structures, and rules that ensure that those in public office act in the public interest, not in their self-interest. In countries with a stable democracy, accountability is an essential feature of effective local governance, which determines the behavior of public officials to timely inform about their activities and ensure fair treatment of the public. Accountability helps officials not forget whom they represent, make valuable decisions in the community's interests, and involve people in evaluating these decisions. Moreover, from the analysis of some foreign studies, it can be concluded that accountability is considered an additional safeguard against possible corruption manifestations by representatives of local authorities. Periodic implementation of legally defined forms of accountability can help curb the worst abuse of power and make more responsible and fair decisions. On the other hand, even where corruption is not widespread, a lack of accountability can undermine public trust in local authorities [4, p. 2; 5].

The experience of decentralization reform in many European countries, particularly

those in the "socialist camp", suggests that accountability can lead to a positive environment where citizens and other stakeholders are recognized as contributing to the quality of the decision-making process. When combined with citizen participation tools, accountability can help ensure that the community's experience, knowledge, and critical analysis add value to and strengthen decisions made by local government officials. Officials should be aware of that side of accountability, which involves monitoring declarations of assets of elected or appointed representatives of local authorities. Knowledge and understanding of the legislative and institutional framework for accountability are essential if elected representatives are to become role models for political integrity.

The content of the concept of "accountability" in the theoretical developments of foreign and domestic authors has different shades of meaning. Accountability implies that bodies and officials who organise the use of mechanisms must, firstly, report on the use of tools and consideration of public suggestions and the reasons for their non-consideration; secondly, create and highlight information so that there is an opportunity for internal and external monitoring [6, p. 315]. In some domestic sources, the accountability of local self-government bodies allows the use of such tools as audits, codes of ethics, and supervision [7, p. 32; 8]. O. Petryshyn, describing the experience of implementing local self-government reform in Latvia [9], analyses the issue of accountability of local authorities through administrative supervision, thus combining the issues of accountability and responsibility. S. Sprindis demonstrate a similar position: "accountability is based on the right of citizens to information, which includes the responsibility (both political and administrative) of politicians" [10, p. 42]. When applying the institution of responsibility of local self-government bodies, specific mechanisms must be defined: 1) annulment of decisions of local self-government bodies in case of violation of the procedure or non-application of the instrument where it is mandatory; 2) bringing to legal responsibility employees, officials and deputies [11, p. 7; 12; 13]. It is evident that without a detailed regulatory expression, the principle of accountability and responsibility to territorial communities of their bodies and officials, defined in Art. 4 of the Law of Ukraine "On local self-government bodies in Ukraine", can be interpreted in different ways in the legislation and practice of foreign countries. Therefore, one of the scientific tasks is to determine the features of its interpretation and implementation typical for the world's leading countries, taking into account the application of this experience in national law-making.

In European countries, where local government experience is considered universal by law, the activities of local authorities are based on a legal system that includes norms of international and national law. So, we have to say that the legal regulation of local government in terms of implementing the principle of accountability and responsibility of its bodies is conditioned by the effect of international agreements of universal and regional importance. This issue is becoming more and more relevant because when implementing the elements of a particular model of governance, local authorities must focus on universal norms; this is especially characteristic of European countries, where the law forms a separate dense legal system, preferring to spread the standards of local self-government to all member states of one or another European association. Such uniformity is due to the effort to create and ensure the implementation of measures for providing high-quality and effective services to the local population, the need to define clear accountability criteria and, as a result, to increase the efficiency of the activities of local self-government entities by the standards of democratic management of processes at the local level.

According to O. Chernezhenko, the development by international organizations of new global norms and regional tasks regarding the importance of local democratic development is another trend that shapes local self-government [6, p. 315]. Models that ensure the right to freely elect representative bodies are laid down in many universal and regional international conventions. For Ukraine, in terms of adequately implementing the principle of accountability and responsibility of local self-government bodies, it is essential to focus on the law-making of European regional organizations. The functioning of the institution of local self-government in European countries is supported by several international acts, among which the European Charter of Local Self-Government occupies a leading place. To achieve the goals declared during the Budapest Conference of Ministers, which formed the basis of the Budapest Resolution on Local and Regional Governance (2005), local and regional governance standards were developed for the member states of the Council of Europe. During 2005-2009, the CDLR Committee prepared recommendations related, among other things, to the accountability and

responsibility of local authorities, including Recommendation (2007) 4 of the Committee of Ministers of the Council of Europe regarding public services provided to local and regional authorities (January 31, 2007); Recommendation (2007) 12 of the Committee of Ministers of the Council of Europe regarding institutional support for the activities of local and regional levels of public administration (October 10, 2007); Recommendation (2009) 2 of the Committee of Ministers of the Council of Europe regarding assessment, audit and monitoring of citizens' participation in social and political life at the local level (March 11, 2009) [14; 15, p. 19-20] and others.

Accountability helps to ensure fairness, and efficiency in decision-making and resource allocation, contributing to the prosperity of democracy, economy and society. To this end, the Congress of Local and Regional Authorities of the Council of Europe adopted the European Code of Conduct for all persons involved in local and regional administration, encouraging local and regional authorities and associations of local and regional authorities to develop appropriate educational programs in integrity management and to provide advisory services, to help your staff identify and resolve potential ethical risk areas and conflict of interest situations. In Article 4 of the Code, accountability is revealed through responsibility, or at least in their integral combination: "all participants are responsible for their decisions and actions and must be ready to provide their detailed justification" [16]. The Explanatory Note to Article 4 of the Code states that this article sets out the fundamental idea that those who have the right to represent others and be public can be held accountable for their performance and conduct. Accountability refers to the institutional process of determining who is responsible for what and to whom. Accountability is a normative basis for retrospective assessment of individual or institutional behavior [16].

The Center for Expertise and Reform of Local Self-Government of the Council of Europe developed the Strategy of the Council of Europe on innovation and good governance at the local level, which was adopted at the 15th European Conference of Ministers of the Council of Member States, responsible for local and regional administration (Valencia, October 15-16, 2007) and approved by the Committee of Ministers of the Council of Europe in 2008 [17]. The strategy also contains a list of twelve principles of good democratic governance, including openness, transparency, accountability and responsiveness. These principles of good democratic management or control create their new philosophy, which takes into account modern challenges, crisis manifestations, limited resources, increasing needs and democratic demands of people and allows implementing local policies under these conditions in the most acceptable way for people and all interested parties [17, 18, 19]. To implement the European strategy of innovation and good governance at the local level and to simplify the understanding of these principles within the framework of the implementation of the "Transparent Ukraine" project, it was proposed to highlight six main principles, including the principles of transparency, citizen involvement, and accountability [20].

International standards of local self-government put forward requirements for improving approaches and determining further steps toward local self-government reform in Ukraine. A special place in the changes that should occur belongs to the increase in the level of responsibility of local self-government bodies for their activities. Therefore, it is essential to study the experience of foreign countries, mainly European countries, to determine approaches to improving the procedures for its provision. However, it would not be enough to argue the need to consider this experience in the European integration course of Ukraine because many countries in the European Union offer and reproduce their peculiarities of local government organization. The main factor in studying the experience of European countries on the path of local government reform is the reception of those best practices that will benefit Ukraine, taking into account our state's historical, social and political development patterns.

Conclusions. So, having studied the foreign experience of implementing the principle of accountability and responsibility of local self-government bodies, it is possible to formulate the following findings and proposals.

1. One of the essential prerequisites for realizing various local interests is the formation of competent territorial communities, the legislative determination of their status and competence, and the implementation of the principles of effective self-government. Ukraine is at a defining stage of decentralization reform, which should fundamentally change approaches to the social purpose of local self-government and legislative regulation of the activities of local self-government bodies by European standards. Given this, the functional role of local self-government bodies should be strengthened in combination with accountability and

responsibility for their activities.

2. Having analysed the scientific works of foreign authors and the legislation of EU member states (Poland, Lithuania, Latvia, Romania, Bulgaria, the Czech Republic, etc.), it is possible to conclude that there are common positions in the interpretation of accountability and responsibility of local authorities. Accountability implies that local self-government bodies and officials must report on their activities, taking into account the public's suggestions by providing information through appropriate means so that there is an opportunity for internal and external monitoring. Furthermore, accountability should be considered in combination with responsibility, which includes specific mechanisms defined by law to bring officials to legal responsibility and cancel decisions of local self-government bodies in case of violation of rules.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

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ABSTRACT

The article examines the content of the principle of accountability and responsibility of local self-government bodies through the prism of legislation and scientific research of foreign countries. It was emphasized that after signing the Association Agreement with the European Union and receiving the status of a candidate for membership in the commonwealth, the integration of Ukraine into the EU and NATO as a national consensus reached a higher quality level. The reform of decentralization of power, which is part of the European integration course, is objectively connected with the reception of the best practices of local government functions in foreign countries. Attention is focused on the fact that, in contrast to the models of local government and the activities of the bodies representing it, the unfamiliar experience of implementing the principle of accountability and responsibility of local self-government bodies in domestic and foreign science has been insufficiently researched.

One of the essential prerequisites for realizing various local interests is the formation of effective territorial communities, the legislative determination of their status and competence, and the implementation of the principles of effective self-government. Furthermore, Ukraine is at a defining stage of decentralization reform, which should fundamentally change approaches to the social purpose of local self-government and legislative regulation of the activities of local self-government bodies by European standards. Given this, the functional role of local self-government bodies should be strengthened in combination with accountability and responsibility for their activities.

It is concluded that there are common positions in the interpretation of accountability and responsibility of local authorities in the scientific works of foreign authors and the legislation of the EU member states. Accountability implies that local self-government bodies and officials must report on their activities, taking into account the public's suggestions by providing information through appropriate means so that there is an opportunity for internal and external monitoring. It is emphasized that accountability should be considered in combination with responsibility, and its content is revealed.

Keywords: *accountability, responsibility, local self-government, decentralization, European integration.*

CURRENT ISSUES OF LAW ENFORCEMENT AND ITS HUMAN RESOURCES

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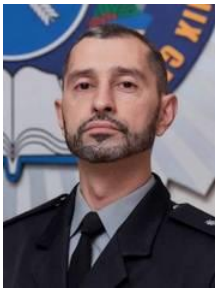

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THE CURRENT STATE OF COMPLIANCE WITH CHILDREN'S RIGHTS IN UKRAINE AND THE PREREQUISITES FOR THE USE OF FOREIGN PRACTICE FOR THE FORMATION OF A MECHANISM FOR THEIR ADMINISTRATIVE AND LEGAL PROTECTION BY THE POLICE

Андрій Собакарь, Олександра Нестерцова-Собакарь. СУЧАСНИЙ СТАН ДОТРИМАННЯ ПРАВ ДИТИНИ В УКРАЇНІ ТА ПЕРЕДУМОВИ ВИКОРИСТАННЯ ЗАРУБІЖНОЇ ПРАКТИКИ ДЛЯ ФОРМУВАННЯ МЕХАНІЗМУ ЇХ АДМІНІСТРАТИВНО-ПРАВОВОГО ЗАХИСТУ ПОЛІЦІЄЮ. У науковій роботі досліджено досвід зарубіжних країн у сфері адміністративно-правового захисту дітей від насильства. Наголошено на багатоаспектності форм і методів державного впливу на сферу організації умов для повноцінної реалізації дітьми своїх прав і законних інтересів, передбачених законодавством інших країн.

Узагальнення зарубіжного досвіду адміністративно-правового захисту прав дитини засвідчило, що система забезпечення безпечного дитинства нерозривно пов'язана та доповнюється діяльністю інститутів громадянського суспільства, які здійснюють моніторинг рівня захищеності дітей. права та формування пропозицій органам державної влади щодо покращення стану державного захисту правового статусу дитини. Використання зарубіжного досвіду адміністративно-правового захисту прав дитини довело доцільність: підвищення рівня профілактики соціального сирітства шляхом запровадження адресних соціальних послуг на рівні територіальної громади сім'ям з дітьми, які потребують соціальної підтримки; розвиток сімейних форм виховання дітей-сиріт та дітей, позбавлених батьківського піклування; запровадження ефективної системи притягнення до адміністративної відповідальності батьків, які неналежним чином виконують батьківські обов'язки; запровадження елементів ювенальної юстиції – спеціалізованих суддів у сімейних справах загальних судів, які спеціалізуються на розгляді справ щодо вирішення спорів між батьками про участь у вихованні дитини, місце її проживання, призначення аліментів, встановлення опіка/піклування, усиновлення, позбавлення батьківських прав або відібрання дитини без позбавлення батьків батьківських прав тощо.

Ключові слова: *дитина, права дитини, охорона дитинства, адміністративно-правовий захист дітей, ювенальна юстиція, ювенальна превенція, зарубіжний досвід.*

Relevance of the study. Protection of children's rights is one of the priorities in every country, because the level of their safety and protection, the state of their development is one of the indicators of a civilized and developed society. It is in childhood that the fundamental

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system of human moral values and personality qualities is formed. The protection of children's rights is not narrowed down to the formation of a normative and legal framework, is not limited to the legislative activity of the state, it is a completely diverse set of measures, among which the conditions of the child's existence, the environment occupy the main places. Moreover, these are also certain criteria for a child's understanding of his rights and awareness of these rights by others. Protection of children's rights is a priority of a developed legal state, which is provided by the Constitution of Ukraine, in Art. 51 of which it is noted that the family, childhood, motherhood and parenthood are understood as food [1].

Recent publications review shows the urgent need to find new ways to protect childhood by means of administrative law, including by studying foreign experience in this regard and implementing its positive achievements in the law enforcement practice of Ukraine. This is precisely what Ukrainian legal scholars emphasize in their scientific works, in particular: R. Opatskyi [2], L. Nalivayko [3], V. Moroz [4], N. Krestovska [5], O. Maksimenko [6], N. Kolomoets [7], O. Navrotsky [8] and other.

Ukraine is, in fact, a very young state, so it is too early to talk about the perfect development of normative and legal regulation in the field of protection of children's rights. In this aspect, the negative statistics regarding the increase in the number of cases of crimes against children, bringing people to administrative responsibility for the improper fulfillment of parental rights, as well as the high level of juvenile crime, indicate the need to study and research the positive international experience of the developed countries of the world regarding social, legal, criminal-legal, administrative and legal protection of the rights of the child and, taking into account domestic legislation, the institutional component and cultural and historical development of our country, its introduction into the sphere of law enforcement.

The article's objective is to find out the current state of children's rights in Ukraine and to determine the prerequisites for the use of foreign practice for the formation of a mechanism for their administrative and legal protection by the police.

Discussion. Violence against children is currently a real threat to the development and formation of Ukrainian society, because cruel treatment of these persons in the future turns them into socially maladjusted people, unable to create a full-fledged family, to be good parents, and is also an impetus for the reproduction of cruelty in towards relatives and friends.

According to statistical data in Ukraine, psychological (48 %) and physical violence (31 %) are the most common forms of violence between parents and children. The lack of an effective system of guarantees for the protection of children's rights in Ukraine is one of the most acute problems, which leads to an increase in legal nihilism and a decrease in the level of indicators of the functioning of public administration entities. The need to provide administrative support for the protection of children's rights in accordance with generally recognized international standards necessitates the reform of Ukrainian legislation.

Ukraine is one of the rule-of-law states that pays enough legislative attention to the protection of childhood. Today, there are about fifty normative legal acts on the social and legal protection of childhood, in particular: the Constitution of Ukraine (Articles 24, 27, 51-53), the Family Code of Ukraine, the Law of Ukraine of May 23, 1991 No. 1060-XII "On Education", Law of Ukraine dated June 1, 2000 No. 1768-III "On the Protection of Childhood", Law of Ukraine dated February 28, 1991 No. 796-XI "On the Status and Social Protection of Citizens Affected by the Chernobyl Disaster", Law of Ukraine dated November 21, 1992 No. 2811-XII "On state assistance to families with children", Law of Ukraine dated November 16, 2000 No. 2109-III "On state social assistance to disabled children and disabled children", Law of Ukraine dated June 2, 2005 No. 2623-IV "On the Basics of Social Protection of Homeless Citizens and Homeless Children", Law of Ukraine dated January 13, 2005 No. 2342-IV "On Ensuring Organizational and Legal Conditions for Social Protection of Orphans and Children Deprived parental care" and others.

However, in the presence of a sufficiently large and developed regulatory framework on childhood protection, the actual implementation of established norms faces serious difficulties. On the one hand, the cause of this state of affairs is negative processes in the sphere of economy, education, health care, culture, etc. On the other hand, we can make sure that the legislation of Ukraine regarding the protection of children's rights is more declarative than practical in nature. Therefore, there is a need for effective protection of the rights of the child, and a fairly widespread problem that needs to be solved is the questioning of the child regarding the detection of signs and caused consequences of violence, where the child was a witness or became a victim. Such situations are quite traumatic for the children's psyche, but

not in all cases the appropriate attention is paid to it by the relevant institutions.

The Law of Ukraine "On Prevention and Combating Domestic Violence" states that "a child who has suffered from domestic violence is a person who has not reached the age of 18 and has experienced domestic violence in any form or has witnessed such violence" [9]. Having studied the decisions of the European Court in which a similar topic is defined, it is necessary to refer to the case "Yeremia against Republic of Moldova", which states that if a child observes systematic violence against one of his parents from the other side, he himself is a victim of violence from the state and has the right to protection [10].

Therefore, there is a need to acquire special knowledge, skills and communication skills with a child. The basis of effective interaction with a child is the observance of a number of rules related to the presence of a person who has knowledge of psychological, physical and age-specific features of the child's development, peculiarities of age-appropriate communication, mastery of skills necessary for effective communication with the child and a safe environment for the child.

In order to implement an effective child protection system, it is necessary to implement certain methods to improve the situation in the sphere of prevention and combating domestic violence. For example, it can be implemented by educational institutions and their employees, who should be more actively involved in detecting facts of domestic violence and necessarily and urgently report the facts to the children's service and the police station.

Hundreds of thousands of people in the country suffer from domestic violence. According to official data, the police registers more than a hundred thousand complaints of domestic violence per year. But no more than 20 % of victims of violence turn to human rights defenders. Thus, a question arises in the study of international experience.

Each state forms a national system for the protection of children's rights in accordance with its own socio-cultural, historical, economic, legal, and organizational standards. Regarding the general typology of systems for the protection of children's rights implemented in different countries, the following models can be distinguished:

1) "Child protection" – normative and organizational activity aimed at protecting the rights and interests of the child from circumstances that negatively affect his development, health and life;

2) "Support of families in which children are raised" – provision of support and protection of families with children, implementation of various services and mechanisms of interaction with families in order to ensure the conditions of upbringing and development of children in them;

3) "Child development" – the system combines both work with families and protection of the rights and interests of the child, at the same time it is "child-oriented" – the child is the center of the system of protection and support. In most European countries, policies on care and protection of children combine elements of family support, protection of rights and child development, but each country has differences regarding the priority directions of policies in this area.

The main provisions of international standards in the field of combating domestic violence are based on a deep awareness of the inadmissibility of such violence, which is a gross violation of human rights. Among the most important international legal documents, we consider it expedient to include the UN Model Law on Domestic Violence, adopted on February 2, 1996 by the UN Commission on Human Rights.

According to the United Nations Special Rapporteur on violence against women, Radhika Kumaraswamy, the purpose of this model legislation is to serve as a drafting guide for legislators and organizations seeking to lobby for their legislative mandate for comprehensive legislation on violence against women.

It is worth noting that the UN Model Law on Domestic Violence aims to ensure that the actions of a law enforcement officer in the event of a report of domestic violence are set out from a technical point of view and require due consideration of each request for assistance and protection. There are clear cases of response upon arrival at the scene, which include the existence of a protective order in the event of its violation, a real danger of violence or its escalation, and the existence of facts of violence in this family in the past. At the same time, the speed of response to the statement must be adequate in those cases when it comes not from the victim of violence, but from another person, who can be anyone (a witness, a friend or relative, medical assistance, a representative or a center for assistance to victims of violence and etc.).

At the same time, the model law recognizes that domestic violence cannot be resolved by legal means alone. This orients the state and society to the adoption of complex social,

moral-ethical, psychological, and pedagogical measures in addition to regulatory and law enforcement measures. It is also important to focus the state authorities on providing victims of domestic violence with both operational and long-term assistance, as well as training specialists on legal issues and services for victims of domestic violence.

The use of the provisions of this law orients states to strengthen the fight against domestic violence and offers various forms, the use of which appears to us to be very effective and promising. We consider it no less promising to study and implement the significant experience of regulatory and organizational measures aimed at preventing domestic violence, developed by countries in Europe and the world.

Therefore, all actions regarding a child who is in difficult life circumstances are aimed at protecting his rights and interests, eliminating the causes of such circumstances and ensuring safe conditions for his maintenance and upbringing, providing him and his parents with a set of necessary services and social assistance. However, in the context of our research, it is worth analyzing the provisions of international legislation, with the help of which it will be possible to modernize and bring domestic legislation closer to European and world standards.

Thus, the provisions of Austrian legislation aimed at preventing and combating domestic violence are contained in the Civil Code, the Law Enforcement Code and the Security Service Act, but a special legal act regulating the prevention and combating of domestic violence in Austria is the Law on Protection from of violence in the family (last edition – 2004), which has the force of law. We believe it is extremely important to include the legal protection of the victim of violence by the offender through the procedures of eviction of the offender and the imposition of a restraining order. The right to make appropriate decisions should belong to the powers of the police [11, p. 160]. Belgian law treats domestic violence as a criminal offence. Domestic violence refers to the scope of Art. 442 of the Criminal Code and is considered an accusation. Domestic violence is now considered an aggravating circumstance, leading to a harsher sentence [12]. Liability for domestic violence in Germany is established by criminal law and is defined mainly as violence against women.

From the analysis of the legislation of many countries, we see that the phenomenon of domestic violence is a painful issue for the legislator of each state. We believe that the issue of domestic violence is quite relevant in our time, because right now we can see the trend of "latency" of crimes, when the victim simply keeps silent about the violence committed against him in the family. The legislation of each country should move in the direction that the victim can safely complain about domestic violence, and it is equally important to establish a stricter punishment system so that before committing domestic violence, a person thinks about the negative consequences that may occur to him.

For example, a special family court has been established in Polish legislation for persons under the age of 13 who have committed a criminal act. He takes into account all the circumstances of the act and chooses the appropriate measure. There is also an institution that helps the court – the District Center for Family Assistance. They help in crisis situations, conduct interviews, cooperating with family curators. There are also such instances as family curators, who may be at the family court and supervise families with difficult family circumstances. They also specialize in children who have not reached the age of criminal responsibility [13].

As for Ukraine, in our opinion, there are not enough centers that provide psychological help, despite the fact that family diagnostic and counseling centers are practiced in Poland. These are centers that conduct psychological research in the field of guardianship on behalf of the court.

It should also be mentioned that in the Netherlands, the care of children who have committed a criminal offense between the ages of 12 and 18 is entrusted to voluntary child care organizations, and the Government performs subsidiary functions. Even in this country there is a voluntary offer – Stop Response, which is used for children under 12 years old. It manifests itself in the fact that the child is told that she had another way out and is given the opportunity to apologize [13].

We fully agree with O. Protsenko's opinion that minors belong to a special legal category, because due to age development and social immaturity, they are not able to fully assess the nature and consequences of their actions, especially serious and especially serious crimes [14, p. 86].

The significance of juvenile issues is also reflected in the desire for international legal regulation of the most important parameters, the formation of universal principles for working

with juvenile offenders for all modern states. It is for this purpose that the general generic concepts of the categories "child", "minor" and "minor offender" are provided in the UN Convention on the Rights of the Child [15]. Despite the fact that these acts do not contain an independent regulation of the administrative responsibility of a minor, we can single out several principled provisions that are basic for the type of legal responsibility under consideration.

It must be said that the functioning of the commissions for the affairs of minors and the protection of their rights as a special separate legal institution is not a purely Ukrainian novel, since there are more or less identical analogues in world practice. For example, a "non-judicial" version of the organization of the system of juvenile rights protection bodies has developed in Scotland, where attempts to create a specialized juvenile court were unsuccessful. This system there is administrative in nature: special commissions conduct "Children's Hearings" as part of the Collegium, formed of members of the public who have undergone special training. A decision on measures of influence, which can be appealed to the court, is made only after a detailed consideration of the case, discussion of relevant issues with parents, social workers, teachers and the child himself. That is, foreign practice shows that juvenile commissions can function quite effectively in this area, and the preservation of this form in Ukraine, subject to significant modification, can have real advantages over the judicial method of solving tort cases involving minors.

In addition, the described Scottish commission system is recognized by the specialists of the International Center for Child Development of UNICEF as progressive, as it allows to avoid "unnecessary" contacts of a child or teenager with the judicial system. According to experts, such consideration of cases of juvenile delinquency corresponds to the letter and spirit of the Convention on the Rights of the Child. Countries of the world with different judicial systems have specialized courts operating within the framework of juvenile justice, it seems to us that the Commissions operating in Ukraine, provided they are reformed accordingly, can be considered as a fairly successful alternative option. At the same time, one cannot ignore the positive aspects inherent in the judicial resolution of tortious relations involving minors [16, p. 57-59].

As for existing family courts in other countries, we can name the US system, where there are juvenile courts and family courts, and the family courts in France, which exist as an experiment (originated in 1970-1972) [17]. Which also use many auxiliary services in their activities. This practice is very positive, and it seems that Ukraine could "borrow" some of the mentioned institutes, which would operate under the commissions for the affairs of minors and the protection of their rights or guardianship and guardianship bodies. In the light of the above, it should be noted that Ukraine needs further development and is not yet sufficiently coordinated with the activities of juvenile commissions and the functional purpose of such subjects of police law. Separately, it should be said about the possibility of practical implementation of the elements of administrative delictology provided in the legal regulations – certain powers are aimed at the implementation of the general preventive function associated with informing the relevant officials about criminogenic factors that stimulate the illegal behavior of minors.

Conclusions. Thus, the above-mentioned foreign practice of administrative and legal protection of children indicates the multifaceted forms and methods of state-authority influence on the sphere of organization of conditions for the full implementation of the rights provided for by the law. The analysis of the considered forms of administrative and legal protection of the rights of the child, which are used by other states, confirms the clear social orientation of the functioning of all branches of the state apparatus, the focus on the priority of ensuring the rights of the child in the state policy system.

The generalization of the foreign experience of administrative and legal protection of the rights of the child proved that the system of ensuring a safe childhood is inextricably linked and complemented by the activities of civil society institutions, which are engaged in monitoring the level of protection of children's rights and formulating proposals for state authorities to improve the state of state protection of the legal status of the child.

The use of foreign experience in the administrative and legal protection of children's rights proved the feasibility of: increasing the level of prevention of social orphanhood through the introduction of targeted social services at the level of the territorial community to families with children who need social support; development of family forms of raising orphans and children deprived of parental care; introduction of an effective system of bringing to administrative responsibility parents who improperly perform parental duties; introduction of

elements of juvenile justice – specialized judges in family cases in general courts, specializing in handling cases regarding the resolution of disputes between parents about participation in the upbringing of a child, the place of his residence, the appointment of alimony, the establishment of guardianship/care, adoption, deprivation of parental rights or removal of a child without depriving parents of parental rights, etc.

Conflict of Interest and other Ethics Statements
The authors declare no conflict of interest.

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ABSTRACT

The scientific work examines the experience of foreign countries in the field of administrative and legal protection of children from violence. The multifaceted forms and methods of state-authority influence on the sphere of organization of conditions for the full realization by children of their rights and legitimate interests provided for by the legislation of other countries are emphasized. The generalization of the foreign experience of administrative and legal protection of the rights of the child proved that the system of ensuring a safe childhood is inextricably linked and complemented by the activities of civil society institutions, which are engaged in monitoring the level of protection of children′s rights and formulating proposals for state authorities to improve the state of state protection of the legal status of the child.

The use of foreign experience in the administrative and legal protection of children's rights proved the feasibility of: increasing the level of prevention of social orphanhood through the introduction of targeted social services at the level of the territorial community to families with children who need social support; development of family forms of raising orphans and children deprived of parental care; introduction of an effective system of bringing to administrative responsibility parents who improperly

perform parental duties; introduction of elements of juvenile justice – specialized judges in family cases in general courts, specializing in handling cases regarding the resolution of disputes between parents about participation in the upbringing of a child, the place of his residence, the appointment of alimony, the establishment of guardianship/care, adoption, deprivation of parental rights or removal of a child without depriving parents of parental rights, etc.

Keywords: *child, child rights, child protection, administrative and legal protection of children, juvenile justice, juvenile prevention, foreign experience.*

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PROBLEMATIC ISSUES OF STAFFING CYBER TROOPS OF UKRAINE UNDER MARTIAL LAW

Едуард Рижков. ПРОБЛЕМНІ ПИТАННЯ КАДРОВОГО ЗАБЕЗПЕЧЕННЯ КІБЕРВІЙСЬК УКРАЇНИ В УМОВАХ ВОЄННОГО СТАНУ. У статті розглянуто передумови створення кібервійськ Міністерства оборони України, появи первинних правових документів, що повинні у майбутньому сприяти розробці відповідного закону та підзаконних актів з цього питання. Наголошується, що наявність в Україні системи суб'єктів захисту кібернетичного простору держави в умовах воєнного стану та у оглядній перспективі сусідства з російським агресором не може в повній мірі забезпечити виконання збройними силами України їх основних функцій щодо захисту країни. Аргументується необхідність створення кібервійськ в державі з огляду на їх потенційний функціонал та його відмінність від того, що притаманний вже існуючим в Україні суб'єктам кібер захисту. Приділяється увага питанням підбору кадрів до майбутніх кібервійськ. Зазначаються їх форми та види з огляду на українські реалії та стан громадянського суспільства. Позначаються існуючі в державі проблеми співпраці державницьких інституцій з суб'єктами громадської ініціативи у сфері захисту кіберпростору. Наводяться приклади потенційних та реальних фактів порушень законодавства з боку правоохоронних органів по відношенню до представників громадської кібер спільноти.

Пропонуються підходи до формування кадрового резерву кібервійськ з урахуванням їх суб'єктності. В процесі дослідження аргументується твердження про те, що розвиток воєнної ситуації в країні обумовлює необхідність внесення коректив до плану реалізації Стратегії кібербезпеки України, затвердженої у 2021 році, з метою активізації розробки відповідного законопроекту зі створення кібервійськ.

Констатується, що відсутність належної динаміки у питанні законотворчості з цього питання позбавляє збройні сили України Міністерства оборони своєчасного створення і надання ним дієвого інструменту протидії ворогові за захисту країни. У висновку висловлюються пропозиції щодо можливих підходів у кадровому забезпеченні кібервійськ на підготовчому та проміжному етапах запуску цього державницького інституту.

Ключові слова: *Стратегія кібербезпеки, кібервійська Міністерства оборони України, кадрове забезпечення кібервійськ, законодавче забезпечення кібервійськ, співпраця державних органів з ІТ-фахівцями.*

Relevance of the study. Over the last 20 years of their existence in Ukraine, entities providing cyber protection and countering illegal manifestations in the field of information technologies have gone through various stages of development – from creation, filling with personnel potential to certain achievements. And although the system of cyber entities has

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acquired permanent features over the years, it did not meet the needs of our society in view of the threats brought by russian military aggression. The main problem was the improper coordination of the actions of already existing subjects of combating cyber incidents in view of the need for operational support of the main subject of state protection in the conditions of martial law – the armed forces of Ukraine. The situation that developed at the beginning of 2022 made it impossible for the armed forces of Ukraine to effectively implement operations against the enemy using the cyber environment. Therefore, in conditions where objectively all signs point to a real cyber war with the participation of Ukraine, there was a need to create such a new entity as a cyber force in the structure of the armed forces of Ukraine with the subsequent need for their personnel support.

Hostililies on the territory of Ukraine with the russian aggressor have been going on since 2014. However, in the issue of ensuring the security of the state's cyberspace, appropriate measures were taken rather slowly. That is why the full-scale invasion, which began after a series of cyber attacks, was so unexpected for the state leadership and so effective for the enemy. The effectiveness of domestic cyber defense actors at the beginning of this stage of hostilities left much to be desired. The formation of a new state strategy of cyber defense, which provided for the formation of cyber troops, on the eve of these events did not allow to fully resolve urgent issues with the formation of their personnel potential. In addition, the interaction of the military with existing subjects of cyber units would not allow to conduct defense cyber operations, military computer intelligence, combat use of information systems, conducting information operations in computer systems, or strategic information operations (which are not at all allow the expansion of the range of subjects of interaction in view of the need to preserve state and military secrets).

Therefore, in the conditions of martial law in Ukraine, there is an urgent need to find effective approaches to the recruitment of cyber troops units and the earliest possible start of their operation.

Recent publications review. The personnel policy of Ukraine regarding the training of specialists for various subjects of cyber defense was formed with an inherent national feature, which can be characterized as interdepartmental disparity and the absence of the necessary comprehensive state approach. At the same time, the borrowing of international experience can be characterized as having a fragmentary nature.

The issue of providing the personnel potential of domestic subjects of cyber units at various times was investigated in their works by scientists: M. Butuzov, A. Volobuev, V. Havlovskyi, V. Golubev, M. Gutsalyuk, K. Ismailov, V. Kudinov, M. Litvinov, O. Manzhai, A. Marushchak, L. Palamarchuk, S. Pekarskyi, K. Titunina, V. Khakhanovskyi, V. Tsimbalyuk, V. Chernei, S. Chernyavskyi, V. Shelomentsev and others.

However, the modern aspects of staffing cyber troops of Ukraine under martial law remain unexplored. Also, taking into account the novelty of the issue, there is a lack of works devoted to the formation of a personnel reserve and the strengthening of cyber protection and cybercrime countermeasures existing in Ukraine by specialists in the field of information technologies. All this determines the relevance of this article and determines its purpose.

The article's objective. The article is devoted to the study of issues of staffing of the cyber forces of Ukraine in the conditions of martial law and ways of solving problematic issues related to them at the stage of formation of the legal field.

Discussion. Russia's full-scale invasion of Ukraine was preceded by a series of global cyberattacks on our cyber infrastructure. About 100 government and state information resources and systems were attacked. In fact, we got a full-scale cyber war, which in the previous 8 years had a preparatory period on the part of the aggressor and many cyber attacks in relation to our country.

Anticipating such a scenario of development of events, certain measures were taken by state leaders. Thus, during 2021, a number of regulatory acts were issued. Among them are Decree of the President of Ukraine dated August 26, 2021 No. 446/2021 "On urgent measures for state cyber defense" and Decree of the President of Ukraine dated August 26, 2021 No. 447/2021 "On the Cybersecurity Strategy of Ukraine" [1, 2].

The specified normative acts introduced the creation of cyber troops in Ukraine. The recruitment of specialists in the field of IT was started in various forms: from anonymous through specialized chat-bots to centralized questionnaires with the formation of an appropriate database of specialists [3]. Although cyber troops will be part of the Ministry of Defense after the adoption of the relevant law, future cyber fighters are planned to be distributed among

various structures responsible for cyber security: Security Service of Ukraine, State Special Communications, Cyber Police, National Security and Defense Council, National Bank of Ukraine, Ministry of Digital Transformation, Ministry of Defense, Armed Forces of Ukraine and intelligence.

It should be emphasized that among the main reasons that led to the implementation of the initiative of specialists in the creation of cyber security in Ukraine is definitely the aggression of the russians in cyberspace in relation to our country, as well as the gradual and steady integration of the country into the alliance with NATO and the European Community. However, it is appropriate to note that the creation of cyber troops in the state and ensuring their effective functioning is not a matter of months, but of years. Yes, the United States Cyber Command or USCYBERCOM was officially formed in 2009, and unofficially – at least 20-30 years ago. The main tasks of USCYBERCOM are the centralized conduct of cyber warfare operations, management and protection of US military computer networks [4]. That is, the preparatory period for the official appearance took a period that Ukraine, taking into account the realities of the military situation, cannot afford. Currently, the US has 9,000 cyber troops, the UK has about 2,000, and russia has about 1,000.

At the start, according to various assessments of experts, the quality of the domestic cyber defense system during the war ranged from sufficient (in the eyes of government sector experts) to unsatisfactory (in the opinion of independent experts). In these conditions, the message that the help of IT specialists and the initiative implemented by the state would be extremely relevant is unconditional. However, in fact, we have a situation in which only dozens of specialists out of thousands who submitted questionnaires are involved in cooperation. The question arises why such a situation has arisen? Why have extremely valuable specialists for the country been in the deaf "reserve" for a year already, who cannot find a direct application to counter the enemy in cyberspace? Or are there not enough curators from the representatives of the state sector at specialized entities, or was the purpose of the questionnaire exactly the same as it was declared? There is a picture of establishing cooperation with representatives of the population. By the end of 2022, the result is minimal from possible.

Another problem became clear on the eve of a full-scale invasion. This is the opening of criminal proceedings against the most qualified domestic IT specialists who offered their services to the state in order to fight against scammers. After several attempts to establish constructive interaction and join forces with the relevant state structures, they were at least demoralized, and in fact neutralized in this direction [5]. A typical example of this is the Ukrainian Cyber Alliance (UKA) [6]. One of the co-founders of the company stated that after such actions on the part of the state authorities, the cyber alliance will not make any night calls for help, there will be no publications, there will be no consultations day and night for various state law enforcement agencies. Cooperation stopped [7]. Among the non-state entities that have declared war on the russian authorities is also the international hacker network Anonymous [8]. Currently, it also operates independently, demonstrating its unconditional effectiveness in the enemy's cyberspace [9].

During the years of military confrontation with Russia, we have many shameful facts of sabotage, collusion and treason on the part of representatives of various branches of the state sector (the non-military surrender of Crimea, the Ilovai cauldron for volunteer battalions, demining of passages to the Kherson region, storage of javelins in warehouses instead of the front line in February, 2022, etc.), which will receive their legal assessment after victory [10]. As for the protection of representatives of the Ukrainian Cyber Alliance from criminal prosecution, such attempts by representatives of the legislative authority have already taken place [11]. In our opinion, the situation requires immediate measures of influence on the part of international partners, who during the period of martial law actually ensure the existence of Ukraine as a state with their help.

The reason is that the sphere of cyber defense of the state in Ukraine, due to its specificity, is extremely conservative, closed and practically inaccessible for control by the domestic public. Undoubtedly, one of the possible options for the cooperation of cyber specialists with law enforcement structures can be implemented within the framework of confidentiality [12]. However, the specified examples so far testify to the opposite. In any case, the Ukrainian experience shows that the state system and bureaucracy do not allow state structures to be as mobile, operational and use social networks as patriotic hacker organizations [13, p. 120].

In the conditions of the continuation of military mobilization, a certain number of

specialists in the field of information technologies will enter the ranks of the armed forces of Ukraine, for whom, in view of the state interest, the computer is a more rational weapon than any other. The mechanism of identifying and attracting such specialists to cyber troops or its reserve should work to prevent their possible loss on the battlefield.

According to O. Reznikov, cyber troops cannot be staffed through military commissars. Because they must have a high level of training and a high monetary maintenance, which corresponds to the market salaries of IT specialists, plus a social package, in order to be willing to serve in these troops. At the same time, he points out that Ukraine has a personnel reserve from which cyber troops can be formed, but it is not possible to limit oneself only to active military [14].

In our opinion, the above should be considered taking into account that the previous Cyber Security Strategy of 2016 had a number of gaps, and only 40 % of its goals were implemented. Therefore, corrections should be made to the Strategy Implementation Plan for 2021 based on the results of the activities of cyberspace entities, taking into account our achievements and experience gained even before the end of hostilities with the aggressor. Only then will Ukraine, as one of the main subjects of modern cyber warfare, have a chance not only to form its cyber armies, but also to become a trend of progressive changes in the formation of new international structures of collective security, including in cyberspace.

Conclusions. Therefore, it should be stated that staffing the future units of the cyber forces of the Ministry of Defense of Ukraine is one of the main components of the state's security in the period of military confrontation with the enemy, and the effectiveness of cyber forces is the key to victory over the enemy in cyberspace. At this stage, efficiency should be realized through constructive cooperation of law enforcement and military structures with the population – in our case, specialists in the IT field. However, the pace of development of the national draft law on the creation of cyber troops significantly lags behind the successes of the Armed Forces at the front, namely its adoption, entry into force and further implementation of the provisions in practice risks taking place already after Ukraine's victory over racism. Therefore, in our opinion, in the absence of legal norms, within the framework of which the Ukrainian cyber forces will eventually operate, at the current stage we can only talk about the formation of a personnel reserve, which in turn should be temporarily attached to the existing subjects of cyber defense of the state and go through their first stage of professional development.

Conflict of Interest and other Ethics Statements
The author declares no conflict of interest.

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ABSTRACT

The article examines the prerequisites for the creation of cyber troops of the Ministry of Defense of Ukraine, the appearance of primary legal documents, which should in the future contribute to the development of the appropriate law and by-laws on this issue. It is emphasized that the presence in Ukraine of a system of entities for the protection of the cyber space of the state in the conditions of martial law and in the perspective of the neighborhood with the russian aggressor cannot fully ensure the fulfillment by the armed forces of Ukraine of their main functions regarding the protection of the country. The need to create cyber troops in the state is argued in view of their potential functionality and its difference from what is inherent in cyber defense entities already existing in Ukraine.

Attention is paid to the issues of recruiting personnel for future cyber troops. Their forms and types are noted in view of Ukrainian realities and the state of civil society. The problems of cooperation between state institutions and subjects of public initiative in the field of cyberspace protection in the state are indicated. Examples of potential and actual violations of legislation by law enforcement agencies in relation to representatives of the public cyber community are given. Approaches to the formation of the personnel reserve of cyber troops are proposed, taking into account their subjectivity. Signs of procrastination, unprofessionalism, bureaucracy, sabotage and treason on the part of representatives of state bodies, neutralization of efforts by representatives of the active cyber community, lack of proper consolidation of efforts with all sectors of society in matters of state protection in the field of information technologies are indicated.

In the course of the research, the statement that the development of the military situation in the country necessitates the need to make adjustments to the implementation plan of the Cybersecurity Strategy of Ukraine, approved in 2021, is argued in order to intensify the development of the corresponding draft law on the creation of cyber troops. It is noted that the lack of appropriate dynamics in the issue of law-making on this issue deprives the Armed Forces of Ukraine of the Ministry of Defense of the timely creation and provision of an effective tool for countering the enemy for the protection of the country. Proposals are made regarding possible approaches to the staffing of cyber troops at the preparatory and intermediate stages of the launch of this state institute.

Keywords: *Cyber Security Strategy, cyber army of the Ministry of Defense of Ukraine, personnel support of cyber army, legislative support of cyber army, cooperation of state bodies with IT specialists.*

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MUNICIPAL GUARDS IN UKRAINE: CURRENT STATE AND PROSPECTS OF ACTIVITY

Ростислав Молчанов. МУНІЦИПАЛЬНА ВАРТА В УКРАЇНІ: СУЧАСНИЙ СТАН ТА ПЕРСПЕКТИВИ ДІЯЛЬНОСТІ. У статті досліджено проблему діяльності муніципальної варти в Україні та визначено перспективи її подальшої діяльності. Наголошено на тому, що поширеною європейською тенденцією сучасності є децентралізація поліції та реалізація принципу спільної відповідальності за стан публічної безпеки і порядку на території поліцейського обслуговування, що є втіленням загальної практики "Community policing". Остання успішно імплементована у діяльність поліцейських структур багатьох розвинутих країн світу.

Зроблено висновок, що це передбачає делегування окремих поліцейських функцій недержавним структурам, що дозволяє певною мірою "розвантажити" державну поліцію від розгляду і вирішення ординарних конфліктних ситуацій та типових правопорушень, що не вирізняються високим ступенем суспільної небезпеки. Для підтримання рівня правопорядку на

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належному рівні місцевими органами влади в Україні створюються принципово нові структури, наділені окремими поліцейськими функціями – муніципальна варта.

Обґрунтовано, що зосередження значних повноважень в межах однієї інституції на території громади матиме наслідком посилення корупційних ризиків та потенційних зловживань службовим становищем. А тому прерогативу муніципальної варти на здійснення охоронної діяльності доцільно відкинути. З іншого боку, законодавче закріплення цього інституту вимагає, насамперед, визначення принципів і стандартів діяльності підрозділів муніципальної варти, їхнє впорядкування та облік. Без цього вести мову про належний контроль і нагляд за цією інституцією вбачається неможливим.

Перспективним напрямками діяльності муніципальної варти в Україні визначено наступні: а) прийняття базового Закону; б) стандартизація – прийняття Типового статуту; в) встановлення граничних меж чисельності особового складу та фінансування; г) уніфікація однострою.

***Ключові слова**: муніципальна варта, комунальне підприємство, публічний порядок і безпека, примус, взаємодія.*

Relevance of the study. Since 2015, the National Police has been operating in Ukraine as a central executive body that serves society by protecting people's rights and freedoms, fighting crime, and maintaining public safety and order. One of the principles of police activity is interaction with the population on the basis of the partnership (Article 11 of the Law), which provides for close cooperation and interaction of the police with the population, territorial communities and public associations on the basis of partnership and aimed at meeting their needs [1].

At the same time, a widespread European trend of modern times is the decentralization of the police and the implementation of the principle of joint responsibility for the state of public safety and order in the territory of the police service. The corresponding trends are the embodiment of the general practice of "Community policing", which has been successfully implemented in the activities of police structures in many developed countries. Among other things, this involves the delegation of certain police functions to non-state structures, which allows to a certain extent to "relieve" the state police from examining and solving ordinary conflict situations and typical offenses that are not distinguished by a high degree of public danger.

In contrast to European trends, in Ukraine the issue of the functioning of non-state institutions endowed with police powers is insufficiently developed. At the same time, local self-government bodies today create structures with different legal status, which are entrusted with the performance of certain police functions within the territorial boundaries of the respective communities.

Recent publications review. Problems related to the participation of the population in ensuring public order and security are traditionally the focus of police scientists. Among others, the works of O. Vdovychenka, O. Kobzarya, O. Kuznichenko, M. Loshytskoho, V. Orlova, S. Shevchenko, A. Fomenka, O. Yunin and many other specialists. Separately, let us point out the monographic research of Yu. Topchiy, devoted to the administrative and legal aspects of the activity of communal security enterprises (municipal guard).

The article's objective is to highlight the current state and prospects of the municipal guard in Ukraine.

Discussion. Today, the National Police in Ukraine is developing in accordance with European standards for the organization of law enforcement forces. Along with attempts to reform individual components of the police system (police services and units), too little attention is paid to the issue of involvement of the local population in the protection of public order and security in the territory of the community. In turn, it should be recalled that the basis of the activities of the police forces of developed European countries is the practice of "Community policing", i.e., the interaction of state and non-state forces for the common goal of protecting public order and security.

As noted by B. Logvynenko and I. Kravchenko, the common international term "Community policing" can act as a guide for improving the police's activities and building its interaction with society on the basis of partnership, and has as its goal cooperation with individual citizens, groups of citizens, public organizations to identify and solve problems that negatively affect quality of life and the state of law and order in specific settlements, districts and regions [2, p. 4].

In the Soviet period, such cooperation was achieved by a wide combination of coercive and ideological methods, when police in the USSR was facilitated by the so-called "voluntary people's wives", formed by employees of enterprises, students, and workers. After Ukraine

gained independence, the ideological component was rejected, while the principle of voluntariness was preserved. As a result, in accordance with the Law of Ukraine "On the Participation of Citizens in the Protection of Public Order and the State Border" dated 22.06.2000, the right of citizens of Ukraine to create public associations for participation in the protection of public order and the state border in accordance with the Constitution and in accordance with the procedure established by this Law was established border, assistance to local self-government bodies, law enforcement agencies, the State Border Service of Ukraine and executive authorities, as well as officials in preventing and stopping administrative and criminal offenses, protecting the life and health of citizens, the interests of society and the state from illegal encroachments, as well as saving people and property during natural disasters and other extraordinary circumstances [3].

In practice, this led to the formalization of such cooperation, because most of the relevant formations were created on paper, and real cooperation was reduced to the realization by their participants of the right to purchase traumatic weapons without real assistance of the police in law enforcement activities.

Positive developments in this matter took place after the formation of the National Police in 2015 and the implementation of a number of local initiatives such as "Neighborhood Watch", "Sheriffs for New Communities", etc. However, it should be noted that positive local practices do not spread at the national level, which cannot be considered correct. Despite the declaration of a crime prevention strategy, the state lacks conceptual strategic documents on its organization at the departmental and national levels. Crime prevention occurs without a centralized approach to involving the public in this process, which deprives the police of such an important partner as society in combating crime.

In response to the current situation, local authorities created fundamentally new structures endowed with separate police functions – the municipal guard. Having analyzed the Constitution of Ukraine, national and international legislation, V. Orlov concludes that the legal basis for the creation and operation of the municipal guard in Ukraine is built on four basic levels: 1) Constitutional level (fundamental norms, law enforcement and law enforcement norms); 2) Legislative level (prohibitory norms, regulatory norms); 3) International level (international norms and standards, international acts on maintaining public order); 4) Local level (statutes of territorial communities, decisions of local councils on the creation of a municipal guard, local acts regarding the granting of powers to the municipal guard) [4, p. 67].

In general, one should agree with the proposed systematization of the legislation related to the functioning of the municipal guard in Ukraine. The most important thing to point out is that no key legal act regulating the status of the municipal guard in one or another city in Ukraine has been adopted. This leads to the fact that the formed structures differ significantly among themselves in terms of the scope of powers, methods and forms of activity, etc.

Among the main problems related to the normative and legal regulation of the activities of the municipal guard, S.I. Shevchenko, indicates the absence of such regulation at the legislative level. The expert emphasizes the expediency of adopting the Law "On the Municipal Guard", the norms of which would establish the powers of the guard, including the maintenance of public order and security, crime prevention and security activities as the priority areas of the guard's activities, the administrative and legal status of the guard, would determine the sources of funding (local budget of the community), accountability and control of representatives of the municipal guard [5, p. 552].

Partially agreeing with the above, we would like to point out that the concentration of significant powers within one institution on the territory of the community will result in increased corruption risks and potential abuse of office. And therefore, in our opinion, the prerogative of the municipal guard to carry out security activities should be rejected. On the other hand, the legislative consolidation of this institution requires, first of all, the determination of the principles and standards of activity of municipal guard units, their arrangement and accounting. Without this, it will not be possible to talk about proper control and supervision of this institution.

The already mentioned V. Orlov provides a thorough classification of subjects of law enforcement activity, which will help us determine the place of the municipal guard among other organizations and officials at the local level. The following are proposed to be classified as private entities: a) private security companies; b) private detective associations, or detectives carrying out their activities individually. Communal (public) subjects of law enforcement include: a) municipal guards; b) municipal parking inspections; c) municipal employees

carrying out law enforcement activities (specialists in interaction with law enforcement bodies and ensuring public order and public order; inspectors for the protection of law and order and public order; instructors in informing the population about the prevention of violations; public order). Public subjects of law enforcement activities include: a) public formations for the protection of public order; b) security coordination offices; c) public assistants of the precinct police officer on a voluntary basis [6, p. 263-264].

Having determined the place of the municipal guard from among other subjects of relations in the law enforcement sphere, one should refer to the draft legislation. Thus, the draft law "On Municipal Guard" No. 2890 dated 05/18/2015 should be considered an attempt to unify the status of municipal guards. The draft stipulated that: "Municipal guard is an executive body in the system of local self-government, created in accordance with the procedure established by this Law, with the aim of ensuring the protection of public order, legality, rights, freedoms and legitimate interests of citizens in the territory under its jurisdiction city councils of the regional and/or republican Autonomous Republic of Crimea, the cities of Kyiv, Sevastopol, as well as the jurisdiction of the village, settlement, city council of the territorial community formed as a result of a voluntary association, and is maintained at the expense of the appropriate local budget" [7]. It should be noted that the mentioned project did not find support in the Verkhovna Rada of Ukraine despite its adoption in the first reading and significant interest in it by local self-government bodies.

As indicated on the Internet resource of the Association of Cities of Ukraine, the municipal guard is a community-controlled mechanism for ensuring law and order. The creation of municipal law enforcement agencies is provided for by the Concept of Reforming Local Self-Government and Territorial Organization of Power in Ukraine (Decree of the Cabinet of Ministers of Ukraine dated April 1, 2014 No. 333). The guard will be financed from the funds of the relevant local budget and will perform the role of a community-controlled mechanism for ensuring law and order in the territory of the relevant administrative-territorial unit. When maintaining public order, municipal guard units will interact with national police units, exchange operational information, conduct joint activities, etc. The creation of a municipal guard is supported by European experts, based on the experience of EU countries. Experts of the Council of Europe, in particular, point out that the strengthening of the role of local self-government in the sphere of ensuring the protection of public order is necessary within the framework of the decentralization of power and the reform of local self-government [8].

O. Vdovichenko also points to the foreign experience of the functioning of the municipal guard as a component of local self-government bodies. The specialist notes that the legal basis for the activities of the municipal guard in Poland at the state level is a special legislative act, and at the local level – the statute of the municipal guard. He also considers it possible to solve the problem of determining the status of the municipal guard by adopting the appropriate law and relying on the positive practice of Poland [9, p. 7].

If the status of the municipal guard is still not defined at the legislative level, the situation is the opposite at the local level. Yu. Topchii, comes to the conclusion that communal security enterprises (municipal guards) created by local self-government bodies are subjects of authority that perform management functions to ensure the implementation of the law enforcement policy of the state and the protection of the rights and interests of the territorial community, man and citizen [10, p. 197].

We cannot agree with the stated thesis. For example, the Decision of the Dnipro local council of the VII convocation dated 21.02.2018 No. 51/30 "On the approval of the Statute of the Communal Enterprise "Municipal Varta" of the Dnipro City Council in the new version", established that the purpose of the creation and operation of this enterprise is economic activity to achieve economic and social results and for profit. And the subject of economic activity for the realization of this goal is the provision of a number of functions. Among such functions: provision of services for the protection of citizens, as well as the property of citizens, legal entities under private and public law, conducting patrols on the streets of the city in order to detect violations of the rules of city improvement, protection of officials of the Dnipro City Council during the performance of their official duties [11].

Some scientists and human rights defenders express their concerns regarding the granting of appropriate powers to utility enterprises, because security activities are regulated by the relevant Law and are a licensed type of economic activity. In addition, it creates grounds for considering the municipal guards as local armed structures subordinate to local authorities.

From the foregoing, the problem of the need to find appropriate mechanisms to preserve

the principle of independence in the activities of the municipal guard emerges. Of course, such enterprises are on the balance sheet of local budgets, which are obviously different, as are the capacities of individual territorial communities. And here we return again to the need to unify the relevant structures, which can be done by adopting the relevant law.

Conclusions. In conclusion, I would like to note that the legal status of the municipal guard in Ukraine remains uncertain and deconsolidated. In order to solve the problem that arose around the diversity of approaches to understanding the status and tasks of the municipal guard, it is necessary to adopt the Law of Ukraine "On Municipal Guard". As for the tasks and functions of the municipal guard, the legal status of its employees, we do not support the identification of the corresponding structure with the prospects of the formation of the municipal police. The police is a professional body (state or local funding) in contrast to the municipal guard, which is staffed by local residents without the status of civil servants.

We consider the following to be promising areas of activity of the municipal guard in Ukraine: a) adoption of the Basic Law; b) standardization – adoption of the Model Charter; c) establishment of the upper limits of the number of personnel and funding; d) unification of uniformity.

Conflict of Interest and other Ethics Statements
The author declares no conflict of interest.

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ABSTRACT

The article deals with the problem of the activity of the municipal guard in Ukraine and defines the prospects for its further activity. It is emphasized that the widespread European trend of modern times is the decentralization of the police and the implementation of the principle of joint responsibility for the state of public safety and order in the territory of the police service, which is the embodiment of the general practice of "Community policing". The latter has been successfully implemented in the activities of police structures in many developed countries of the world.

It was concluded that this involves the delegation of certain police functions to non-state structures, which allows to a certain extent to «relieve» the state police from considering and solving ordinary conflict situations and typical offenses that are not distinguished by a high degree of public danger. To maintain the level of law and order at the appropriate level, local authorities in Ukraine are creating fundamentally new structures endowed with separate police functions – the municipal guard.

It is substantiated that the concentration of significant powers within one institution on the territory of the community will result in increased corruption risks and potential abuse of office. Therefore, it is advisable to reject the prerogative of the municipal guard to carry out security activities. On the other hand, the legislative consolidation of this institution requires, first of all, the determination of the principles and standards of activity of municipal guard units, their arrangement and accounting. Without this, it is considered impossible to talk about proper control and supervision of this institution.

The following are the prospective directions of municipal guard activity in Ukraine: a) adoption of the Basic Law; b) standardization – adoption of the Model Charter; c) establishment of the upper limits of the number of personnel and funding; d) unification of uniform.

Keywords: *municipal guard, communal enterprise, public order and security, coercion, interaction.*

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STOPPING CRITICAL BLEEDING BY WORKERS WITHOUT MEDICAL EDUCATION

Тетяна Пакулова, Ганна Бідняк. ЗУПИНКА КРИТИЧНИХ КРОВОТЕЧ ПРАЦІВНИКАМИ БЕЗ МЕДИЧНОЇ ОСВІТИ. В науковій роботі зосереджено увагу на особливостях надання домедичної допомоги для зупинки критичних кровотеч немедичними працівниками в цивільних та військових умовах. Зауважено, що в умовах сьогодення навіть зони надання допомоги можуть різко змінюватись і тоді надання домедичної допомоги проводиться в залежності від умовної зони находження потерпілого та рятівника. Серед дієвих засобів зупинки критичної кровотечі розглянуто тиск, турнікет, тампонаду з тиснутою пов'язкою та особливості їх застосування. Аргументовано заперечення використання саморобних пристроїв, які працюють по типу турнікета.

Ґрунтуючись на рекомендаціях бойових медиків, інструкторів, волонтерів, CoTCCC, Центра тестування турнікетів надано назви турнікетів та інших пристроїв, рекомендованих для зупинки критичних кровотеч. Також надано пропозиції щодо підвищення рівня домедичної підготовки з зупинки критичної кровотечі у немедичних працівників.

Ключові слова: *критичні кровотечі, масивні кровотечі, турнікет, тампонада, немедичні працівники, домедична допомога.*

Relevance of the study. The urgency of the mentioned topic both in peacetime and during the period of military aggression of the russian federation on the territory of independent Ukraine does not raise doubts. As is known, more than 92 % of the victims of the accident are victims of critical blood edema. Previously, the causes were the consequences of road traffic accidents, fights, industrial injuries, accidents, etc. Today, these are massive rocket strikes on residential buildings, multi-surface areas, office centers, parking lots, petrol stations, critical infrastructure facilities, educational institutions, kindergartens, cultural institutions, health care facilities, industrial enterprises. Therefore, for the population, law enforcement officers, volunteers, military, all ordinary citizens need basic knowledge and skills to stop critical bleeding.

Recent publications review. Some aspects of pre-medical care for victims were considered by both domestic and foreign colleagues, in particular: A. Biryukova, M. Voronkova, A. Voynarovych, I. Dubivka, S. Huriev, M. Horbachova, D. Giannoulopoulos, I. Golovan, E. Jill, V. Zaborovsky, N. Kotliar, Iu. Kuntsevych, V. Kryliuk, G. Letsas, P. Malanchuk, O. Maslak, O. Myslyva, O. Maslyuk, V. Nor, O. Nykyforova, S. Overchuk, V. Tertyshnyk, Te. Theodore, D. Surkov, V. Cherniakhovskyi and others. However, the current conditions require additional research on such an important topic as stopping critical bleeding.

The article's objective is to study the peculiarities of providing pre-medical assistance for stopping critical blood tests by immediate workers in civilian and military conditions.

Discussion. In the Soviet literature description of blood father always touched the

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classification of the injured vessel, in particular, captain, venous, arterial, parenkhimatozna. In recent years, pre-medical training has reached a new level, has moved away from a large volume of theory and has a more practical orientation. Therefore, it is important for immediate workers to recognize critical or massive bleeding, which means a large loss of blood (more than a half-liter of each wound) in a short period of time (several minutes) and requires immediate action to stop.

Pre-medical specialists currently distinguish external and internal bleeding. To provide assistance, it is important to identify the bleeding that is life threatening. Out of all life threatening conditions, the most dangerous are external bleeding from the extremities and "vulva" bleeding (neck, groin, groin). If you do not stop such bleeding, a person can be killed for several minutes. Massive (or critical) bleeding from the extremities is the most common cause of death that can be prevented (approximately 2/3 all deaths that could have been prevented) [2, p. 91]. It is important to understand that the final stop of bleeding is carried out by medical personnel in health care facilities, and rescuers on the scene can only temporarily stop bleeding. At the same time absence of consciousness or pulse, a pale skin does not always indicate bleeding. Scientists recommend to pay attention to the following signs of massive bleeding: pulsating or rapidly leaking blood from the wound; a bottle of blood on a rapidly-growing clothes; the lood of the blood around the victim; amputation or separation of the limb [1, p. 28].

Using the known MARHE algorithms, XABCDE or CABCDE will check for the presence of massive blood flow, even if none of the above symptoms are immediately visible to exclude their presence. We pay attention to areas of neck, underarms, groats, upper and lower ends. Methods of blood flow stop represent a discussion issue among the experts of premeditational help. However, the rule of three "T" works always, that is: A tournament tamponade-stamping bandage. It is clear that direct pressure on the wound or the clamping of large vessels above the wound is always used to help the victim and is passed to all the mentioned "T", i.e. laying of a tournament, or tampon, or a pressing bandage. In case of self-help, of course, pressure can not always be done.

For stopping critical bleeding there is a lot of specially created structures, including turnstiles and other means.

CoTCCC Recommended Devices & Adjuncts:
Combat Application Tourniquet (CAT) Gen 7
Combat Application Tourniquet (CAT) Gen 6
Ratcheting Medical Tourniquet –Tactical (RMT-T)
SOF Tactical Tourniquet – Wide (SOFTT-W)
Tactical Mechanical Tourniquet (TMT)
TX2 Tourniquet (TX2)
TX3 Tourniquet (TX3)
Emergency & Military Tourniquet (EMT)
Combat Gauze (CG) Z-Fold (QuikClot Combat Gauze)
Celox Gauze, Z-Fold 5’
ChitoGauze
X-Stat, Single Applicator
iTClamp

Absolutely effective means for quick stopping of massive blood flow from the ends is tournament, in literature it is described as a jam with a twist. Apart from the ones mentioned in the list above, the tournament kits of the leading Ukrainian producer of blood-stop jguts "RICH-Tourniquet", which are equipped both civilian and military pharmacies, are widely used in Ukraine. It is a special construction, which in any weather conditions, in wet, snow-covered, contaminated condition, when heated or severely cooled, quickly stops mass bleeding of the extremity and will withstand extreme renumbering [11].

It should be noted that in the modern period of full-scale invasion of russia on the territory of our state, military medical personnel recommend "RICH-Tourniquet" along with the world-recognized "CAT". In our opinion, it is very convenient when providing self-help, because the metal gate allows to open the tournament from martial position with one sharp movement and to lay very quickly on the injured end with one hand.

The quality of the tunkets is a guarantee of stopping critical bleeding and, as a result, saving the life of the victim. However, in recent years Ukraine has been provided with a lot of low-quality products as humanitarian aid. Unfortunately, the practice of combat doctors

testifies to numerous counterfeits of both domestic and foreign manufacturers. The instructions for such pseudo turnstiles also indicate false information, for example, "do not delay" or "relax after two hours". We hope that the reason for this is a lack of awareness about critical blood flow and underestimation of the negative consequences caused by them. The price of such a kidnapping is someone's life!

Recall, the turnstile put on clothes or directly on the skin 5-8 cm above (proximal) from the wound. If it is difficult to determine the place of bleeding, the gut is put as high as possible, but not on the sugla. The effectiveness of the tournament's teaching is determined by stopping bleeding and the absence of pulse lower (distal) from the wound. It is necessary to indicate the time of teaching (on the tournament itself, on the skin of the injured, for example, on the cheeks or on the head) immutable marker. If the victim has his own turnstile – put it first. Your tournament is for you. It is not recommended to put your gut to other victims. When laying turnstiles injured rescuer should use gloves [2, p. 92].

It should be noted that in some outdated literature specified time to lay the tournament in summer and in cold season. The law prohibits attempts to relax or withdraw the jute until the injured medical has been taken into account. Instead of the tournament use a rubber gut like Esmach. Quite effective, however, has its drawbacks. First, he will be torn by improper storage conditions. Also, very uncomfortable when providing self-help with one hand, cannot be applied directly on the skin, etc.

Of course, we could not give attention to tamponade. Wound amination is more often used in places of "vulva" blood edema (groans, groin) – in places where it is impossible to put a gut, but also apply also on extremities, especially with a large layer of muscles (hips, shoulders). Do not tamper with the body cavity (black, chest, small pelvis, head). The essence of the tamping is to compress the broken vessels in the wound with a large amount of material (bandage, gauze). Often use special hemostatic gauze or bandages – a material, highlighted by special chemical substances, which contribute to the creation of thrombus. After full filling the wounds carry a direct pressure on the wound: If the tamponade with hemostat – not less than 3 minutes, if the usual material – not less than 10 minutes [2, p. 92].

Really effective means to stop critical bleeding in those places where it is possible, ie where you can press the finger. However, for medical workers does not cause problems with work in the morning, large amount of blood, etc. Sometimes, rescuers without medical education may have problems because of fear, fear of blood, the appearance of wounds and he will not be able to effectively use this method.

The compression (pressure) connection is applied directly to the open wound of the limb, neck, smell, smell or tamponade. Use clean cloth (preferably non-colored), gauze and elastic bandages. In recent years, the most effective link has been the so-called "Israel bandage". This is a special connection consisting of a sterile cushion and an elastic bandage with a plastic compression element and a clip. When applying the injured compression (pressing) connection to the open wound of the limb, the pulse on the limb below the bandage should be determined [2, p. 93].

Also, almost all ordinary rescuers who have not passed the training course on stopping critical bleeding, there is an idea to use self-made means with improvised screw-ins on the type of "fabric and palitsa". In this regard, we note that the place where the victim is located and during which time he will be delivered to the hospital or transferred to medical personnel. In combat conditions, when the evacuation of the wounded takes several hours instead of minutes, this way stopping critical bleeding will definitely lead to the wrong consequences. So, before using such a dubious method, the rescuer must answer his question whether he is ready to play roulette and accept his mistake in the form of death of the victim?

Denying one means of stopping critical bleeding, you can offer an alternative. We agree with experts who offer direct pressure on the wound with critical bleeding or higher wounds, for example, the middle of the folds or the middle of the inner thigh when the lower extremity is affected. Each rescuer will be able to exert pressure on the whole body on equal hands in the elbows for 10-15 minutes, putting any tissue on the wound first. This way will stop bleeding and allow in such a position to wait for medical care or rescuer with the tournament.

We would like to draw attention to the relatively new in Ukraine, but on positive responses, an effective means is iTClamp, an advanced device for stopping bleeding. FDA-approved bleeding at the extremities, in the groin and groin areas, on the head and neck – where the wounds can easily be brought closer. Tightly closes the wound edges to reduce further blood flow until the wound is surgically restored.

According to studies, iTClamp outperforms the usual dressing on wound due to patient survival, survival time (>180 minutes) and total blood flow (120 cc). It is applied in seconds by one hand and with minimal pain for the patient (1 on a scale of pain from 1 to 10). Creates a localized pressure without the help of hands, which quickly forms a stable clot and prevents further blood flow. Localized pressure is still the easiest, time-tested way to control severe bleeding. The search mechanism does not overcover distal perfusion as most jguts.

Application is intuitive – every medical worker with minimal training will be able to immediately stop life-threatening bleeding, which is not subject to the imposition of a jgut (more than 90 % of the success of application from the first attempt). This is the only effective product for "help under fire" or in other situations where the competition cannot be cured. The device is lightweight, portable and easy to adjust when needed.

ITClamp minimizes time spent on the event:

– easy application during mobile evacuation of the victims (e.g. ambulance or helicopter);

– eliminates the need for 3 minutes of manual pressure after dressing on wound;

– ideal addition to apply hemostatic bandage and can be imposed on most types of clothing;

– controls bleeding in a stable and/or coagulant patient;

– creates the effect of the power multiplier;

– can be applied during initial assessment at sorting of mass victims;

– frees the hands of doctors to help other victims [12].

The legislative basis for the provision of premeditated care to the victims with critical blood-edema is the order of the Ministry of Health of Ukraine No. 441 of March 09, 2022, which contains the procedures for the provision of premeditated care, including those suffering from massive external bleeding who do not have medical education, however, they must provide medical care for their duties.

But such an algorithm is appropriate in civil life. During the shooting in the zone of direct threat there are its peculiarities. In previous work we tried to draw attention to the first aid to victims of rocket attacks on civilian infrastructure, which can be provided by both ordinary citizens and persons who, in accordance with the Law of Ukraine "on emergency medical assistance" are obliged to provide pre-medical assistance to the person in urgent condition [7, p. 201]. These are rescuers of emergency rescue services, state fire guards, police, pharmaceutical workers, passenger car drivers, flight attendants and other persons who do not have medical education, but should have practical skills in providing pre-medical care [9].

Thus, during missile attacks it is necessary to define zones for providing assistance:

– a direct threat zone is the place where the action is carried out and there is a high threat to life of the rescuer caused by external factors, or when the action of external factors is more threatening for the victim than the damage received;

– an indirect threat zone is a place that is close to the combat zone and is likely to be injured by persons providing pre-medical assistance;

– the evacuation zone is a place that is far from the place where the fighting takes place, safe from the point of view of injury and from which the evacuation of the victims takes place [3, 8].

The actions, sequence and volume of the provision of pre-medical care to the victims will be somewhat different in each zone. In addition to the safety of the rescuer, who always takes the first place. Therefore, in the red zone or a direct threat (also called "under fire") it is necessary to find shelter and provide self-help. When the rocket is left in the building, a large smoke is possible, which requires the use of a respirator, mask, cosine, etc. Limited visual control does not exclude the possibility of providing pre-medical care, although it considerably complicates it.

As we have already noted, the most dangerous are critical bleeding, which is possible to stop even in this zone with the help of a tournament at the level of shoulder or thigh as high as possible, while the time of laying, check other affected places and further examination of the victim is conducted in the zone of the shelter. In case of a breach of consciousness and inability to move the victim in the shelter or area of an indirect threat the victim should be returned to the stomach or to a stable side position. When attempting to evacuate a victim in the shelter or the next area, it is necessary to assess the safety of its implementation, taking into account the path of movement of the victim, his body mass, threat of external factors, including combat actions.

In the area of indirect threat or closure, all actions are performed according to the commonly accepted algorithm MARHE: assess the presence of external massive bleeding and if it is available – place a blood-stop gut, put the wound under pressure or use direct pressure on the wound; assess the progress of the respiratory tract by assessing the level of consciousness of the injured person:

– in advance by simple appeal: "Do you hear me?" If the victim does not respond – to ensure the passage of respiratory tract and to estimate respiratory motion up to 10 sec. In the absence of breathing, if possible, begin heart-lung resuscitation;

– in the presence of breathing and absence of consciousness: to maintain the passage of respiratory ways – manually (by hands) or to ensure stable lateral position [8].

In recent years, many trainings have been held from Ukrainian instructors and foreign partners in providing pre-medical care during critical blood tests, pre-hospital trauma, respiratory disorders, etc. Getting the knowledge and skills on dummy-simulators can really achieve high results, having a lot of wounded, and not to break, having found in zone of rocket attacks.

In view of the above, in order to achieve a high level of pre-medical preparation for stopping critical bleeding, we fully agree with the proposals of scientists, in particular, O. Misliva, O. Nikiforova, Yu. Kuncevych. Thus, the best standards of emergency care should be implemented in police training and activities, in particular, derived from both: our own research and positive foreign experience:

1. The use of interactive methodological approaches gives a stable result of long-term actions in the training of TECC police officers. Further introduction of interactive forms of TECC police training is an important aspect of modernizing the approach to premedical police training.

2. Interactive methods of TECC police officers training are aimed primarily at increasing the activity and motivation of cadets to educational and professional activities. Interactive methods allow active use of passive learning in model or real situations of professional activity, which improves the quality of training of future professionals.

3. Police training should be not only standardized but also unified to ensure the completeness, integrity and continuity of maintaining the stable condition of the victim until he or she receives qualified medical care in any country in the world; legal and coordinated work of units designed to provide premedical care, based on algorithms of action both in everyday situations and in crisis (extreme / emergency) situations.

In particular, A. Givati, C. Markham, K. Street "The bargaining of professionalism" emphasizes the need for professional regulation and standardization of education in high-income countries, as it not only indicates their political stability, but also has a positive effect on the image of the institution and the demand for its specialists. Based on interviews with leading paramedics, paramedic teachers and paramedic students in the south of England, these researchers explore how paramedical education reforms have affected the professionalization of paramedics and its development.

4. The integration of pre-medical care into the discipline "Tactical and special training" is a mandatory and justified requirement for simultaneous performance of professional and combat missions by police officers.

5. Algorithms for first aid provided by the police should be adapted to unforeseen emergencies and describe the protocol of action in situations of unknown risk, as in the recently adopted in March, 2020 protocol "Provision of medical care for the treatment of coronavirus disease (COVID-19)" emphasis is placed on the absence at the time of approval of specific antiviral treatment for coronavirus disease [8-10].

6. Modern interactive methods of TECC police officers training, especially role-playing, are the most effective and appropriate, while more intensively used on various web platforms in the form of quests or other types of gaming practices.

7. Foreign experience of training or updating the knowledge of TECC police officers shows that even very short-term but intensive training on narrowly focused topics has a positive effect. This requires investment in training, much of which can be obtained from partner countries and joint research grants [4, p.131].

Conclusions. Thus, it should be noted that during the provision of pre-medical care, immediate workers should distinguish civilian conditions from military ones that have certain tactical characteristics. In the present situation, even in remote towns from the front-line zone, shots of civilian infrastructure can occur, and then the provision of pre-medical assistance is

carried out depending on the condition zone of the victim and rescuer's finding. Among the effective means of stopping critical bleeding remained steel: Pressure, turnstile, tamponade, which after the appropriate exercises can apply immediate workers.

Conflict of Interest and other Ethics Statements
The authors declare no conflict of interest.

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ABSTRACT

The scientific work focuses on the features of providing pre-medical care to stop critical bleeding by non-medical workers in civilian and military conditions. It is noted that in today's conditions, even the zones of assistance can change dramatically, and then the provision of pre-medical assistance is carried out depending on the conditional zone of the victim and the rescuer. Effective means of stopping critical bleeding include pressure, a tourniquet, tamponade with a pressed bandage and the specifics of their use. The objection to the use of self-made devices that work like a turnstile is argued.

Based on recommendations from combat medics, instructors, volunteers, CoTCCC, and the Tourniquet Testing Center, names of tourniquets and other devices recommended for stopping critical bleeding are provided. Suggestions for increasing the level of pre-medical training in stopping critical bleeding among non-medical workers are also provided.

Keywords: *critical bleeding, massive bleeding, turnstile, tamponade, immediate workers, medical assistance.*

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PREVENTIVE ACTIVITY OF THE JUVENILE PREVENTION POLICE: THE EXPERIENCE OF THE USA AND WAYS OF ITS INTRODUCTION INTO THE NATIONAL DOCTRINE

Карина Пісоцька, Тетяна Борисенко. ПРЕВЕНТИВНА ДІЯЛЬНІСТЬ ПОЛІЦІЇ ЮВЕНАЛЬНОЇ ПРЕВЕНЦІЇ: ДОСВІД США ТА ШЛЯХИ ЙОГО ВПРОВАДЖЕННЯ У ВІТЧИЗНЯНУ ДОКТРИНУ. У статті розглянуто діяльність поліції Америки в сфері протидії та профілактики адміністративних правопорушень, що вчиняються дітьми та відносно дітей. Здійснено аналіз нормативно-правових актів, які регулюють діяльність поліції та інших спеціалізованих органів і установ у справах дітей у США.

Встановлено, що однією з провідних діяльностей поліції ювенальної превенції США визначається стратегічна співпраця та довгострокові плани дій для попередження правопорушень дітьми, як на загальнонаціональному так і на місцевому рівні. Визначено, що сучасними напрямками в адміністративній діяльності поліції США щодо профілактики правопорушень, що вчиняються дітьми є: широке застосування аналізу факторів та причин, що призводять до дитячих правопорушень, так звана превентивна перспектива; високий акцент на експертності поліцейських та інших фахівців, які займаються профілактикою адміністративних правопорушень, що вчиняються дітьми.

Встановлено основні засади адміністративної діяльності ювенальної поліції та інших органів і установ у справах дітей зарубіжних держав, реалізація яких може бути доцільною в Україні. Аргументовано, що для успішної реалізації позитивного зарубіжного досвіду,

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рекомендується поетапне та поступове внесення змін, або ж, наприклад застосовування новел методом пілотного проєкту на одній з областей чи місті. Така методика дає можливість проаналізувати дієвість змін не зашкодивши правовій системі, державним органам тощо. Кожна держава пройшла свій шлях розвитку та становлення, що відображається в унікальності культури, правової свідомості та світосприйняття. Обґрунтовано пропозиції щодо таких напрямків удосконалення.

Ключові слова: *дитина, міжнародний досвід, поліція, США, профілактика правопорушень, адміністративна діяльність.*

Relevance of the study. One of the priority tasks of the modern legal system is the protection of the rights and interests of children. The child is not able to independently protect his rights due to his age, psychological immaturity and dependence on the decisions of his parents or other adults who take care of him. As a result, children cannot always seek legal help on their own and are emotionally vulnerable.

Protection of the rights and interests of the child at an appropriate level is not only a matter for one state, or for an underdeveloped state in the world. Today, this problem belongs to the global problems of our time, in the solution of which each country participates individually, both internally and globally, international organizations, communities, associations, agreements, etc. All this is motivated by the need to reduce and prevent offenses committed by and against children.

Juvenile prevention units of the National Police of Ukraine play an important role in protecting the rights and interests of children. Therefore, the study of foreign experience of the administrative activity of juvenile prevention units will make it possible to evaluate the effectiveness and find ways to introduce the latest into the domestic doctrine. During the study of the issue of the activities of the police of foreign countries in the field of prevention and termination of administrative offenses committed by children or in relation to children, it was proved that there are no modern comprehensive studies on this issue.

Research on this issue is also complicated by the fact that the police system of foreign countries is not identical to ours. For the most part, the issue of juvenile prevention in foreign countries is dealt with by state bodies of juvenile justice, which, unfortunately, have not been created in Ukraine today. Therefore, mainly, we will study the outlined issues of our research through the prism of broader issues, namely: activities of juvenile justice, prevention and prevention of offenses against children and deviant behavior in the environment of minors. That is, within the framework of our research, we will focus on those aspects that can contribute to the improvement of the administrative activity of the juvenile prevention units of the National Police of Ukraine.

Recent publications review. The study of foreign experience of the administrative activity of juvenile prevention units was reflected to one degree or another in the scientific studies of G. Tereshchuk, O. Semerak, O. Litvinov, K. Muranenko, O. Navrotskyi, A. Dzyuba, I. Kravchenko, O. Druchek, I. Ishchenko, R. Opatskyi, I. Verba, R. Myronyuk, V. Moroz and others.

The article's objective is to study the activities of the American police in the field of counteraction and prevention of administrative offenses committed by children and in relation to children.

Discussion. First of all, we should note that administrative responsibility, as an institution of administrative law, in the usual sense exists only in the countries of Eastern Europe. Thus, in European countries, the activity of police officers in preparing materials for consideration of a case in court is considered an administrative activity. Another difference between the administrative activities of national law enforcement agencies and foreign countries is the legislative acts that regulate their activities, as well as the imposition of sanctions on offenders. For example, in the USA, the main source of law is judicial precedent, so there are no codes or other types of codified laws that would regulate the activities of law enforcement agencies. Instead, the activities of police officers are regulated by so-called acts of parliament – statutes that are approved annually, or regulated by court precedents.

We would like to note that the police system of the United States is one of the least centralized in the world, and its organization is complex, since there are about 40,000 police units in the United States, and there is practically no clear hierarchical subordination between them. Decentralized police systems can also include those operating in Great Britain and Germany [11, p. 206].

J. Stanford in his study "Initiation of the legal process" [3, p. 206] noted that the history

of juvenile court dates back to the Illinois Juvenile Court Act of 1899. It is called "About abandoned, homeless and criminal children". Also in the study, Stanford described key trends in the early history of the juvenile court, beginning with the establishment of separate juvenile correctional facilities in the 1820ˢ and ending with the development of critical case law analysis in the 1930s. The Illinois statute distinguished between juvenile offenders and those 18 years of age or older. Courts in the early nineteenth century, however, generally did not make this distinction: children convicted of crimes and children who were abandoned, abused, or simply very poor were often placed in the same institutions. Both criminal behavior and poverty were seen as threats to social order.

Today, the legal bases of police activity in the USA are the US Constitution, the Federal Criminal Code, state constitutions, court precedents in cases related to police actions in specific aspects. The key legal acts that regulate the activities of the police, other specialized bodies and institutions for children in the USA are the federal Juvenile Justice Act (1974), the Juvenile Delinquency Prevention Act (2004) and others. The system of specialized bodies and institutions for children in the USA today includes: the police (more than 75 % of the 13,000 police departments in their structure have special services that deal with children's affairs or implement special programs in the specified field); temporary detention centers for children; juvenile prosecutors; juvenile public defenders; juvenile courts; penitentiary institutions for children. The highest governing body in this field in the United States is the Office of Juvenile Justice and Youth Delinquency Prevention, which is headed by an administrator appointed by the President. At the federal level, there is a Coordinating Council for Juvenile Justice and Youth Crime Prevention, which is headed by the Attorney General and includes: Ministers of Health, Social Services, Labor, and Education; Director of the National Police Narcotics Control Office; other state officials, as well as nine non-officials, who are appointed by the President, the heads of the House of Representatives and the Senate on equal quotas [14, p. 110].

A major emphasis in the preventive activities of American police officers with regard to minors is to implement the maximum preventive barrier before the child commits offenses. These can be the following measures: strengthening the protection of more vulnerable objects, creating anti-criminogenic conditions in the child's environment, equipping possible objects of crime with signaling devices, wearing police uniforms in the places of deployment of possible (alleged) criminals, etc. The advantage of this preventive measure is its effectiveness and application as an element of the mechanism of relieving the law enforcement and judicial system of a large number of offenses committed by children. The disadvantage of such prevention measures is that minors do not actually commit crimes precisely because of the obstacles created by the police, but not because of an inner conviction about law-abiding behavior.

British and American scientists emphasize the implementation of social crime prevention measures that actively involve the public. Offenses are perceived as a social problem, in the solution of which society as a whole should take part. Among the tasks facing social prevention, priority ones should be singled out: improvement of social living conditions; strengthening the role of social institutions; expansion of opportunities for obtaining education, decent employment, recreation [8, p. 220].

The problem for modern society is the disunity of its members. In large cities, people often do not know their neighbors, do not communicate with each other at their place of residence. Therefore, British and American scientists assumed that the association of citizens by their place of residence (doorway, house, yard, city, etc.) in order to maintain cleanliness, order in their territory and guarantee the safety of their members will reduce the level of crimes. This type of prevention was called "prevention with the help of the public". Police officers take an active part in the organization of preventive activities of citizens' associations. They provide advisory and practical assistance to citizens. The most common forms of this type of prevention are the implementation of "neighborly mutual aid", "stop the criminal" programs, etc. [10, p. 94].

That is, with the help of social prevention, police officers, on the one hand, educate minors, and on the other hand, involve the public in issues of minors.

Examining measures and means of prevention of administrative offenses by US police officers, we can note that the state and law enforcement agencies implement a large number of programs for minors and teenagers. To apply a certain program or preventive measure, police officers take into account whether the child belongs to the so-called risk group. Risk factors

can be: improper living conditions, committing offenses by one of the child's parents, living in an area with a high level of crime, etc.

The modern preventive practice of foreign countries is characterized by the presence of many different programs aimed at preventing offenses. Among them, an important role is assigned to the measures of prevention of delinquency among minors, including the measures of early prevention of illegal behavior of minors. Foreign scientists believe that the success of all preventive activities largely depends on the effectiveness of prevention of delinquency among minors. Depending on the object of preventive influence, all foreign programs can be conditionally divided into the following groups: programs aimed at strengthening the family. They are designed to eliminate or weaken the effect of family risk factors; programs aimed at eliminating school risk factors, improving the level of school education, etc.; programs of special prevention of crimes and other offenses among minors, aimed at prevention of illegal behavior of minors, as well as prevention of relapse by minors who have already committed offenses. In the implementation of these programs, various forms of control and supervision of minors with deviant behavior are used, as well as punitive methods for minors who violate the requirements set for them [1].

The following programs are used by the US police to prevent crimes.

"DARE" ("Drug Abuse Resistance Program") is an educational program aimed at combating drug abuse, involvement of children in committing crimes and aggressive behavior. It was founded in Los Angeles in 1983 as a joint initiative of Los Angeles Police Chief Daryl Gates and the Los Angeles Unified School District. The purpose of the program is to familiarize students with the drug use prevention course by police officers. This program is used less often today. In 2009, the DARE program was changed to the Keepin'it REAL training program. Keepin'it REAL is a high school drug prevention program to reduce alcohol and drug use. The main changes that have taken place are the focus of the program exclusively on countering drug and alcohol abuse, and the program is designed to take into account aspects of European-American, Mexican-American and African-American culture, integrated with cultural narrative and performance. "Truancy and Disaffected Pupils Programmer" is a program aimed at reducing the number of absenteeism and the negative attitude of students to the requirements of school discipline. Its content includes measures aimed at improving control over the presence of students at school; prevention of school hooliganism, bullying; work with children who do not attend school without reason; organization of training programs for teachers with the aim of mastering special methods of influencing the child's deviant behavior; educational work with parents [9, p. 161].

The Olweus Bullying Prevention Program (BPP) is a bullying prevention program designed for elementary, middle, and junior high school students (ages five to fifteen). All students participate in this program, and students who are bullies or bullies receive additional individualized measures. Student Transition and Recovery (STAR) Program: An Evaluation Report (The STAR program serves high school students who are at risk of entering the juvenile justice system. The program resembles a military operation, requiring students to report on one of three tracks of varying duration. Big Brothers Big Sisters of America (BBBSA) – through this youth mentoring program, police and other non-governmental organizations promote the positive development of US youth and increase self-esteem, thus reducing delinquency. The BBBSA program was first implemented by the city of Dallas in 2017. The program was created as a way to build relationships between residents and officers. This program brings together police officers and children, who mostly come from poor or single-parent families, or have incarcerated parents. Thanks to this program, there are already 1,090 police associations in the United States with youth in the areas they patrol.

Carrying out the task of ensuring the rights and freedoms of the child and carrying out preventive activities, the police, other specialized bodies and institutions for children in the USA are authorized to use various measures of influence, in particular, administrative. As in Ukraine, in most states of the USA the responsibility of parents for committing illegal acts by their children is legally established. Yes, under Arkansas law, fines apply to parents of children who do not attend school; in the state of Florida, parents are criminally liable if their child uses a weapon that adults have left in an accessible place; most states have laws that disqualify families from receiving public assistance if a child is involved in the use or sale of drugs. As a measure of primary prevention in many states, a ban on the appearance of children on the streets and in public places at night is used [14, p. 110].

Therefore, the study of the foreign experience of the US police in the field of prevention

of administrative offenses made it possible to draw the following conclusions. Scientists consider the implementation of early prevention measures to be an advantage of the US police system in terms of the prevention of children's crimes. Police officers work with children starting from preschool age, and also choose the necessary preventive measures depending on which "risk group" the child belongs to.

Administrative and legal preventive measures of the police are aimed at eliminating all factors and reasons that can encourage children to commit crimes. Prevention of delinquency among children is a separate type of state activity in the United States. The specified type of activity is implemented comprehensively, that is, it is carried out at the federal level and at the state level; provides for the implementation of measures of a general social, material and economic, educational and educational nature; implemented on the basis of long-term large-scale programs of correction and intervention; the subjects of its implementation are state (police, social services, educational institutions) and non-state (volunteers, municipal institutions) bodies and institutions [9, p. 160].

A characteristic feature of the administrative and legal regulation of the activities of the police, other specialized bodies and institutions for children in the USA is its focus mainly on correcting the behavior of the child and people from his environment, and not on punitive measures [13, p. 55].

A specific feature of the activities of the US police is the formation of relations between the police and citizens in the form of trust relations. To reduce crime, the police use preventive models such as "elder brother", "elder sister". This is a psychological technique that allows the child to perceive the policeman not as a supervisor or controller, but as a close person to whom you can entrust your problems, ask for help, etc. The administrative activity of the US police in the child's environment is aimed at preventing conflict situations in the family. Police officers can carry out preventive measures immediately both with the child and with the child's parents. The American police has a positive experience in the implementation of such prevention. This is due to the following: 1) the presence of a sufficient number of programs aimed at strengthening and meeting the individual needs of this particular family; 2) focus on a multifactorial (complex) approach and include children from early childhood.

An important aspect of adopting and implementing the experience of a foreign country in the activities of juvenile prevention units of the National Police is a deep study of social needs, the activities of the system of organization of state bodies and institutions in the field of juvenile delinquency prevention, the education system, the legislation system, etc. For the successful implementation of a positive foreign experience, it is recommended to make changes gradually and gradually, or, for example, to apply novelties by the method of a pilot project in one of the regions or a city. Such a technique makes it possible to analyze the effectiveness of changes without harming the legal system, state bodies, etc. Each state has gone through its own path of development and formation, which is reflected in the uniqueness of culture, legal consciousness and worldview.

Conclusions. Therefore, noting the importance of studying the foreign experience of the work of the juvenile police and, tangentially, the protection of the rights and interests of children, institutions and organizations, we emphasize the need to study the issue of introducing in Ukraine certain areas of administrative and legal regulation of their activities, in particular, in the field of prevention committing administrative offenses by minors, as well as the development and implementation of new, effective forms and methods of prevention. We would like to emphasize that it is necessary to introduce the latest methods taking into account national characteristics in all spheres of social life.

Conflict of Interest and other Ethics Statements
The authors declare no conflict of interest.

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ABSTRACT

The article examines the activities of the American police in the field of counteraction and prevention of administrative offenses committed by children and in relation to children.

An analysis of legal acts regulating the activities of the police and other specialized bodies and institutions for children's affairs in the USA was carried out. It has been established that one of the leading activities of the US Juvenile Prevention Police is strategic cooperation and long-term action plans for the prevention of delinquency by children, both at the national and local levels. It has been determined that the current trends in the administrative activities of the US police regarding the prevention of offenses committed by children are: wide application of the analysis of factors and reasons that lead to children's offenses, the so-called preventive perspective; high emphasis on the expertise of police officers and other specialists engaged in the prevention of administrative offenses committed by children.

The basic principles of the administrative activity of the juvenile police and other bodies and institutions for children's affairs of foreign countries, the implementation of which may be appropriate in Ukraine, have been established.

It is argued that for the successful implementation of positive foreign experience, gradual introduction of changes is recommended, or, for example, the application of novelties by the method of a pilot project in one of the regions or a city. Such a technique makes it possible to analyze the effectiveness of changes without harming the legal system, state bodies, etc. Each state has gone through its own path of development and formation, which is reflected in the uniqueness of culture, legal consciousness and worldview. Proposals regarding such areas of improvement are substantiated.

Keywords*: child, international experience, police, USA, crime prevention, administrative activity.*

ISSUES OF PUBLIC AND PRIVATE LEGAL REGULATION OF SEPARATE SOCIAL RELATIONS

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FEATURES OF THE BROADCASTING MODEL IN UKRAINE

Євген Курінний. ОСОБЛИВОСТІ МОДЕЛІ ТЕЛЕРАДІОМОВЛЕННЯ В УКРАЇНІ. Розглянуто питання особливостей моделі телерадіомовлення в Україні. Пропонується власне визначення зазначеної моделі, як узагальненої уяви про типову структуру організації та функціонування телебачення та радіо в нашій державі, що характеризується відповідними системою, структурою, динамікою та контролем з боку держави, а також метою своєї діяльності – повного та своєчасного задоволення суспільних потреб у сфері надання інформаційних послуг новинного, освітньо-пізнавального, виховного, мистецько-культурного, спортивного та розважального характеру.

Наголошується, що для теперішньої України найбільше підходить модель телерадіомовлення, що за своїми ключовими характеристиками схожа з відповідною конструкцією Франції. Основними аргументами на користь цієї пропозиції виступають: висока питома вага суспільного мовника у структурі масмедіа цієї країни, що підтверджує належну якість та популярність його інформаційного контенту серед французьких громадян; негативний досвід домінування донедавна в Україні приватних телеканалів та радіостанцій, функціонування яких переважно гальмувало втілення державної інформаційної політики, надавало пріоритет реалізації бізнесових та політичних інтересів їх власників – представників великого бізнесу (олігархів); об'єктивна необхідність у тривалому перехідному періоді післявоєнної роботи вітчизняного телерадіомовлення, яке краще здійснювати без переваги приватних складових у відповідній моделі.

Констатується, що для реалізації завдань і функцій, досягнення високих стандартів роботи медіа, що запровадженні у розвинутих демократичних країнах, необхідно зважати на ті особливості, які характеризують модель телерадіомовлення в Україні, серед яких головними є: робота в умовах особливого періоду, що настав з 24 лютого 2022 після розширеної збройної агресії рф, що характеризується наявністю окремих елементів воєнної цензури та згортанням роботи значної частини приватних телеканалів і радіостанцій; домінування у теле- та радіо ефірах інформаційної політики держави контрзаходів інформаційній війні, що здійснюється країною-агресором; пріоритетність новинної складової в інформаційному контенті під час війни, що має бути підсилена патріотично-виховними та інтеграційно-об'єднуючими компонентами впливу на українських громадян; готовність у післявоєнний час до здійснення реформування усього українського інформаційного простору в цілому та його невід'ємної складової – моделі телерадіомовлення зокрема, з обов'язковим усуненням причин допущення помилок у довоєнній інформаційній політиці.

Ключові слова: *інформація, модель, телерадіомовлення, медіа, особливий період, реформування.*

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Relevance of the study. The vast majority of people in today's civilization are consumers of information, the number of sources of which is constantly increasing, especially this undeniable fact becomes almost an axiom with the further development of digital technologies, which are implemented with the help of numerous new forms – broadband, mobile 5G or satellite Internet, which impress not only by its speed, as well as the volume and quality of provision of relevant information services.

If elementary rules of information hygiene (primarily critical assessment of relevant sources, their dosage) and self-restraint are not observed, various information flows can not only help to be knowledgeable in the most diverse matters, but also disorient a person, create false ideas about various social trends and facts. , to finally infect with the "virus of political color blindness", which in the end will make it possible to diametrically change the perception of the real color of specific events and for a long time to deprive of the ability to objectively evaluate the actions of the surrounding people and the surrounding world in general.

A particularly critical perception of information should occur when it comes from little-known and unverified sources or generally from the aggressor state, which has been occupying the territory of our country for almost 9 years (of which 10 months were part of a large-scale invasion).

Simultaneously with the expansion of the "hot" war front, the degree of informational aggression of the invader is also increasing, the invisible arrows of which are directed not only at their own internal consumption, but also at the consciousness of Ukrainian citizens, sowing despair, panic, fear in them, sharpening the will to resistance and undermining faith in victory Such a dangerous hostile influence is carried out by the entire media arsenal, which includes both the capabilities of Internet media resources (especially this applies to various Internet publications, video hosting YouTube and such social networks as: Telegram, Facebook, Instagram, TikTok, etc.), as well as time-tested radio and television.

The multi-vector scheme of media intervention looks quite logical, because it concerns all important sources of information. The stated thesis is confirmed by the results of a survey conducted by the Kyiv International Institute of Sociology in February 2019 regarding the identification of the main sources of information about the situation in Ukraine and the world for Ukrainians. Thus, according to the results of the mentioned study, the Central Ukrainian TV channels remained the top source for the absolute majority of the population – 74 %. Regarding Internet media, 27.5 % called them the main source of information. 23.5 % of Ukrainians received information from social networks. Among our citizens, for whom social networks were the top source of information, 74 % used Facebook, 33.5 % – Instagram, 15 % – VKontakte, 10 % – Odnoklassniki [1].

The full-scale war seriously affected the media landscape of Ukraine. First, the policy of one voice was introduced in the telecast and most news services were united in the telethon "One News". Secondly, in the conditions of the dynamic and often tragic development of the situation, the demand for information has grown wildly. In July, KMIS commissioned OPORA to conduct a sociological study, which showed exactly what changes had taken place in the information basket of Ukrainians. The study proved that the TV as a source of information has lost its leading position to the Internet. In particular, 59 % of respondents include social networks among the top sources of information (and in general, 69 % received information from them in the last 7 days). 43 % consider "Edyny Novyny" to be one of the top sources of information (in general, 57 % watched it). Social networks are appreciated for convenience (36 %), different points of view (24 %), efficiency (20 %), although only 26 % note reliability. In "Yediny noviny" the reverse indicators are: reliability (68 %), convenience (13 %), different points of view (6 %), efficiency (10 %). About 88 % of respondents use the Internet, in particular, 79 % do it every day or almost every day. Telegram, YouTube, and Facebook are the most popular among social networks. Ukrainians spend 41 % of the total time consuming news on Telegram, 37 % on YouTube, 12 % on Facebook, 6 % on Viber, 62 % prefer short videos; 61 % – a short informative message.

The age difference due to different technical literacy and provision of smartphones remains. In general, 75 % of Ukrainians have a smartphone, but among young people under the age of 30 it is 96 %, and among people aged 60+ - 49 %. In the first group, 87 % count social networks among their top sources of information, and 28 % – "Edyni Novyni", and in the second, these figures are 34 % and 61 %, respectively.

There is also a certain difference in the popularity of social networks among residents of villages and large cities (49 % and 67 %). The "Edyni Novyni" telethon has the highest level of

trust – 57 % (only 6 % do not trust it). 65 % of respondents approve of the policy of one voice on television, 17 % condemn it, while 60 % believe that justified criticism of the government is needed on television.

The sources of information of the aggressor country still attract the attention of 13 % of Ukrainians, but 89 % of them explained this by the fact that they wanted to check how information is presented in the russian federation, and only 2 % doubt Ukrainian sources, 16 % of Ukrainians believe that the russian mass media give an alternative view for the balance, but for 77 % of the information from the Ukrainian mass media is sufficient for the completeness of the picture [2].

According to Art. 34 of the Constitution of Ukraine, everyone is guaranteed the right to freedom of thought and speech, to the free expression of their views and beliefs.

Everyone has the right to freely collect, store, use and disseminate information orally, in writing or in any other way – of his choice.

The exercise of these rights may be limited by law in the interests of national security, territorial integrity or public order in order to prevent riots or crimes, to protect public health, to protect the reputation or rights of others, to prevent the disclosure of information obtained in confidence, or to maintain authority and impartiality of justice.

According to Part 2 of Art. 64 of the Basic Law of Ukraine, in conditions of war or a state of emergency, separate restrictions of rights and freedoms may be established with an indication of the period of validity of these restrictions. These restrictions include, in particular, the one recorded in Art. 34 of the Constitution the right to freedom of thought and speech.

In fact, in the conditions of a special period, there are elements of military censorship regarding access, use (publication) of certain types of information, which is fully justified in view of the need to ensure national security and defense of the state during the war.

Such basic features of military censorship as restriction and control should be extended to all types of media. It is easier to control the so-called traditional means of information – domestic TV channels, radio and printed publications, much more difficult – Internet content (especially due to the absence of relevant legislation).

During a special period, the most demanded information product is news, the more or less complete objectivity and content of which must be provided by official mass media – radio, TV, as well as relevant print media and online publications.

A special role among official media sources in wartime is played by television and radio broadcasting, the constituent elements of which function within a certain model, characterized by such basic features as the form of ownership, sources of financing, the scale of broadcasting, production of own informational and other creative products.

The relations between the organization and the functioning of the specified model (which do not differ in permanence and stability) are mostly regulated by the norms of administrative and information law, which must be taken into account during further study of this issue.

Recent publications review. The scientific works of I. Aristova, G. Blinova, I. Hrytsai, R. Kalyuzhny, V. Negodchenko, K. Primakov, etc. are devoted to the regulation of various relations in the information sphere. However, until recently, the issue of administrative-legal regulation of television and radio broadcasting relations did not have a significant priority in the research of domestic scientists (an exception can be considered the dissertation work of O. Chudnovsky "Administrative-legal regulation in the sphere of television and radio broadcasting of Ukraine" prepared in 2016), however, Ukraine's stay in the conditions of a special period objectively contributes to the further study of the raised problem.

The article's objective is to determine the peculiarities of the broadcasting model in Ukraine.

Discussion. Starting consideration of the issues directly related to the subject of this article, it should be noted that radio and television, given their long broadcasting period (respectively 98 and 71 years in the territory of modern Ukraine), are the most widespread among the so-called traditional mass media (the corresponding printed editions are not taken into account, due to their gradual curtailment of work as a result of their non-competitiveness with numerous cheaper and operational Internet media resources).

Carrying out a small retrospective, several interesting facts can be cited. Ukrainian Radio began broadcasting on November 16, 1924 in Kharkiv. And already in the fall of 1941, during the Second World War, evacuations were made again to Kharkov, and then even further. And despite the fact that the territory of Ukraine was occupied, Ukrainian Radio

continued to work. The day of the broadcast of the first program of "Ukrainian Radio" is celebrated as the Day of Radio, Television and Communications Workers. In 1994, the Decree of the President of Ukraine established it as a professional holiday. In 1951, the Kyiv Television and Radio Center was commissioned at 26 Khreshchatyk Street, from which Ukrainian Radio, Radio Promin and Radio Kultura still broadcast. From 2022, there will also be TV channels: First Channel of Public Broadcasting and Public Culture. On August 24, 1991, Ukrainian Radio broadcast from the Verkhovna Rada of Ukraine, thanks to which radio listeners witnessed the declaration of state independence of Ukraine. Since 1993, Ukrainian Radio became a member of the European Broadcasting Union. In 2017, three channels of Ukrainian Radio became part of Public Broadcasting. This year, "Ukrainian Radio" opened its signal for rebroadcasting to radio stations of any form of ownership, so that radio stations around the world could broadcast the Ukrainian broadcaster's signal. Currently, the coverage of Ukrainian Radio includes 194 FM frequencies and four medium wave transmitters [3].

November 5, 1951 can be considered the birthday of Ukrainian television, but regular broadcasting of TV programs began in 1956. Until the mid-60s of the last century, video recording was not used on television (that is, broadcasting was carried out "live"). In January 1965, the first permanently functioning Ukrainian TV channel (UT-1) was established, and since October 1990, Ukrainian television began to demonstrate the productions of non-state TV channels.

Since the first years of our country's independence, Ukrainian television has chosen the path of commercialization. On January 15, 1992, the first private entertainment TV channel in Ukraine, "Tet-a-Tet" (TET), began broadcasting on Channel 30 in Kyiv. The second private channel and the main competitor of TET in terms of ratings was "ICTV", created in the same year, which by the end of 1992 launched broadcasting in 15 regions and was the first to conduct it at night. In 1993, the TV channel "Ukraine" was created in Donetsk; "1+1" appeared in 1995, "Inter" was broadcast for the first time in 1996, "STB" in 1997, and "Novy Kanal" in 1998. At the beginning of the 2000s, national television was formed. In 2005-2010, the largest Ukrainian media holdings were formed, including "Inter Media Group" (founded in 2005), "StarLight Media" (founded in 2009), "1+1 Media" (founded in 2010), and "Media Group Ukraine" (founded in 2010). The total market's share of the four holdings until recently reached 76.25 %, which represents a monopoly on the Ukrainian television market.

Therefore, more than three-quarters of national television is actually owned by individuals who are interested in lobbying for their own interests, including by involving media resources that belong to them. This threatens the country's information security and reduces the population's chances of receiving unbiased, objective information. The media, especially such popular ones as television (as of 2019, 74 % of Ukrainians received news information from Ukrainian TV channels), form value orientations and worldviews, so there is a possibility of instilling hostile attitudes towards the state and its integrity. Based on this, the decision of the National Security and Defense Council of Ukraine dated February 2, 2021 "On the application of personal special economic and other restrictive measures (sanctions)" was adopted, according to which three channels of the "News" media holding – "NewsOne", "112 Ukraine" and "ZIK" were blocked.

Concerning radio broadcasting, the total market's share of the four holdings mentioned above before the full-scale war was 92.23 %, which allows us to talk about the existence of a monopoly in the Ukrainian radio broadcasting market as well. All radio stations of the mentioned media associations are entertainment and music. In contrast to them, there are quite a few Ukrainian talk radio stations due to the cost (such a radio requires more journalists, editors, presenters, etc.) The most popular talk radio in Ukraine is "Ukrainian Radio", which since 2017 is part of the public broadcaster – Public Joint Stock Company "National Public Television and Radio Company" of Ukraine". It has the widest FM network – it covers about 200 settlements. It includes radio stations "Promin" and "Kultura", as well as the World Radio Broadcasting Service of Ukraine, which speaks for a foreign audience. The largest of the commercial talk stations is "Radio HB", which covers 40 settlements and is owned by the Ukrainian investment company "Dragon Capital". The radio began broadcasting in 2018 on the basis of the Era radio network [4].

The basic legislative act of the field under consideration is the Law of Ukraine "On Television and Radio Broadcasting" No. 3759-XII of December 21, 1993, which, in accordance with the Constitution of Ukraine and the Law of Ukraine "On Information" (hereinafter the Law), regulates relations arising in the field of television and radio

broadcasting on the territory of Ukraine, determines the legal, economic, social, and organizational conditions for their functioning, aimed at the realization of freedom of speech, the rights of citizens to receive complete, reliable and operational information, to open and free discussion of public issues.

The legislation of Ukraine on television and radio broadcasting consists of the Constitution of Ukraine, the Law of Ukraine "On Information", this Law, laws of Ukraine "On Public Television and Radio Broadcasting of Ukraine", "On the National Council of Ukraine on Television and Radio Broadcasting", "On Electronic Communications", international treaties, the binding consent of which has been given by the Verkhovna Rada of Ukraine (Article 3 of this Law).

According to Art. 4 of the Law, the main principles of state policy in the field of television and radio broadcasting are: implementation of protectionism policy regarding the distribution of domestically produced programs and broadcasts; creation of conditions for ensuring the cultural and informational needs of Ukrainian citizens, as well as the needs of ethnic Ukrainians living outside of Ukraine, by means of television and radio broadcasting; establishing effective restrictions on the monopolization of television and radio organizations by industrial-financial, political and other groups or individuals, as well as guaranteeing the protection of television and radio organizations from financial and political pressure from financial and political groups and state and local self-government bodies, etc.

The functions of state management and regulation in the field of television and radio broadcasting (Article 7 of the Law) are carried out by: the Verkhovna Rada of Ukraine, which determines the state policy regarding television and radio broadcasting, the legislative basis for its implementation, guarantees of social and legal protection of workers in this field; The Cabinet of Ministers of Ukraine, which ensures the implementation of state policy regarding television and radio broadcasting, directs and coordinates the activities of ministries and other executive authorities in this area.

According to Art. 7 of the Law on ensuring the formation and implementation of state policy in the field of television and radio broadcasting is entrusted to the central body of executive power (since March 23, 2020 – the Ministry of Culture and Information Policy of Ukraine). The National Council of Ukraine on Television and Radio Broadcasting (hereinafter referred to as the National Council) is the only body for state regulation of activities in the field of television and radio broadcasting, regardless of the method of distribution of television and radio programs and broadcasts.

According to Art. 11 of the Law, the structure of national television and radio broadcasting of Ukraine consists of: communal television and radio organizations, the joint-stock company "National Public Television and Radio Company of Ukraine" (hereinafter – NSTU), the State Television and Radio Company "World Service "Ukrainian Television and Radio Broadcasting", the state enterprise "Parliamentary TV Channel "Rada", private (regardless of the method of distribution of programs), public and other television and radio organizations established in accordance with the requirements of the legislation.

As we can see, the model of Ukrainian television and radio broadcasting is polystructural, that is, it is built according to a mixed principle, which allows the functioning of broadcasters of different forms of ownership – state, communal (self-governing), private.

The mentioned model can be considered a variety of social construction, which is characterized by such basic features as: imagination; typicality; systemicity (set of elements), structurality (internal organization and connections between these elements), dynamism (which determines the variability of structural characteristics and the model as a whole), state control and the purpose of functioning.

Based on the above, the model of television and radio broadcasting in Ukraine can be considered a generalized idea of the typical structure of the organization and functioning of television and radio in our country, which is characterized by the appropriate system, structure, dynamics and control by the state, as well as the goal of its activity – complete and timely satisfaction of public needs in the field of providing information services of a news, educational, cognitive, educational, artistic and cultural, sports and entertainment nature.

The results of familiarization with the practice of radio and television organization in the developed democratic countries of the world show that the relevant mixed model dominates among them, based on which a specific public (community) television and radio company (corporation) functions, in relation to which and other broadcasters the control powers are exercised by the state.

An almost exemplary construction of public broadcasting was introduced in France. Its formation took place through the cooperation of the state and mass media within the framework of a functioning, developed civil society. Public broadcasting in France is carried out by several companies - French television (France Télévisions, hereinafter – FT), French radio and ARTE. In addition to six TV channels, the FT group also includes a number of subsidiary film companies and an advertising production company. Also, FT is a shareholder of five thematic channels (Ma Planète, Planète Thalassa, Gulli, Mezzo and Euronews), and also owns a share of the capital of four French broadcasting companies (France 24, CFI, TV5 Monde, ARTE). The FT's weekly share is about 80 % of the total TV audience. French radio broadcasts through several networks and radio stations – France Inter, France Info, France Musique, France Cultur, Radio Bleue, FIP, Le Mouv' and RFI – International French radio covering territories outside France, mainly African countries.

The activities of public and private broadcasting companies are controlled by the Higher Council for Broadcasting (Conseil supérieur de l'audiovisuel). It consists of nine members, three of whom are appointed by the president and three by the heads of both houses of the parliament from prominent figures of broadcasting, culture and academic circles. It is an independent, impartial body, whose members are elected for 5 years without the right to re-election. They cannot have commercial interests in the mass media and are not even allowed to work on television or radio after retirement. One of the council's tasks is to prevent abuse of television as a tool of personal power or commercial interests [5].

In my opinion, the model of television and radio broadcasting, which in its key characteristics is similar to the corresponding structure of France, is most suitable for the current Ukraine. The main arguments in favor of this proposal are: the high specific weight of the public broadcaster in the mass media structure of this country, which confirms the proper quality and popularity of its information content among French citizens; the negative experience of the dominance of private TV channels and radio stations in Ukraine until recently, the functioning of which mainly inhibited the implementation of the state information policy, gave priority to the realization of the business and political interests of their owners – representatives of big business (oligarchs); an objective necessity in the long transition period of the post-war work of the domestic television and radio broadcasting, which is better to be carried out without the advantage of private components in the relevant model.

To implement tasks and functions, to achieve high standards of media work introduced in developed democratic countries, it is necessary to take into account those features that characterize the model of television and radio broadcasting in Ukraine, among which the main ones are: work in the conditions of a special period that began on February 24, 2022 after the extended armed aggression of the russian federation, which is characterized by the presence of certain elements of military censorship and the curtailment of the work of a large part of private TV channels and radio stations; the dominance of the state's information policy on countermeasures to the information war carried out by the aggressor country in the TV and radio broadcasts; the priority of the news component in the information content during the war, which should be strengthened by patriotic-educational and integration-unifying components of influence on Ukrainian citizens; readiness in the post-war period to carry out the reform of the entire Ukrainian information space in general and its integral component – the television and radio broadcasting model in particular, with the mandatory elimination of the reasons for making mistakes in the pre-war information policy; taking into account the significant dynamics of the modern development of television and radio broadcasting (the emergence of Internet TV, online radio, improving the quality of digital broadcasting and preventing a private monopoly on the terrestrial version of its distribution); the need to increase the sources of funding for public broadcasting (without increasing the material burden on a significant part of the impoverished post-war Ukrainian population), which will contribute to increasing the material and financial independence of NSTU and improving the quality of its products; the need to expand forms of cooperation between the Ministry of Culture and Information Policy of Ukraine and NSTU, primarily in the field of state procurement and financing of the production of the latest high-quality creative products; determined by the accumulated experience and time, the optimization of the control powers of the relevant National Council in terms of preventing private capital from offshore zones into the sphere of activity of information service providers and the abuse of television and radio broadcasting as a tool of personal power or commercial interests; the need for the gradual introduction of positive foreign experience in the work of domestic media, which should take place with the

accelerated formation and development of institutions of civil society and the rule of law in Ukraine.

Conclusions. On the basis of the above, it can be stated that the current model of television and radio broadcasting in Ukraine objectively needs to be reformed, during which taking into account its features will greatly contribute to preventing the repetition of mistakes that were made in the pre-war period (when there was actually an oligarchic monopoly and the interests of big business dominated over the interests of Ukrainian society and the state). This important step will undoubtedly bring us closer to the EU, but the final guarantees for membership in this union for the Ukrainian people will be the victory suffered and the replacement of the bankrupt oligarchic-corrupt system (mostly modeled by the then national leadership from the relevant schemes of the russian federation) with the newest and adapted to modern Ukraine needs a civilizational matrix that will be compatible with the developed democracies of Europe and the world as a whole.

Conflict of Interest and other Ethics Statements
The author declares no conflict of interest.

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ABSTRACT

The article deals with an actual problem – the peculiarities of the television and radio broadcasting model in Ukraine. Issues of the history of the formation of radio and television in our country, as well as individual issues of legislative regulation of this sphere, were considered. The structural features of the mentioned model are noted, and an own version of its definition is proposed. The relevant structure of the organization and functioning of French broadcasting was analyzed and the possibility of taking into account the experience of this country in the domestic media sphere was emphasized. A list of the main features of the broadcasting model in Ukraine is provided.

It is concluded that in order to implement the tasks and functions, to achieve high standards of media work introduced in developed democratic countries, it is necessary to take into account those features that characterize the model of television and radio broadcasting in Ukraine, among which the main ones are: work in the conditions of a special period that began with February 24, 2022 after the

extended armed aggression of the russian federation, characterized by the presence of certain elements of military censorship and the curtailment of the work of a large part of private TV channels and radio stations; the dominance of the state's information policy on countermeasures to the information war carried out by the aggressor country in the TV and radio broadcasts; the priority of the news component in the information content during the war, which should be strengthened by patriotic-educational and integration-unifying components of influence on Ukrainian citizens; readiness in the post-war period to carry out the reform of the entire Ukrainian information space in general and its integral component – the television and radio broadcasting model in particular, with the mandatory elimination of the reasons for making mistakes in the pre-war information policy.

Keywords: *information, model, broadcasting, media, special period, reformation.*

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EUTHANASIA: BETWEEN THE RIGHT AND THE OFFENSE

Борис Логвиненко. ЕВТАНАЗІЯ: МІЖ ПРАВОМ ТА ПРАВОПОРУШЕННЯМ. Проблема легалізації або продовження заборони евтаназії на національному рівні продовжує викликати широкий суспільний резонанс. Вказана проблема носить комплексний характер, адже стосується не лише медичних питань, а й правових та біоетичних. Евтаназія значно збільшує ризики зловживання цим правом щодо пацієнтів, які бажають реалізувати відповідну процедури гідного та осмисленого припинення життя для припинення страждань. Метою статті є розкриття дуалістичної сутності евтаназії – як права особи на гідну смерть, та як кримінально караного правопорушення.

У статті зроблено акцент на сучасних наукових поглядах на евтаназію, що охоплюють три аспекти: 1) негативний – підтримка діючої заборони евтаназії; 2) позитивний – необхідність створення правових інструментів для реалізації права на добровільне припинення власного життя; 3) альтернативний – прихильники якого розглядають можливість заміни евтаназії іншими, більш гуманними з точки зору біоетики процедурами (паліативна допомога, добровільна відмова від лікування тощо). Звернуто увагу на те, що право вільно розпоряджатися власним життям має місце в національному законодавстві. Так, відмова пацієнта від медичного втручання, або від лікування може мати наслідком наближення моменту смерті.

Наголошено на поширенні міжнародної практики подальшої лібералізації та розширення кола держав, що підтримують процедури евтаназії. Акцентовано увагу на тому, що різноманітність процедур і форм евтаназії не дозволяє чітко визначити, яка з них є найбільш прийнятною у правовому аспекті. Водночас, всі такі процедури і форми передбачають одне – право невиліковно хворої або страждаючої від хронічної хвороби людини самостійно визначити, як і коли померти. Зроблено висновок про те, що евтаназія є власним вибором людини і це найголовніше в її усвідомленні, як складової права на життя. Підтримано позицію щодо можливості її легалізації в Україні у майбутньому.

Ключові слова: *евтаназія, умисне вбивство, право на життя, право на гідну смерть, вибір.*

Relevance of the study. Human rights can be considered as a dynamic category, because the content and scope of such rights is constantly changing, adapting to the realities of today and the civilizational development of society. What was considered unacceptable or forbidden recently is now in the realm of lawful behavior. The legalization of soft drugs,

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prostitution, euthanasia, surrogate motherhood, crypto-currency operations, pornographic products, same-sex relationships, reassignment and many other things are the norm of proper behavior for the population of some states and an inviolable taboo for other communities.

Euthanasia has a special place in the list above. If we consider the right to life as a complex category, then it arises from the moment of birth and ceases from the moment of death. In turn, the full legal capacity of a person involves his ability to exercise rights and fulfill obligations through his actions. Combining these two points, one can think about the fact that a person's right to life also includes the ability to dispose of it at his own discretion. But if this is considered impossible at birth, then after reaching legal age, a natural person can freely manage his life, choose a profession, form his own worldview, political and other beliefs, etc. In particular, this may include the right to voluntarily end one's own life, in cases provided for by law. The problem of the ethics of euthanasia is hotly debated among philosophers, scientists, doctors, politicians, lawyers, intellectuals and ordinary citizens all over the world. Some countries have legalized euthanasia, others have banned it as an inhuman and illegal practice.

Recent publications review. Issues related to euthanasia in the context of legal sciences were studied by: N. Borysevich, M. Gromovchuk, O. Dzyubenko, A. Zaporozhchenko, V. Zakharov, B. Ostrovska, O. Terzi, I. Shapovalova and many other specialists. At the same time, a thorough study of the bioethical and legal issues of the introduction of euthanasia or the continuation of its ban in Ukraine is directly related to the adaptation of national legislation to the standards of the European Union. On the other hand, the transformation of social values does not allow us to be guided by outdated ideas about law and offenses. This is what determines the relevance of the presented work.

The article's objective is a scientific analysis of euthanasia as a person's right or an offense related to it, with the justification of possible perspectives of the attitude to this procedure in Ukraine.

Discussion. In general, euthanasia comes from the German concept "Euthanasie" (from the Greek eu - good and thanatos – death) and includes two components: 1) quiet, painless death; 2) euthanizing a terminally ill patient in order to end his suffering. Accordingly, a distinction is made between passive and active euthanasia. Passive euthanasia consists in the deliberate termination of treatment of a sick person so that his suffering ends as soon as possible. Active euthanasia is the intentional administration of drugs or the use of other necessary actions that allow a quick and painless end to a person's life. In the case of active euthanasia, appropriate drugs can be administered either by a medical worker or given by him to the patient, who will administer them himself [1, p. 126].

At the legislative level, euthanasia is prohibited in Ukraine. This is mainly due to the inalienability of the right to life, guaranteed by Article 27 of the Constitution of Ukraine [2]. Also, parts 2, 4 of Article 281 "Right to Life" of the Civil Code of Ukraine stipulates that a natural person cannot be deprived of life, as well as the prohibition of satisfying a natural person's request to end his life [3].

Part 7 of Article 52 "Determining the irreversible death of a person and stopping active measures to maintain the patient's life" of the Fundamentals of the Health Care Legislation of Ukraine, which provides for the prohibition of euthanasia by medical workers, i.e. the intentional acceleration of death or the killing of an incurably ill person for the purpose of ending his suffering [4, p. 181].

Turning to scientific approaches to the problem of euthanasia, let's take into account the opinion of I. Haydachuk, who points out that supporters of "accelerating the death" of patients argue that a person has the right to life, and therefore the right to dispose of it. It is impossible to imagine that a person is free on legal grounds to dispose of his property, but not his life. Opponents of euthanasia point out that life is good and it remains good even when it becomes mainly continuous suffering [5, p. 227].

V. Zakharov and I. Shapovalova draw attention to the fact that the use of euthanasia methods is unacceptable in modern life. According to the researchers, human life should be preserved in all cases until the natural end, because medical science and practice do not guarantee the absence of diagnostic errors. The legalization of euthanasia can harm medical activity and contribute to abuse, and therefore will increase the distrust of the population in the quality of medical care and the health care system as a whole [6, p. 188].

The director of the British alliance "Care, not death", Dr. P. Saunders, believes the same. In his opinion, legislators are unable to allow euthanasia without expanding the range of

categories of persons who supposedly have the right to it. If in some conditions it is possible to take people's lives, which supposedly do not need to be continued, the expansion of the list of such conditions is inevitable. Accordingly, the process will get out of control and the only possible option here remains a complete ban on any form of euthanasia [7].

Another position is taken by A. Zaporozhchenko, who points to the legal aspect of understanding euthanasia, which creates the basis for realizing the right to die with dignity and easily. The right to die easily and with dignity is used as the main means of decriminalization of euthanasia, its interpretation as one of the forms of realization of the right to life in the aspect of disposal of life [8, p. 34].

O. Dzyubenko also convinces that human life is the highest value, and the state must guarantee the provision of human rights to life, health and at the same time death. Only the person himself should decide which rights to exercise, including the right to dispose of his life, and the state, through the adoption of an appropriate law with clearly defined grounds and procedure for euthanasia, should ensure that the person realizes this right, since euthanasia ends the suffering and torment of a person, makes it possible legally, without committing suicide, to end one's own life with dignity by one's own will [9, p. 67].

The third approach is demonstrated by M. Gromovchuk, in whose opinion the right to euthanasia contradicts the human right to life, and therefore, instead of promoting euthanasia as a method of solving problems, the state should focus the efforts of specialists on finding ways to reduce mortality and ensure a dignified life, even in conditions of incurable diseases. The author sees a way out in the quality provision of "palliative care" [10, p. 32].

Thus, it can be concluded that euthanasia is considered from a scientific point of view in Ukraine in three aspects: 1) negative – support for the current ban on euthanasia; 2) positive – the need to create legal instruments to implement the right to voluntarily end one's own life; 3) alternative – supporters of which consider the possibility of replacing euthanasia with other, more humane procedures from the point of view of bioethics (palliative care, voluntary refusal of treatment, etc.).

If we look at the problem of euthanasia from a different sight, part 6 of Article 13 "Conditions and procedure for the application of transplantation" of the Law of Ukraine "On the application of transplantation of anatomical materials to a person" provides the following: "If, after the explanations given by the doctor, the recipient refuses the application of transplantation, the doctor has the right to offer the recipient to submit a written statement on refusal to provide him with medical assistance with the use of transplantation. In the case of the recipient's refusal to provide such a written statement or the impossibility of providing it, including due to the state of health, the doctor draws up an appropriate act in the presence of witnesses" [11]. That is, the recipient's refusal to receive a donor organ actually deprives him of the opportunity to live, bringing the moment of death closer. Thus, in certain, legally defined cases, an individual in Ukraine nevertheless has the right to freely manage his own life.

As for the criminal responsibility for euthanasia in Ukraine, one should agree with S. Shcherbak and M. Kozodav that in the modern theory of criminal law science of Ukraine it is recognized that the consent of another person to take his life or the presence of his request to take his life does not eliminate of the illegality of an act aimed at depriving the life of such a person, and does not exempt the subject who commits it from criminal liability. On the other hand, there is a question of how to qualify euthanasia according to the norms of the Criminal Code of Ukraine [12, p. 143].

Here, S. Romanov and Ya. Trynyova point out that the legislation of many countries, including Ukraine, does not provide for the procedure of euthanasia, while it is still found in the practical activities of medical workers. In the Criminal Code of Ukraine, there are a number of articles that provide for the death of a person in case of criminal consequences: 115-120, 129, 297. Thus, the law already foresees the fact of death as a consequence. But the law is silent about when a person has not yet died, but is allegedly no longer alive. This period of human existence is not prescribed by law, although thanks to supportive medical measures it can last for months and years [13, p. 105].

When considering the issue of euthanasia, it is worth paying attention to the fact that a terminally ill (suffering) person can always commit suicide, which can be a consequence of his desire to stop suffering from the disease. Cases of such suicides tend to increase all over the world. Among the possible reasons for the termination of life are disbelief in the effectiveness of the health care system, the possibility of recovery, as well as the insufficient development of palliative care.

O. Ishchenko and A. Mazyar note that the problem of euthanasia is mainly a problem of choice: a person, a doctor and society [14, p. 39]. Thus, the society of every democratic state in the world faces a choice whether to legalize the right to euthanasia, or what should be the responsibility in case of banning the mentioned procedure.

Norms of international law treat euthanasia with a caveat, not indicating a direct prohibition of this procedure, but emphasizing its unethicality. In October 1987, at the 39th plenary session of the World Medical Assembly, the Declaration on euthanasia was adopted (Madrid, Kingdom of Spain). The mentioned document stipulates that euthanasia as an act of intentionally taking a patient's life, even at his own request or at the request of his relatives, is not ethical. This does not exclude the need for a doctor's respectful attitude to the patient's desire not to interfere with the course of the natural process of dying in the terminal phase of the disease [15, p. 342]. That is, we see here a reference to the "non-interference" of a medical worker in the event of a patient's refusal of treatment. However, such a refusal cannot be equated with euthanasia, as the right to die voluntarily at a time determined by the patient himself, with dignity and without pain.

Conclusions. In conclusion, we return to the key thesis of our research, what is euthanasia – a right or a crime? International practice indicates further liberalization and expansion of the circle of states that support euthanasia procedures. Moreover, legal safeguards to prevent the abuse of this right differ significantly in each state. Speaking about the procedures and forms of euthanasia, it is difficult to say which of them is the most acceptable, but they all imply one thing – the right of a terminally ill person or a person suffering from a chronic disease to independently determine how and when to die. Euthanasia is a person's own choice and it is the most important thing in his awareness as a component of the right to life.

On the other hand, euthanasia is a criminal offense – a crime. There is no specialized provision on euthanasia in the domestic Criminal Code, which reduces the possible procedures for its implementation to one or another form of intentional murder.

We stand on the position of the possibility of legalizing euthanasia in Ukraine. We believe that the right to a dignified death will testify to the maturity of the development of democratic values in Ukraine. Likewise, the readiness of Ukrainian society to accept euthanasia will result in changes and additions to the national legislation for a positive solution to this issue.

Conflict of Interest and other Ethics Statements
The author declares no conflict of interest.

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ABSTRACT

The problem of legalization or continuation of the ban on euthanasia at the national level continues to cause wide public resonance. This problem is complex in nature, because it concerns not only medical issues, but also legal and bioethical issues. Euthanasia significantly increases the risks of abuse of this right for patients who wish to implement an appropriate dignified and meaningful end-of-life procedure to end suffering.

The purpose of the article is to reveal the dualistic essence of euthanasia – as a person's right to a dignified death, and as a criminal offense. The article focuses on modern scientific views on euthanasia, covering three aspects: 1) negative – support for the current ban on euthanasia; 2) positive – the need to create legal instruments to implement the right to voluntarily end one's life; 3) alternative – supporters of which consider the possibility of replacing euthanasia with other procedures that are more humane from the point of view of bioethics (palliative care, voluntary refusal of treatment, etc.).

Attention was drawn to the fact that the right to freely dispose of one's own life is enshrined in national legislation. Yes, the patient's refusal of medical intervention or treatment may result in the approaching moment of death. The spread of the international practice of further liberalization and expansion of the circle of states that support euthanasia procedures are emphasized.

Attention is focused on the fact that the variety of procedures and forms of euthanasia does not allow to clearly determine which of them is the most acceptable from a legal point of view. At the same time, all such procedures and forms provide for one thing – the right of a terminally ill or chronically ill person to independently determine how and when to die. It was concluded that euthanasia is a person's own choice and this is the most important thing in his awareness as a component of the right to life. The position regarding the possibility of its legalization in Ukraine in the future is supported.

Keywords: *euthanasia, intentional killing, right to life, right to a dignified death, choice.*

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FEATURES OF THE ADMINISTRATIVE AND LEGAL STATUS OF VOLUNTEER ORGANIZATIONS IN UKRAINE AND ITS IMPLEMENTATION UNDER THE CONDITIONS OF MARTIAL LAW

Роман Миронюк, Майкл Антонів. ОСОБЛИВОСТІ АДМІНІСТРАТИВНО-ПРАВОВОГО СТАТУСУ ВОЛОНТЕРСЬКИХ ОРГАНІЗАЦІЙ В УКРАЇНІ ТА ЙОГО РЕАЛІЗАЦІЇ В УМОВАХ ВОЄННОГО СТАНУ. В межах статті здійснено аналіз адміністративно-правового статусу волонтерських організацій в Україні та виокремлено особливості його реалізації в умовах воєнного стану. З'ясовано, що для належної реалізації адміністративно-правового статусу волонтерських організацій в України доцільно: 1) урегулювати процедури реєстрації волонтерських організацій та фізичних осіб-волонтерів, та надати можливість фізичним особам-волонтерам здійснювати таку діяльність через застосунок «Дія»; 2) визначити Міністерство юстиції України як центральний орган виконавчої влади, що реалізує державну політику у сфері волонтерської діяльності; 3) запровадити відкритий реєстр волонтерських організації та фізичних осіб-волонтерів, адміністратором якого має стати Мінюст України; 4) урегулювати в Законі «Про волонтерську діяльність»: статус «волонтерської організації» та «фізичних осіб-волонтерів»; перелік напрямів волонтерської діяльності з урахуванням її проведення під час надзвичайних ситуацій чи бойових дій; деталізувати повноваження повноважного центрального органу виконавчої влади у сфері волонтерської діяльності; запровадити процедуру заключення договорів про надання волонтерської допомоги під час надзвичайних ситуацій чи бойових дій; визначити обов'язковість страхування волонтерів; запровадити пільги для волонтерів під час вступу до вищих навчальних закладів та при прийомі на роботу; зарахування часу здійснення волонтерської діяльності до навчально-виробничої практики в разі її здійснення за напрямом, що відповідає отримуваній спеціальності; переліку відшкодувань витрат волонтеру; внесення норми «про зарахування діяльності офіційно оформленого волонтера – фізичної особи, яка здійснює свою волонтерську діяльність не менше ніж 40 годин тижня неділі до загального трудового стажу, а також виплати заробітної плати з надбавками та преміями за основний місцем роботи і збереження робочого місця цієї особи в період дії режиму військового або надзвичайного стану».

Ключові слова: *волонтерство, волонтерські організації, адміністративно-правовий статус волонтерських організацій, реалізація в умовах воєнного стану.*

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Relevance of the study. The introduction of martial law in Ukraine poses new challenges for Ukraine, which arise for the first time in the 30-year history of the existence of modern independent Ukraine and lead to the application of critical norms (not inherent in the normal development of the state), the implementation of which can, due to the restriction of certain rights of citizens, ensure the proper defense capability of the country, create opportunities to repel armed aggression and ensure the constitutional rights of citizens, in particular, including the protection of their property rights [1]. Since 2014, since the violation of the territorial integrity of Ukraine by the armed invasion of Russia and until today, the significant burden of eliminating the consequences of such aggression falls on volunteer organizations, which, starting from the organization of the collection and provision of humanitarian aid to the victims, to helping the military with means of protection, food products, and medicines, provide their effective resistance to armed aggression. It was with the participation of volunteer organizations that the post-war crisis of 2014 was overcome [2, p.34-35].

At the same time, it should be noted that in order to properly ensure the activities of volunteer organizations, they must have a clearly defined legal field of activity, their activities must be carried out on the principles of selflessness, publicity, and legality; economic activity under the guise of volunteering should be excluded, and there should be other safeguards and guarantees for their activity. In this regard, below it is advisable to analyze the administrative and legal status of volunteer organizations in Ukraine and highlight the peculiarities of its implementation in the conditions of martial law.

The article's objective is to analyze the features of the administrative and legal status of volunteer organizations in Ukraine under the conditions of martial law and the mechanisms of ir's implementation.

Recent publications review. In general, the legal status of volunteer organizations in Ukraine was the subject of research by scientists both in the field of public administration (management) and constitutional and administrative law, among which we can highlight the works of V. Golub, R. Serbin, V. Shamray, M. Olkhovskyi and others. [3-5]. At the same time, in the works of these authors, separate elements of the legal status of volunteer organizations are singled out, without their comprehensive study and without taking into account the peculiarities of its implementation in the conditions of martial law, which actualizes the research issues within the scope of our article.

Discussion. The world experience of volunteer organizations shows the significant impact of the results of their activities aimed at overcoming the lack of financial and material resources to cover the needs of society in critical situations – natural disasters, epidemics, armed conflicts, which lead to a threat to the lives and health of citizens. Today, volunteers from more than 100 countries are united in a global world movement that is becoming more and more influential. Thus, in the USA, the number of volunteers is about 60 % among women, who devote an average of 3.4 hours to volunteering. per week, and about 50 % among men (3.6 hours per week). Canadian citizens work as volunteers for an average of 191 hours. per year, equivalent to 578,000 full-time jobs. In France, 19 % of the adult population participates in the actions of volunteer organizations (60 % of them regularly), giving more than 20 hours to volunteering. per month [6]. Every third citizen of the Federal Republic of Germany (22 million people) is a volunteer and devotes more than 15 hours to work in volunteer associations, projects and mutual aid groups. month. In South Korea, the value of volunteering services exceeds $ 2 billion per year. 26 % of Japanese citizens have volunteer experience, 48 % of them are sure that volunteer work is very useful for personal growth and society as a whole. 72 % of volunteers in Ireland believe they are doing things that could never be done by paid workers. In general, more than 100 million people of the adult population of the planet are involved in volunteer activities every year [7, p.75].

The main activity of volunteers from 2014 to today is helping the Ukrainian army and the wounded – 70 % of volunteers are engaged in this. Before the invasion of russia and the temporary seizure of certain territories of Ukraine, the most relevant activities of volunteers were helping socially vulnerable population groups and improving public space. Today, in connection with the armed invasion of russia on the territory of Ukraine, a crisis situation has arisen in the maintenance of the vitality of citizens, significant damage has been caused to the infrastructure of Ukraine, and a daily threat to the life and health of Ukrainian citizens is created from constant shelling of its territory. All this led to a shift in emphasis from helping the civilian population and supplying everything necessary to contain armed aggression and liberate the territory of Ukraine. Of the many areas of work of volunteers aimed at countering

external aggression and its consequences, four main areas can be singled out, which they take care of the most: collection and delivery of necessary resources to the military operations zone; provision of medical assistance to victims during their implementation; assistance to forced migrants; search for missing persons and release of prisoners; demining territories.

Below, in order to fulfill the tasks of the research, it is advisable to carry out an analysis of the administrative and legal status of volunteer organizations in Ukraine and to highlight the peculiarities of its implementation in the conditions of martial law.

One of the main elements of the administrative and legal status of volunteer organizations is their legal capacity. Only since November 19, 2011, with the adoption of the Law of Ukraine "On Volunteering" (hereinafter – the Law) [8], this type of voluntary socially oriented, non-profit activity carried out by volunteers through the provision of volunteer assistance (free work and services) has undergone legal regulation.

The list of areas of volunteer activity is provided for in part 3 of Article 1 of this law and is defined in the Decree of the Cabinet of Ministers of Ukraine dated August 5, 2015 No. 556 "On approval of the Procedure for providing volunteer assistance in certain areas of volunteer activity" [9]. However, this list is not exhaustive, and therefore other types are allowed that are not prohibited by law.

In fact, the concept of legal capacity of any legal entity is enshrined in the Central Committee of Ukraine. Yes, according to Art. 91 of the Civil Code of Ukraine, civil legal capacity of a legal entity is its ability to have civil rights and obligations, which arises from the moment of creation of a legal entity and ceases from the date of entry into the Unified State Register of its termination [10]. The law does not provide an unequivocal answer to the exclusive form of volunteering.

Yes, Part 2 of Art. 17 of the Law indicates that "volunteers provide volunteer assistance on the basis of an organization or institution that involves volunteers in its activities, on the basis of a contract on conducting volunteer activities concluded with such an organization or institution, or without such a contract," and in part 1, Article 5 of the Law defines that "non-profit organizations and institutions registered in the Register of Non-profit Institutions and Organizations may involve volunteers in their activities." In turn, part 2 of Article 17 of the Law states that "volunteers can provide volunteer assistance individually, while they are obliged to inform recipients of volunteer assistance that they do not cooperate with organizations and institutions that involve volunteers in their activities ". However, exceptions are made here (restrictions on individual volunteer activities), namely "volunteers cannot provide voluntary assistance individually in the following areas: 1) providing volunteer assistance to eliminate the consequences of man-made or natural emergency situations; 2) provision of volunteer assistance to the Armed Forces of Ukraine, other military formations, law enforcement agencies, state authorities during a special period, a legal regime of emergency or martial law, conducting an anti-terrorist operation, implementing measures to ensure national security and defense, repelling and deterring armed forces the aggression of the russian federation in the Donetsk and Luhansk regions, the implementation of measures necessary to ensure the defense of Ukraine, the protection of the safety of the population and the interests of the state in connection with the military aggression of the russian federation against Ukraine and/or another country against Ukraine. That is, they can carry out such activities exclusively by cooperating with volunteer organizations as legal entities that carry out non-profit activities.

A volunteer is a natural person who voluntarily carries out socially oriented non-profit activities by providing volunteer assistance (Article 7 of the Law of Ukraine "On Volunteering"). Citizens of Ukraine, foreigners and stateless persons who are in Ukraine on legal grounds and are able to act can become volunteers. Persons aged 14 to 18 perform volunteer activities with the consent of their parents (adoptive parents), adoptive parents, foster parents or guardian. At the same time, persons aged 14 to 18 cannot provide volunteer assistance to: the Armed Forces of Ukraine, other military formations, law enforcement agencies, state authorities during a special period, legal regimes of emergency or martial law, conducting an anti-terrorist operation, implementing measures for ensuring national security and defense, repelling and deterring the armed aggression of the russian federation in the Donetsk and Luhansk regions; in the direction of assisting the authorized body on probation issues in supervision of convicts and carrying out social and educational work with them; in medical institutions. Foreigners and stateless persons carry out volunteer activities through organizations and institutions that involve volunteers in their activities, information about

which is posted on the official website of the central executive body that implements state policy in the field of volunteer activities. A volunteer can obtain a volunteer certificate by performing volunteer activities in organizations and institutions that involve volunteers in their activities.

After analyzing the legislation, a number of conclusions can be drawn regarding the administrative legal capacity of volunteering: firstly, volunteering in all areas of volunteer assistance can be carried out exclusively by legal entities that are non-profit organizations and institutions entered into the Register of non-profit institutions and organizations, the administrator of which there is a State Tax Service and you can familiarize yourself with this register in the open and private part of the electronic cabinet located on the official web portal of the State Tax Service (https://cabinet.tax.gov.ua); secondly, a natural person can volunteer in all areas of volunteer activity by concluding a contract on conducting volunteer activities with a volunteer organization or institution; thirdly, a natural person can volunteer in separate areas of volunteer activity, not related to the assistance of the Armed Forces and elimination of man-made consequences, independently without registration, and at the same time they are obliged to inform the recipients of volunteer assistance that they do not cooperate with organizations and institutions involving volunteers in their activities.

However, volunteering in most cases involves receiving funds from individuals and legal entities for volunteering. Receipt of charitable contributions by a natural person by a taxpayer, as practice shows, on his own account – a bank card opened in a banking institution requires reporting to the authorities of the DPS of Ukraine, and can be considered as receiving undeclared profit, for which legal responsibility is waived. In addition, it is not an exception to the fraudulent activity of individual individuals who, under the guise of volunteering, accumulate funds on the bank cards of false individuals, withdraw these funds for their own needs, carrying out criminal activities, for which, in our opinion, in the conditions of martial law, the responsibility for be strengthened at least twice. That is, the issue of registration of natural persons who carry out volunteer activities with the aim of legalizing their activities, ensuring the possibility of exemption from taxation and taking appropriate control measures for their activities are urgent.

It should be noted that the attempt to legally register the status of "volunteer of anti-terrorist operation" and maintain the Register of volunteers of anti-terrorist operation was initiated by the order of the Ministry of Finance of Ukraine dated 10.30.2014 No. 1089, which approved the Procedure for the formation and maintenance of the Register of volunteers of anti-terrorist operation [11], in accordance with an ATO volunteer is an individual benefactor (a citizen of Ukraine or a foreigner or a stateless person residing in Ukraine on legal grounds), who has reached the age of eighteen, performs volunteer activities on a voluntary and unpaid basis, entered in the Register of ATO volunteers. This normative act defines the procedure for inclusion and exclusion from the Register of ATO and/or OOS volunteers, their registration in the bodies of the DPS of Ukraine, the procedure for publishing information about the register.

This should be noted as an important step towards the legalization of volunteer activities, especially in the conditions of martial law, where without the activities of volunteers (both legal entities and individual citizens) it is impossible to ensure the defense capability of Ukraine and the normal operation of infrastructure facilities. At the same time, we agree with the opinion of individual authors regarding the fact that "the undoubtedly significant contribution of volunteers during the anti-terrorist operation, the legislative definition of the concept of "volunteer of anti-terrorist operation" exclusively in the normative legal act approved by the Ministry of Finance of Ukraine, indicates the improper recognition of the activity by the state volunteers" [12, p.105], this can also be said about volunteers who carry out their activities today under martial law. In this regard, we believe that today there is an objective need to legalize volunteering in Ukraine at a higher level of legal regulation. it is expedient to determine: separately the procedure for registration of legal entities that carry out volunteer activities, separately – individual volunteers; establishing the legal status of "receipts for the implementation of volunteer assistance", determining the procedure for reporting receipts for the implementation of volunteer assistance and their use; procedure for publishing this report.

It should be noted that today the Verkhovna Rada of Ukraine is carrying out activities to improve the normalization of volunteer activities. Thus, draft laws No. 8076 and No. 7492 were adopted, which simplify the official registration of volunteers and exemption from taxation of charitable contributions. In particular, Law No. 8076 simplifies the registration of volunteers as

much as possible, applications for inclusion in the Register of Volunteers can be submitted both in paper and electronic form (including using the Unified State Web Portal of Electronic Services). Draft Law No. 7492 expands the areas of spending: they include charitable assistance during the wartime and state of emergency for the benefit of combatants throughout Ukraine, civil defense workers and their family members, forcibly displaced people from war zones throughout Ukraine. Also, the tax benefit now extends not only from the date of registration, but also from the beginning of the current accounting year [13]. Thus, a large number of Ukrainians who, with the beginning of the full-scale russian aggression, became volunteers and joined the assistance of the Armed Forces, namely, collected funds for the purchase of helmets, bulletproof vests, cars, etc., through personal cards should have a guarantee of exemption from taxation, namely through simplified registration in the Register of Volunteers, including through the "Action" application, which will significantly save time for volunteers.

It is obvious that the main components of the administrative and legal status of volunteer organizations are the rights, duties and guarantees for the realization of rights. Despite the imperfection of some of its provisions, the law enshrines the rights of volunteers. In particular, in accordance with Art. 7 of the Law, a volunteer has the right to: proper conditions for performing volunteer activities, in particular, receiving reliable, accurate and complete information about the procedure and conditions for conducting volunteer activities, provision of special means of protection, equipment and equipment; crediting the time of volunteering to the educational and industrial practice in the case of its passing in the direction that corresponds to the specialty received, with the consent of the educational institution; reimbursement of expenses related to the implementation of volunteer activities; other rights provided for by the contract on conducting volunteer activities and legislation.

At the same time, the volunteer is obliged to: conscientiously and timely fulfill the duties related to the conduct of volunteer activities; in cases specified by law, undergo a medical examination and provide a health certificate; if necessary, undergo further training (retraining); to prevent actions and deeds that may negatively affect the reputation of the volunteer, the organization or institution on the basis of which volunteer activities are carried out; comply with the legal regime of information with limited access; in the case of concluding a contract on conducting volunteer activities and unilaterally terminating the contract at the initiative of the volunteer, to compensate for direct damages caused by him, if this is provided for in the contract; to compensate property damage caused as a result of his volunteer activities, in accordance with the law. However, it should be noted that the Law separately regulates the rights and obligations of volunteer organizations. In particular, organizations and institutions that involve volunteers in their activities have the right to: carry out activities with the conclusion of a contract on conducting volunteer activities with a volunteer or without such a contract in the manner specified by this Law; receive funds and other property for volunteer activities; independently determine the areas of volunteering; issue certificates to volunteers certifying their identity and the type of volunteer activity within the organization; to reimburse volunteers for expenses related to their provision of volunteer assistance; to invite foreigners and stateless persons to carry out volunteer activities on the territory of Ukraine, to send citizens of Ukraine abroad to carry out volunteer activities; to insure the life and health of volunteers for the period of their volunteering in accordance with the Law of Ukraine "On Insurance".

At the same time, the latter, namely life and health insurance of a volunteer operating under martial law, should not be attributed to the rights, but to the duty of the volunteer organization. Volunteer organizations are obliged to: provide volunteers with safe and appropriate conditions for volunteering; train volunteers; to provide volunteers with reliable, accurate and complete information about the content and specifics of volunteer activities; to provide free access to information related to the implementation of volunteer activities by organizations and institutions that involve volunteers in their activities.

Separately, it is necessary to point out the guarantees of protection of the rights of volunteers, which should include the following: 1) reimbursement of travel expenses in the territory of Ukraine and abroad within the limits of reimbursement of travel expenses established for civil servants and employees of enterprises, institutions and organizations that are fully or are partially supported (financed) at the expense of budget funds (Article 11 of the Law), travel expenses (including luggage transportation) to the place of volunteering, expenses for obtaining a visa, for food, when volunteering lasts more than 4 hours a day, for accommodation in the case of a volunteer’s business trip to another populated place for the implementation of volunteer activities, which will last more than 8 hours, etc., which are

confirmed by relevant documents (Article 11 of the Law); 2) volunteers are paid a one-time cash benefit in the event of death (death) or disability of the volunteer as a result of an injury (contusion, trauma or mutilation) received during the provision of volunteer assistance in the area of anti-terrorist operations, implementation of measures to ensure national security and defense, repulsion and deterrence armed aggression of the russian federation in the Donetsk and Luhansk regions, hostilities and armed conflicts; 3) in the event of the death (death) of a volunteer during the provision of volunteer assistance in the area of anti-terrorist operations, implementation of measures to ensure national security and defense, repelling and deterring armed aggression of the russian federation in the Donetsk and Luhansk regions, hostilities and armed family conflicts the deceased (deceased), his parents and dependents are paid in equal parts a one-time cash benefit in the amount of 500 subsistence minimums, established by law for able-bodied persons on the date of death (death); 4) in the case of establishing a volunteer's disability as a result of an injury (contusion, trauma or mutilation) received during the provision of volunteer assistance in the area of anti-terrorist operations, implementation of measures to ensure national security and defense, repel and deter armed aggression of the russian federation in the Donetsk and Luhansk regions, hostilities and armed conflicts, depending on the degree of disability, he is paid a one-time cash benefit in the amount determined by law. The amount of one-time cash benefit in case of disability due to injury (contusion, trauma or mutilation) is determined based on the subsistence minimum effective on the date of disability (Article 6 of the Law).

The payment of one-time cash assistance is carried out in the order and under the conditions determined by the Decree of the Cabinet of Ministers of Ukraine of August 19, 2015 No. 604 "Some issues of payment of one-time cash assistance in the event of death (death) or disability of a volunteer due to injury (concussion, trauma or mutilation) received during the provision of volunteer assistance in the area of the anti-terrorist operation..." [14]. Another element of the administrative and legal status of volunteer organizations is legal (primarily administrative) responsibility. There are two types of such responsibility: financial responsibility – for a legal entity that is engaged in volunteer activities and has violated the rules of financial accounting and tax reporting; personal responsibility of the volunteer for covering up volunteer activities.

Thus, an urgent issue in connection with the introduction of martial law and the need for mobilization is the issue of evasion of a conscript who, having registered, went abroad for humanitarian aid and does not return to the territory of Ukraine in order to avoid mobilization. As of now, direct responsibility for such actions is not provided, theoretically we can talk about responsibility for evading mobilization, which is provided for in Art. 210-1 of the Criminal Procedure Code "Violation of the legislation on defense, mobilization training and mobilization", which provides for the imposition of a fine on citizens from one hundred to two hundred tax-free minimum incomes of citizens and on officials – from two hundred to three hundred tax-free minimum incomes of citizens, and for the repeated commission of such an act – imposing a fine on citizens from two hundred to three hundred non-taxable minimum incomes of citizens and on officials – from three hundred to five hundred non-taxable minimum incomes of citizens [15].

Conclusions. In conclusion, it should be noted that the main problems in the proper implementation of the administrative and legal status of volunteer organizations, in my opinion, are: 1) the need to regulate the registration procedure of volunteer organizations and individual volunteers, and to provide the opportunity for individual volunteers to carry out such activities through the "Action" application"; 2) definition of the Ministry of Justice of Ukraine as the central body of the executive power implementing state policy in the field of volunteering; 3) creation of an open register of volunteer organizations and volunteer individuals, whose administrator should be the Ministry of Justice of Ukraine; 4) regulation in the Law "On Volunteering": the status of "volunteer organization" and "volunteer individuals"; a list of areas of volunteer activity, taking into account its implementation during emergency situations or hostilities; determination of the authorized central body of executive power in the field of volunteering; regulations on the application of contracts on the provision of volunteer assistance during emergency situations or hostilities; the need for compulsory insurance of volunteers; benefits for volunteers during admission to higher education institutions and when hiring; crediting the time of volunteer activity to educational and industrial practice in the case of its implementation in the direction that corresponds to the received specialty; a list of volunteer expenses reimbursements; introduction of the rule "on the inclusion of the activity of

an officially registered volunteer – a natural person who performs his volunteer activity for at least 40 hours on a Sunday to the total length of service, as well as the payment of wages with allowances and bonuses for the main place of work and the preservation of this person's place of work in the period of operation of the regime of martial law or state of emergency".

Conflict of Interest and other Ethics Statements
The authors declare no conflict of interest.

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ABSTRACT

The article analyzes the administrative and legal status of volunteer organizations in Ukraine and highlights the specifics of its implementation under martial law. Peculiarities of the administrative and legal status of volunteer organizations in Ukraine and its implementation in the conditions of martial law are discussed.

It was found that in order to properly implement the administrative and legal status of volunteer organizations in Ukraine, it is advisable to: 1) regulate the registration procedures of volunteer organizations and individual volunteers, and provide the opportunity for individual volunteers to carry out such activities through the "Action" application; 2) define the Ministry of Justice of Ukraine as the central body of the executive power that implements state policy in the field of volunteering; 3) introduce an open register of volunteer organizations and volunteer individuals, whose administrator should be the Ministry of Justice of Ukraine; 4) regulate in the Law "On Volunteering": the status of "volunteer organization" and "volunteer individuals"; a list of areas of volunteer activity, taking into account its implementation during emergency situations or hostilities; to detail the powers of the authorized central body of the executive power in the field of volunteering; introduce the procedure for concluding contracts on the provision of volunteer assistance during emergency situations or hostilities; determine the mandatory insurance of volunteers; introduce benefits for volunteers during admission to higher education institutions and when hiring; crediting the time of volunteer activity to educational and industrial practice in the case of its implementation in the direction that corresponds to the received specialty; a list of volunteer expenses reimbursements; introduction of the rule "on the inclusion of the activity of an officially registered volunteer – a natural person who performs his volunteer activity for at least 40 hours on a Sunday to the total length of service, as well as the payment of wages with allowances and bonuses for the main place of work and the preservation of this person's place of work in the period of operation of the regime of martial law or state of emergency".

Keywords: *volunteerism, volunteer organizations, administrative and legal status of volunteer organizations, implementation under martial law.*

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INCORPORATION AS THE MAIN WAY OF SYSTEMATIZATION OF LABOR LEGISLATION: GENERAL CHARACTERISTICS

Наталія Обушенко. ІНКОРПОРАЦІЯ ЯК ОСНОВНИЙ СПОСІБ СИСТЕМАТИЗАЦІЇ ЗАКОНОДАВСТВА ПРО ПРАЦЮ: ЗАГАЛЬНА ХАРАКТЕРИСТИКА. Стаття розкриває основний спосіб систематизації інкорпорацію. Інкорпорація може здійснюватися на постійній основі для підтримки трудового законодавства в належному стані, тоді як проводити кодифікацію систематично і постійно немає сенсу, тому що для здійснення такої діяльності відносини у трудовій галузі мають бути більш-менш усталеними, тобто кодифікація здійснюється періодично для безпосереднього оновлення законодавства. Предметом впливу інкорпорації є нормативно-правові акти у сфері праці, на відміну від цього кодифікацію спрямовано на юридичні норми, приписи та правові інститути. Зовнішня форма результату інкорпорації трудового законодавства втілюється у збірниках або зводах законів, а кодифікації – зазвичай у кодексах, основах тощо, як правило, інкорпорація здійснюється для забезпечення зацікавлених осіб текстами нормативно-правових актів, що були піддані інкорпорації, тобто певної категорії осіб, а кодифікація охоплює всіх осіб, що вступають у трудові правовідносини, і в результаті у ній зацікавлені всі. Інкорпорація є окремим способом систематизації трудового законодавства, використання якого має важливе значення для його подальшої кодифікації.

В статті висвітлено, що інкорпорація чинного законодавства виражається в повному або частковому об'єднанні в алфавітному, хронологічному, системно-предметному порядку нормативно-правових актів певного рівня в різні збірники, з метою забезпечення зацікавлених осіб текстами відповідних нормативних актів зі всіма їх офіційними змінами та доповненнями. Інкорпорація є такою формою обробки нормативного матеріалу, метою якої є тільки його зовнішнє впорядкування (виправлення друкарських, граматичних і синтаксичних помилок, виключення нормативно-правових актів або частин, що були формально скасовані; опущення преамбул, підписів посадових осіб тощо).

Результатом інкорпорації є розміщення правового матеріалу в різних збірниках у певному порядку. Особливість інкорпорації, полягає в тому, що будь-які зміни у змісті актів, поміщених у збірники, зазвичай не вносяться, і зміст правового регулювання по суті лишається незмінним. Саме ця властивість інкорпорації – збереження незмінним змісту нормативного регулювання – відрізняє її від кодифікації і консолідації. Форма викладу змісту нормативних актів інколи зазнає певних досить суттєвих змін, оскільки інкорпорація не являє собою простого відтворення актів у їх первинній редакції. Зазвичай у збірниках чинних нормативних актів тексти останніх друкуються з урахуванням подальших офіційних змін і доповнень. Крім того, у процесі інкорпорації з тексту актів, поміщених у збірник, вилучаються глави, статті (пункти), окремі абзаци й інші частини, визнані такими, що втратили чинність. У збірник вносяться всі такі зміни і доповнення з фіксуванням офіційних реквізитів тих актів, якими внесено відповідні корективи.

Ключові слова: *систематизація трудового законодавства, інкорпорація, нормативно-правові акти, трудові норми, шляхом зовнішнього опрацювання та об'єднання нормативного матеріалу, вступають у трудові правовідносини, вдосконалення чинного законодавства, інкорпорація може бути офіційною, офіціозною та неофіційною, зовнішня систематизація законодавства, зібрання законодавства.*

Relevance of the study. Today, in the scientific literature and at the legislative level, the need to systematize labor legislation is increasingly emphasized. At the same time, it is

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important to choose a way to carry out such activities. In our opinion, the main methods of systematization are incorporation and codification. At the same time, these two methods are closely related to each other, because usually it is incorporation that precedes codification.

Recent publications review. Some issues of formation and development labor law were at one time the subject of scientific research by such prominent scientists as M. Aleksandrov, V. Andriyev, N. Bolotina, L. Bugrov, S. Vavzhenchuk, V. Venediktov, S. Venediktov, S. Vyshnovetska, L. Ginzburg, Yu. Gryshina, D. Zhuravlyov, T. Zanfirova, M. Inshin, Y. Ivchuk, R. Kondratiev, M. Klemparskyi, R. Livshyts, M. Lushnikova, S. Lukash, A. Matsyuk, N. Melnychuk, K. Melnyk. Tolkunova, K. Urzhynskyi, N. Khutoryan, G. Chanysheva, S. Chernous, V. Shcherbina, O. Yaroshenko and others [1-5]. At the same time, despite the significant contribution of scientists to the development of the science of labor law, under modern conditions, a unified conceptual approach to defining the essence and features of the labor law system has not been formed.

The article's objective is to find out the essence and features of incorporation as a way of systematizing labor legislation.

Discussion. Modern legal views make it possible to separate the essential differences between incorporation and codification: 1) the most essential difference is that incorporation does not change the content of labor legislation, while codification is aimed at changing both the form and the content of regulatory legal acts, i.e. the latter has a law-making essence; 2) incorporation can be carried out on a permanent basis to maintain labor legislation in proper condition, while it makes no sense to carry out codification systematically and constantly, because for the implementation of such activities, relations in the labor field must be more or less established, that is, codification is carried out periodically for direct updating legislation; 3) the subject of the influence of incorporation is normative legal acts in the field of labor, in contrast to this, codification is aimed at legal norms, prescriptions and legal institutes; 4) the external form of the result of the incorporation of labor legislation is embodied in collections or sets of laws, and codification is usually in codes, foundations, etc.; 5) as a rule, incorporation is carried out to provide interested persons with the texts of normative legal acts that were subject to incorporation, i.e. a certain category of persons, and codification covers all persons entering into labor relations, and as a result, everyone is interested in it; 6) codification, in contrast to incorporation, is aimed at the current labor legislation, and incorporation can be carried out, for example, with regard to normative legal acts in the field of labor from the XIX to XX centuries; 7) during codification, "outdated" or those that are outdated and have no practical significance labor regulations may be canceled, but not during the incorporation process; 8) types of incorporation and codification of labor legislation differ, incorporation can be official, unofficial and unofficial, alphabetical, chronological and system-subject are also distinguished, and codification can be general, inter-branch, branch and institutional. So, from the above, we really see that incorporation is a separate way of systematizing labor legislation, the use of which is important for its further codification.

Incorporation (lat. incorporation) should be understood as "incorporation", "joining", its purpose is to improve the current legislation by systematically processing the form without changing the content of legal norms. In the legal literature, incorporation is understood as a form of systematization of legislation carried out by competent state bodies, their officials and other subjects through external processing and combining normative material into collections in a certain order without changing their content, the main purpose of which is to ensure convenience search and availability of regulatory material. Incorporation of current legislation is expressed in full or partial unification in alphabetical, chronological, system-subject order of normative legal acts of a certain level in various collections, with the aim of providing interested persons with the texts of relevant normative acts with all their official changes and additions.

Incorporation is a form of processing of regulatory material, the purpose of which is only its external arrangement (correction of typographical, grammatical and syntactic errors, exclusion of normative legal acts or parts that have been formally canceled; omission of preambles, signatures of officials, etc.). The result of incorporation is the placement of legal material in different collections in a certain order. Incorporation is understood as the adoption by the state of the norms of national law (or the change or cancellation of already existing ones), which contribute to the fulfillment of the prescriptions of international law. Norms of national law may textually repeat some rules of international law, specify and adapt them to the features of the social order and legal system of the state, since in this case new norms of

national law adopted for the purpose of implementing international law are introduced (incorporated) into national law, then this method could be called an incorporation.

Incorporation is a method of processing current legal norms by combining legal acts in a certain collection in accordance with the chosen criterion (chronological, alphabetical or thematic) without changing their internal content. This is an external systematization of legislation, which does not introduce any new provisions into it and does not set itself the goal of revising legal norms. At the same time, the texts of normative acts may be slightly adjusted, but in such a way that this does not affect their normative content (for example, correction of typographical, grammatical or syntactical errors, exclusion of articles and clauses that have lost their validity, etc.). Since the content of the regulatory regulation does not change in the case of incorporation, it can be both official and unofficial.

Incorporation is a form of systematization, when normative acts of a certain level are fully or partially combined into different collections or collections in a certain order (chronological, alphabetical, system-subject). Incorporation is a permanent activity of state and other bodies with the aim of maintaining legislation in a valid (control) state, ensuring its availability, providing the widest range of subjects with reliable information about laws and other regulatory acts in their current version [1-5].

The peculiarity of incorporation is that any changes in the content of the acts placed in the collections are usually not made, and the content of the legal regulation essentially remains unchanged. It is this feature of incorporation – keeping the content of regulatory regulation unchanged – that distinguishes it from codification and consolidation. The form of presentation of the content of regulatory acts sometimes undergoes certain rather significant changes, since incorporation is not a simple reproduction of acts in their original version. Usually, in the collections of current normative acts, the texts of the latter are printed taking into account further official changes and additions. In addition, in the process of incorporation, chapters, articles (clauses), separate paragraphs and other parts, recognized as having lost their validity, are removed from the text of the acts placed in the collection. All such changes and additions are entered into the collection with the recording of the official details of those acts, by which the corresponding corrections were made.

Incorporation can be considered as an independent form of systematization of legislation, which is carried out by competent state bodies, their officials and other subjects through external processing and combining normative material into collections in a certain order without changing their content, the purpose of which is to ensure ease of search and accessibility regulatory material. Incorporation is limited to material processing only. Only changes of an external, editorial or technical nature are allowed: correction of topographical errors, exclusion of legal acts or their parts, later formally canceled by the lawmaker, omission of signatures under normative legal acts, etc. The systematization of regulatory legal acts in the form of incorporation is expressed in the preparation and publication of various collections of such acts. Incorporation is carried out in order to provide the widest range of subjects with the texts of laws and other regulatory legal acts.

At the same time, the incorporation of regulatory legal acts is directly related to their accounting, since it is based on a certain, maximally certain fund of relevant acts and a search system capable of ensuring the finding of all the necessary acts, because the first task of incorporation is the preparation of a list of acts, which should consist of the prepared collection. In the case of preparation of a collection of acts adopted by one or several law-making bodies, normative acts adopted by them for the entire period of their activity or for some specific period are subject to selection. Normative acts can be incorporated in the form in which they were adopted by a law-making body. This principle of placement of acts in the collection is used in the case when the act consists only of normative prescriptions and has not undergone changes or additions in the course of its operation, or in the case of preparation of historical sources of law. In the collections of current regulatory legal acts, their texts are usually published not in the version in which they were originally adopted by the law-making body, but with subsequent changes and additions taken into account.

Incorporation is a type of systematization of legislation, which involves the unification of normative legal acts without changing their content into collections in chronological, alphabetical, subject or other order. The purpose of incorporation is to maintain the legislation in its current state, which could ensure its availability, to provide all subjects of law with reliable information about regulatory legal acts in their current version. The result of incorporation is the external regulation of the current legislation [3, 4]. During such

arrangement, all further official changes and additions are made to the text of the acts placed in the collection, with the recording of the details of those acts, by which the corresponding corrections were made, as well as removing chapters, articles, individual items, paragraphs and other parts that are recognized as expired. The text of normative legal acts also excludes various operative orders, non-normative prescriptions and temporary norms, the validity period of which has expired, and information about the persons who signed the corresponding act.

Investigating the problem of systematization of social security legislation, we came to the conclusion that the incorporation of social security legislation can be defined as the activity of official and unofficial ordering of the current normative legal acts of Ukraine in the field of normative regulation of social security relations into certain collections of the legislative base according to one or more system-forming criteria in order to ensure proper conditions for doctrinal and practical work with the appropriate legal framework. The peculiarity of this form of systematization of legislation on social security is that: 1) it is carried out by both general (any physical and legal entities) and special subjects (state authorities of Ukraine); 2) as a result of incorporation, collections of social security legislation of Ukraine or its individual sub-sectors (institutes) are created; 3) is carried out according to a certain systematic criterion (alphabet, date of issue of the act, sub-branch or institution of social security law, etc.); 4) there are no clear rules for the incorporation of the legislation of Ukraine on social security; 5) it can relate to both the entire subject of social security relations and a part (pension legislation, legislation on social services, etc.).

In Ukraine, the most common results of incorporation are collections and compilations of laws. Compendiums are collected normative legal acts, united according to a thematic feature. The texts of such acts are given in an updated form – with changes and additions at the time of completion of preparation for printing. The first page or the source data must contain information about the date on which the texts of the documents are given. It is allowed to include in such collections not the full texts of acts, but only extracts from them, as well as official explanations of state authorities on the application of these acts - decisions of the Constitutional Court of Ukraine, recommendations of higher specialized courts, resolutions and generalized legal positions of the Supreme Court of Ukraine. Collections of legislation in Ukraine are most often published on a commercial basis. They belong to official sources in the case of their publication under the seal of the Ministry of Justice of Ukraine or state authorities, from the acts and explanations of which the collection is compiled.

Collections of legislation are collections of normative and legal acts of higher (central) state authorities organized chronologically. They are usually of an official nature. At the same time, the texts of legislative acts are not objects of copyright, therefore, publication of unofficial collections can be carried out on the initiative of the publishing house or another subject of the publishing business. For example, in Germany, the practice of publishing printed collections of laws with detachable parts is widespread, which makes it possible to update the texts of laws by replacing parts that have lost their validity with new ones, and the publishers of such collections undertake the obligation to timely supply new editions to subscribers for independent updating (updating) of texts. Thus, the publisher and the subscriber actually become partners in the activity of incorporation of legislation. Unfortunately, there is no established practice of such commercial publications in Ukraine.

When revealing the essence of incorporation, special attention should be paid to its types. So, in the legal literature, the most classic division of incorporation into the following types:

1) depending on the legal force of published collections and collections, the following are distinguished: a) official; b) official (semi-official); c) unofficial incorporation;

2) depending on the method of placing the material, incorporation is divided into the following types: a) chronological; b) substantive; c) subjective;

3) depending on the legal force of normative legal acts, which are systematized;

4) depending on the scope of the covered material, the following are distinguished: a) general (full) incorporation; b) partial incorporation.

The process of preparation for incorporation should include the following stages: 1) removal from the text of individual articles, clauses or paragraphs that have lost their validity, and, on the contrary, adding further changes and additions with an indication of the details of the act, by which the changes or additions were made; 2) exclusion from the act of those parts of it that do not contain normative prescriptions, with a note on the reasons for the absence of such parts in the text; 3) deletion of information about persons who signed the act.

Such external processing of normative acts does not affect their normative content. The norms themselves do not undergo any changes and are incorporated in the form in which they operate at the time of systematization [1, 3]. By its very nature, the act of official incorporation is a way of publishing and reissuing current legal acts, and therefore, an official source of legislation [2, 4, 5].

Conclusions. Thus, we can state that today incorporation is really an important way of systematizing labor legislation, because it allows to streamline numerous normative legal acts in the field of labor law, to give them a more structured and systematic look. With its help, you can systematize any amount of legislation. However, incorporation as a method of systematization does not make it possible to solve all urgent problems of labor legislation, since, unlike codification, it does not create new norms, but only streamlines existing ones. At the same time, it was noted that the positive side of incorporation is that it allows to further simplify and speed up the process of codification of labor legislation. It is important that the incorporation has a permanent character, because it allows to maintain the legislation in proper condition.

Conflict of Interest and other Ethics Statements
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ABSTRACT

The article reveals the main way of systematizing incorporation. Incorporation can be carried out on a permanent basis to maintain labor legislation in a proper state, while it makes no sense to carry out codification systematically and constantly, because in order to carry out such an activity, relations in the labor industry must be more or less established, that is, codification is carried out periodically to directly update the legislation.

The subject of the influence of incorporation is normative legal acts in the sphere of labor, in contrast to this, codification is aimed at legal norms, prescriptions and legal institutions. The external form of the result of incorporation of labor legislation is embodied in collections or codes of laws, and codification is usually in codes, foundations, etc., as a rule, incorporation is carried out to provide interested persons with the texts of normative legal acts that have been subject to incorporation, i.e. a certain category of persons, and codification covers all persons entering into labor relations, and as a result, everyone is interested in it. Incorporation is a separate way of systematizing labor legislation, the use of which is important for its further codification.

The article highlights that the incorporation of current legislation is expressed in the full or partial unification in alphabetical, chronological, system-subject order of normative legal acts of a certain level in various collections, with the aim of providing interested persons with the texts of relevant normative acts with all their official changes and additions Incorporation is a form of processing of regulatory material, the purpose of which is only its external arrangement (correction of typographical, grammatical and syntactic errors, exclusion of normative legal acts or parts that have been formally canceled; omission of preambles, signatures of officials, etc.). The result of incorporation is the placement of legal material in different collections in a certain order.

Keywords: *systematization of labor legislation, incorporation, regulatory legal acts, labor standards, through external processing and unification of normative material, enter into labor relations, improvement of current legislation, incorporation can be official, unofficial and unofficial, external systematization of legislation, collection of legislation.*

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DIGITAL (VIRTUAL) CURRENCY AS AN OBJECT OF CIVIL RIGHTS IN UKRAINE AND EUROPEAN COUNTRIES

Дмитро Лещенко. ЦИФРОВА (ВІРТУАЛЬНА) ВАЛЮТА ЯК ОБ'ЄКТ ЦИВІЛЬНИХ ПРАВ В УКРАЇНІ ТА КРАЇНАХ ЄВРОПИ. Досліджено правову природу цифрової валюти в цілому та її різновиду – криптовалюти (віртуальної валюти), яка не має чітко визначеної правової природи і визнається або платіжним засобом, або товаром у європейських країнах. Цифровою (електронною) валютою вважаються електронні гроші, які використовуються як альтернативна або додаткова валюта. Найчастіше їх вартість прив'язана до національних валют. Проаналізовані такі цифрові валюти як Estcoin, eKrona, е-гривня. Визначено, що віртуальна валюта, як особливий різновид цифрової валюти, не має статусу законного платіжного засобу в переважній більшості юрисдикцій країн Європи. Досліджено нормативні визначення цифрових валют в Україні та ЄС, а також проаналізовані юрисдикції, у яких віртуальним валютам надано офіційного статусу як платіжного засобу. Акцентована увага на перспективному законодавстві України, присвяченому віртуальним активам та віртуальній валюті. Сформульовано ознаки цифрової валюти як об'єкта цивільних прав та особливості її правового статусу.

Ключові слова: *цифрова (електронна) валюта, віртуальні активи і віртуальна валюта, криптовалюта, об'єкти цивільних прав, фіатна валюта, блокчейн, е-гривня.*

Relevance of the study. The concept of digital currency is worth subjecting it to a comprehensive study and not only within the framework of civil and economic relations and its individual types, but also as a legal phenomenon.

Recent publications review. At one time, such lawyers as O. Danylenko, T. Zamotaeva, E. Kohanovska, V. Lapach, R. Maidanyk, K. Nekit, V. Skrypnyk, I. Spasibo-Fateeva, V. Yarotskyi, L. Zelmanovitz and others wrote and conducted research on money as an object of civil rights. Despite the fact that a lot of time has passed since independence, there have been significant changes in almost the entire range of use of various objects of civil rights, however, there are only few works devoted to digital money in Ukraine.

The article's objective is to study the peculiarities of digital currency and to provide an answer to the question of whether the legal regime of civil rights objects can be extended to it.

Discussion. Considering the complexity of the concept of digital currency and its

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specifics, we will focus on its main characteristics and varieties, thus making an attempt to outline the range of issues that will require considerable effort to study.

Digitalization of social relations in the world does not bypass Ukraine, which is also in the process of digitalization of the economy. This process is associated with the active use of new technologies and leads to the emergence of new objects of civil turnover, including digital currency. The national legislator does not always have time to regulate new social relations that require legal protection. New social relations of private law, particularly in terms of digital currency circulation, are usually regulated by contractual principles, which, at the time of conclusion between the parties, are declared as such that do not contradict the general principles of civil legislation of Ukraine. However, the implementation of these objects may cause various complications both at the stage of concluding contracts and at the stage of their implementation, which may result in various civil disputes. The above convinces of the need for a deep study of the legal nature of digital currency and the peculiarities of its civil circulation in Ukraine and European countries at the level of a separate comprehensive study.

Starting from 2020, in the Concept of Updating the Civil Code of Ukraine (hereinafter referred to as the Civil Code of Ukraine), a group of scientists put forward proposals to expand the list of objects of civil rights, taking into account the development of civil turnover and the emergence of objects unknown at the time of the creation of the Civil Code of Ukraine, such as digital currencies (in particular, cryptocurrencies).

In general, digital (electronic) currency is considered to be electronic money used as an alternative or additional currency. Most often, their value is pegged to national currencies. A number of EU countries are planning or have already issued national digital currencies. They are fully centralized as they are under the control of the government. They are also non-anonymous, cannot be mined, and are usually backed up by fiat currencies or other values. Thus, Estonia plans to launch its own digital currency Estcoin on the blockchain. According to a government representative, Estonia can use Estcoin as a crypto token as part of its E-Residency program, which allows foreigners to obtain state ID cards. The central bank of Sweden is currently exploring the possibilities of blockchain technology. Moreover, the Riksbank is also considering the possibility of creating a national digital currency eKrona. If the electronic krona is issued, it will be used alongside conventional money. With the introduction of electronic money, Sweden has all chances to build a completely cashless society. At the beginning of January 2021, the Ministry of Digital Transformation of Ukraine signed a memorandum with the Stellar Development Foundation, within the framework of which it is planned to develop a national digital currency – e-hryvnia, as the press office of the Ministry posted official information on the Ministry's website on January 4, 2021.

However, in some cases, there is no peg to national currencies and their value is formed solely by the balance of supply / demand. We are talking about such type of digital currencies as cryptocurrencies (Bitcoin, Ethereum, Tether, Litecoin, etc.). They are also often called virtual currencies. This is the interpretation of the European Central Bank (hereinafter – the ECB). In particular, in the ECB annual report for 2012, virtual currency was defined as one of the types of digital money not regulated by the state, which is usually created and controlled by developers and accepted among members of a certain "virtual community".

Unlike digital currencies, they do not have a clearly defined legal nature and are recognized either as a means of payment or as a commodity. Thus, the Court of Justice of the European Union in its judgment in the case of David Hedqvist v. Sweden dated 22.10.2015 determined that bitcoin should be considered a currency (means of payment), not a commodity. This was due to the fact that there were certain difficulties regarding the taxation of cryptocurrency. The relevant decision established that all transactions related to the exchange of bitcoins (bitcoin) will be taxed in the same way as transactions with traditional currencies. European case law essentially equated cryptocurrency to legal tender, and the exchange of funds – to a "currency exchange transaction".

That is, a virtual currency is such a way of currency exchange that acts as a currency in some areas, but does not have all the attributes of real currency. Virtual currency is considered "convertible" if it has an equivalent in real currency, or acts as a substitute for real currency. In particular, virtual currency does not have the status of legal tender in the vast majority of jurisdictions. Despite the above-mentioned decision of the EU Court of Justice, according to the current EU legislation, digital currency is considered to be a commodity and is subject to the regulation of civil law and the EU Directive on PFM as a commodity, and the contract of sale in relation to cryptocurrency is a contract of sale of goods.

The official status of virtual currency as a means of payment is established in belarus by the decree, which legalized the circulation of cryptocurrency in the country. Cryptocurrency was defined as bitcoin, another digital sign (token) used in international circulation as a universal means of exchange. And, accordingly, the operator of the crypto platform provided individuals and legal entities with the opportunity to perform among themselves and with the operator such transactions on alienation, acquisition of digital tokens for national currency, foreign currency, electronic money; exchange of digital tokens of one type for digital tokens of another type [1].

The position of the Ukrainian legislator until 2020 was unambiguous. In a joint statement of the National Bank of Ukraine, the National Securities and Stock Market Commission and the National Commission for Regulation of Financial Services of November 30, 2017 "On the Status of Cryptocurrency in Ukraine" it was noted that, since in accordance with Part 2 of Article 32 of the Law of Ukraine "On the National Bank of Ukraine" the issue and circulation of other monetary units in Ukraine and the use of monetary surrogates as a means of payment was prohibited, the National Bank of Ukraine considered the "virtual currency / cryptocurrency" Bitcoin as a monetary surrogate.

But, at the end of 2020, the Verkhovna Rada of Ukraine adopted as a basis the draft Law "On Virtual Assets", which, among other things, regulates legal relations related to the circulation of digital currency [2]. According to this draft law, digital currency is considered a virtual asset, which is divided into secured and unsecured. The first "provides its owner with the right to claim other, except for the virtual asset itself, objects of civil rights", the second – no. According to some lawyers, if the draft law is adopted as a whole and becomes a law, the business related to digital currency in Ukraine will actively develop [3, 4].

The main problem of digital currencies (except cryptocurrencies) is that they are centralized, which allows the government to close them at any time. Cryptocurrencies, on the other hand, use blockchain and distributed ledger technologies. Thanks to this, no regulator can control what happens in the network, and this happens throughout the user space. In cryptocurrencies, such as Bitcoin, Litecoin and PPCoin, issuance and accounting are based on cryptography and the Proof-of-work security method, and this happens decentralized in a distributed computer network.

Conclusions. Thus, the peculiarity of digital (virtual) currency as an object of civil rights is its substitutability and equivalence. Digital currency, as well as fiat money, claims to be the most important object of almost any civil legal relationship along with fiat money. Just like fiat money, it gradually becomes an equivalent of other objects of civil rights: fiat money, material things, works, services, intellectual property, etc. The peculiarity of their legal status as an object of civil rights is that their legal regime is not established exclusively by the state (as in fiat currency) and it is not the state itself that ensures their issue. The right to issue, control circulation and withdrawal from circulation belongs not exclusively to the National Bank of Ukraine, but to its issuers (developers) – members of a certain "virtual community". The circulation of these objects of civil rights is based on the principles of decentralization and anonymity.

The issue of their legislative regulation both in Ukraine and European countries remains open and can be determined in the short terms.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

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ABSTRACT

The article examines the legal status and features of digital currency as an object of civil rights in Ukraine and the EU. The legal nature of digital currency as a whole and its variety - cryptocurrency (virtual currency), which does not have a clearly defined legal nature and is recognized either as a means of payment or as a commodity in European countries – has been studied. Digital (electronic) currency is electronic money that is used as an alternative or additional currency. Most often, their value is tied to national currencies. Such digital currencies as Estcoin, eKrona, e-hryvnia were analyzed.

It was determined that virtual currency, as a special type of digital currency, does not have the status of legal tender in the vast majority of jurisdictions of European countries. The normative definitions of digital currencies in Ukraine and the EU were studied, as well as the jurisdictions in which virtual currencies were given official status as a means of payment were analyzed. Focused attention on the prospective legislation of Ukraine, dedicated to virtual assets and virtual currency. Features of digital currency as an object of civil rights and peculiarities of its legal status are formulated.

Keywords: *digital currency, virtual assets, cryptocurrency, civil rights objects, fiat currency, blockchain, e-hryvnia.*

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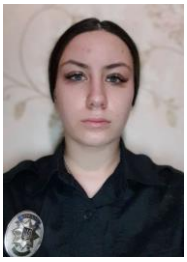

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PECULIARITIES OF REPRESENTATION IN CIVIL PROCEEDINGS

Марина Логінова, Кароліна Резниченко. ОСОБЛИВОСТІ ПРЕДСТАВНИЦТВА У ЦИВІЛЬНОМУ ПРОЦЕСІ. Стаття присвячена висвітленню однієї з актуальних проблем цивільного процесу щодо питання представництва в цивільному процесі України. Сучасний цивільний процес відрізняється особливою складністю, оскільки на зміну слідчому процесу прийшов процес змагальний, сутність якого полягає у перенесенні обов'язку обґрунтування і доведення всіх фактичних обставин справи на сторони. Нині цивільне судочинство здійснюється на засадах змагальності, тому сторони та інші особи, які беруть участь у справі, повинні довести обставини, на які посилаються як на підставу своїх вимог та заперечень.

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Проаналізовано поняття, ознаки представництва як важливого процесуального засобу репрезентації та захисту інтересів сторін та інших учасників цивільного судочинства. Його суть полягає у процесуальній діяльності представника або повіреного, спрямованій на захист суб'єктивних прав та охоронюваних законом інтересів іншої особи, як сторони або третьої особи, що бере участь у справі, державних і громадських інтересів, а також сприяння суду у всебічному, повному й об'єктивному з'ясуванні обставин справи з метою постановлення законного і обґрунтованого рішення по справі. З розвитком суспільства сфера застосування представництва охопила широке коло як майнових, так і немайнових відносин. Важливість цього інституту в суспільному житті визначається тим, що представництво дає змогу оптимізувати та активізувати процес набуття та реалізації суб'єктивних прав та обов'язків, а для непрацездатних громадян воно є основним засобом їх участі у правовідносинах. За допомогою представництва можна набувати і здійснювати більшість матеріальних і процесуальних цивільних, а також інших суб'єктивних прав і обов'язків залежно від галузі.

Таким чином, представництво виступає однією з важливих гарантій реального здійснення прав і виконання обов'язків суб'єктами права. Значення цього інституту в суспільному житті визначається тим, що за допомогою інституту представництва створюються додаткові можливості для здійснення прав і обов'язків учасниками цивільних правовідносин, здійснюється найбільш повний захист їх суб'єктивних прав. забезпечується, а ефективність налагодження економічних зв'язків між суб'єктами господарювання підвищується.

Актуальність даної теми зумовлена проведенням в Україні системних та ефективних правових реформ, що зумовлює необхідність поглибленого дослідження проблем удосконалення механізмів для реалізації та захисту цивільних прав та інтересів особи та (у зв'язку з цим) переосмислення деяких підходів до правової природи представництва.

***Ключові слова**: представництво, представник, довіреність, адвокат.*

Relevance of the study. Most disputes are considered by the court with the participation of representatives of one or both parties, therefore the institution of representation plays a significant role in the system of procedural and legal relations regarding the protection of the rights and legitimate interests of persons participating in the case. Existing fields of law are intensively changing, updating and becoming more complicated, and the emergence of new categories of cases causes difficulties in their application, especially by persons who do not know the intricacies of regulatory and legal acts. In these conditions, the need for professional representation is particularly noticeable, therefore representation carried out by qualified lawyers on a contractual basis is becoming more and more important.

Voluntary representation in civil proceedings is one of the forms of legal assistance guaranteed by the Constitution of Ukraine (Article 59). If legal representation in civil proceedings in one form or another has existed for many centuries, given the objective impossibility of certain categories of subjects to appear in court on their own, then voluntary representation to some extent depends on the degree of democracy and development of the state.

Recent publications review. Turning to the institute of representation in civil proceedings, it should be noted that both domestic and foreign scientists paid attention to this issue, namely: I. Biryukov, S. Kerimov, L. Klimovska, N. Galaburda.

Despite the careful and long-term development of the problems of representation in civil procedural law, many of its problems remain unsolved, in particular the issues of classification of representation, the limits of the application of the institution of representation, the separation of voluntary representation in court from related institutions, the peculiarities of certain types of voluntary representation.

The article's objective is to investigate the formation and development of the modern model of representation in court proceedings as a form of providing legal assistance.

Discussion. According to Art. 15 of the Civil Code of Ukraine, the parties to the case have the right to use legal assistance. The Constitution of Ukraine, giving priority to the rights and freedoms of man and citizen, proclaimed and guarantees citizens the right to judicial protection. With the development of society, the scope of application of representation covered a wide range of both property and non-property relations. The importance of this institution in social life is determined by the fact that representation enables optimization and activation of the acquisition and implementation of subjective rights and obligations, and for disabled citizens it is the main means of their participation in legal relations. With the help of representation, it is possible to acquire and implement the majority of material and procedural civil, as well as other subjective rights and obligations depending on the branch. Thus, representation acts as one of the important guarantees of real exercise of rights and fulfillment of duties by legal subjects. The importance of this institution in social life is determined by the fact that with the help of the institution of representation, additional opportunities are created

for the exercise of rights and obligations by participants in civil legal relations, the most complete protection of their subjective rights is ensured, and the effectiveness of establishing economic ties between the subjects improves the management [7, p. 973].

Guided by the content of the provisions of Art. 58 of the Civil Code of Ukraine, three types of procedural representation can be distinguished:

– Representation of natural persons;

– Representation of legal entities;

– Representation of the state.

In Art. 59 of the Code of Civil Procedure of Ukraine lists another type of representation as legal, which is carried out in the interests of incapacitated persons, as well as persons whose civil capacity is limited [3, p. 105].

As for legal aid in civil proceedings, since January 1, 2019, the representation of the interests of individuals in courts of all instances in cases in which proceedings have not been opened by September 30, 2016 is carried out by lawyers. Exceptions to this rule, in accordance with Art. 131 of the Constitution of Ukraine, there is representation in court in labor disputes, disputes regarding the protection of social rights, regarding elections and referenda, in minor disputes, as well as regarding the representation of minors or minors and persons recognized by the court as incompetent or whose legal capacity is limited. Therefore, in civil proceedings, as an exception, during consideration of disputes arising from labor relations, as well as cases in minor disputes, a person who has reached the age of eighteen and has civil procedural legal capacity can be a representative. In addition to the requirements that procedural representatives in such cases must meet. At the same time, the legislator establishes a relative and absolute prohibition of procedural representation [5, p. 452].

The circle of persons who can exercise the right to representation is defined in Part 1 of Art. 58 of the Civil Code of Ukraine are parties, third parties, persons who, in accordance with the law, protect the rights and interests of other persons, that is, all participants in legal proceedings. In separate proceedings, applicants, interested persons, as well as persons who, in accordance with the law, protect the rights and interests of other persons, have the right to legal aid. It is also worth noting that in adoption cases, the applicant's participation in the case is mandatory, regardless of whether he has a procedural representative.

Representation is characterized by certain features. Civil rights and duties belong to one person and are exercised by another. The representative performs certain legal actions. The representative acts on behalf of another person. Legal consequences arise not for the representative, but for the person he represents. When the agreement concluded by the representative caused losses for the counterparty, then the obligated party will not be the representative, but the person who authorized him to perform the deed [2, p. 124]. While in relation to natural persons, according to the modern doctrine of civil law, this prerequisite has no practical significance, due to the fact that each person has legal capacity from the moment of birth, then in relation to legal entities, this circumstance plays a decisive role, because legal capacity of the latter can occur only in the presence of certain conditions stipulated by law, and besides, such a person is not a subject of law and cannot acquire rights and obligations either personally or through a representative [3, p. 105].

Unlike criminal proceedings, in a civil proceeding, a person can protect his rights personally, but it is impossible to achieve the desired results in the consideration of a civil case in court without certain legal knowledge and skills in their practical application. Therefore, in the civil process, it is possible to protect the violated, unrecognized or disputed rights or interests of a person protected by law. Thus, Article 12 of the Code of Civil Procedure states that a person participating in a case has the right to a legal representation provided by lawyers or other specialists in the field of law. A person's personal participation in a case does not deprive him of the right to have a representative in this case (Article 38 of the Civil Procedure Code). That is, a representative can act in a civil process alongside a person or replace him [8, p. 672].

The representative in the process is an independent participant in the relationship, despite the fact that he represents the interests of other persons. Since the representatives are not included among the participants in the case, it can be assumed that they have no procedural interest. Also, the legislator did not include representatives among other participants in the legal process, who do not have and should not have an interest in the case. If we analyze the representative's interest in the proceedings, it can be considered that they are disinterested, since the court's decision does not affect their rights and legal interests. However, the representative's relationship with the principal and the purpose of procedural representation

justify the subjective behavior of the representative in the proceedings in favor of the participant whom he represents [10, p.148].

Conclusions. Having considered the representation as an activity for the exercise of powers, it can be concluded that the internal legal relationship is not part of this activity. But the legal relationship cannot be part of the activity - on the contrary, the activity can be the meaning of the legal relationship. If we consider representation as a unity of legal relations necessary and sufficient to achieve the goal of representation, then internal legal relations, on the contrary, are part of representation, regardless of the fact that the presence of this legal relationship is not yet sufficient to achieve the goal of representation, due to the fact that the authority is exercised in relation to third parties.

Conflict of Interest and other Ethics Statements
The authors declare no conflict of interest.

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ABSTRACT

The article is devoted tohighlighting one of the urgent problems of the civil process regarding the issue of representationin the civil process of Ukraine. The modern civil process is particularly complex, since the investigative process was replaced by an adversarial process, the essence of which is to transfer the obligation to substantiate and prove all the factual circumstances of the case to the parties. Currently, civil proceedings are carried out on the basis of competition, so the parties and other persons participating in the case must prove the circumstances they refer to as the basis of their claims and objections.

The concepts and signs of representation as an important procedural means of representation and protection of the interests of the parties and other participants in civil proceedings are analyzed. Its essence consists in the procedural activity of a representative or attorney, aimed at protecting the subjective rights and legally protected interests of another person, as a party or a third party participating

in the case, state and public interests, as well as assisting the court in a comprehensive, complete and objective clarification of the circumstances of the case in order to make a legal and well-founded decision on the case. With the development of society, the scope of representation has covered a wide range of both property and non-property relations.

The importance of this institution in social life is determined by the fact that representation makes it possible to optimize and activate the process of acquiring and realizing subjective rights and obligations, and for disabled citizens it is the main means of their participation in legal relations. With the help of representation, it is possible to acquire and exercise most material and procedural civil, as well as other subjective rights and obligations, depending on the industry.

Thus, representation acts as one of the important guarantees of real exercise of rights and fulfillment of duties by subjects of law. The importance of this institution in social life is determined by the fact that, with the help of the institution of representation, additional opportunities are created for the exercise of rights and obligations by participants in civil legal relations, and the most comprehensive protection of their subjective rights is carried out. is ensured, and the efficiency of establishing economic ties between economic entities increases. The relevance of this topic is due to the implementation of systemic and effective legal reforms in Ukraine, which necessitates an in-depth study of the problems of improving mechanisms for the implementation and protection of civil rights and interests of the individual and (in this regard) rethinking some approaches to the legal nature of representation.

***Keywords**: representation, representative, power of attorney, lawyer.*

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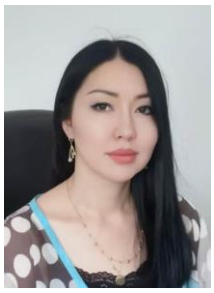

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THE LEGAL NATURE OF PROPERTY AND NON-PROPERTY FAMILY RELATIONS

Алія Мусаєва. ПРАВОВА ПРИРОДА МАЙНОВИХ І НЕМАЙНОВИХ СІМЕЙНИХ ВІДНОСИН. Розуміння правового статусу сім'ї є важливим у правозастосовчій діяльності. Поняття сімейних правовідносин та їх види визначено Кодексом про шлюб та сім'ю Республіки Казахстан. Сімейні правовідносини у сімейному праві регулюють практично всі сфери життя та відносин у сім'ї. Зміст сімейних правовідносин утворюють правничий та обов'язки учасників. При цьому передача будь-яких прав учасників сімейних взаємин суворо заборонена, оскільки сімейні правовідносини, види яких бувають як немайновими, так і майновими.

Немайнові відносини особистого характеру припускають укладення або розірвання шлюбу, народження дитини або її усиновлення, також сюди належать і рішення, які подружжя приймає спільно – наприклад, вибір прізвища та інші моменти, що стосуються спільного життя. Тут же знаходиться виконання обов'язків з виховання дитини, її освіти та інших важливих життєвих аспектів. Особисті немайнові правовідносини членів сім'ї врегульовані нормами права. Незважаючи на те, що особисті немайнові відносини переважають у сім'ї, оскільки визначаються самою сутністю шлюбу, спорідненості, більшість з них перебувають за рамками правового регулювання.

У зв'язку з цим, у статті встановлено коло договорів у сімейному праві, що регулюють як майнові, так і немайнові відносини суб'єктів сімейних правовідносин, виявлено їх особливості на основі аналізу правових наслідків, укладання таких договорів, а також зумовлених не лише немайновим характером, а й сімейно- правової природою і модернізація зазначених статей, може бути додатковим захистом для непрацездатних членів сім'ї.

***Ключові слова:** сім'я, сімейні правовідносини, суб'єкти сімейних правовідносин, власність, шлюб, подружжя, спільна власність.*

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Relevance of the study. Family legal relations in family law regulate almost all spheres of life and relationships in a family. In this regard, the study of this issue would be logical to begin with a discussion of the concept of "family". In the explanatory dictionary of S. Ozhegov, it is proposed to understand a family as a group of relatives living together (husband and wife, parents with children) [1]. In legal science, various opinions have been offered on the legal definition of a family. G. Sverdlov called a family a social unit based on kinship and marriage (which corresponds to the Marxist doctrine), built on mutual love, equality of men and women, unity of interests of the individual and society and performing the functions of procreation, upbringing and mutual assistance [2].

A similar approach is demonstrated by R. Manakova, who defines a family as a small social group based on marriage, kinship, adoption and other forms of adoption of children for upbringing, connected by commonality of life, as well as family rights and responsibilities [3]. We believe the second definition is more preferable, devoid of illegal and difficult-to-define categories, such as love, mutual assistance, etc.

But the most difficult question is whether a family can be considered an independent subject of law or at least a quasi-subject entity. The current Kazakhstan marriage and family legislation does not explicitly state that a family is a subject of law. Traditionally, the subjects of law include citizens and legal entities, public entities. At the same time, other legal entities have recently begun to appear. In fact, such legal personality can be recognized for holding entities.

But the well-known classification of civil law relations by object into property and non-property does not imply the inclusion of corporate relations. O. Krasavchikov wrote that "a family, as it is known, is not a legal entity. At the same time, family members, without losing their individuality, jointly acquire some legal opportunities and encumbrances, legally reflecting their relationship with each other and with third parties" [4]. Based on this, it can be assumed that a family is a kind of quasi-legal entity that has common features with a corporate legal entity. This argument is supported by the norms of Article 33 of the The Code of the Republic of Kazakhstan on Marriage (Matrimony) and Family of the Republic of Kazakhstan (CRKMF) and Article 223 of the Civil Code of the Republic of Kazakhstan dated December 27, 1994 (hereinafter referred to as the Civil Code of the Republic of Kazakhstan), which establish the rule on joint property of spouses [5]. Thus, the property jointly acquired by the spouses includes the property acquired by the spouses during the marriage. It does not include the property of each of the spouses that belonged to him/her before marriage, as well as received by one of the spouses during marriage as a gift or by inheritance. Accordingly, it can be argued that there is a separate property of the spouses as a private legal community and the presence of the property of each of the spouses. We believe it is possible to define a family as a family-legal community, which is characterized by some features peculiar to civil law corporations.

Confirmation of the stated position can be found in judicial practice. Thus, in one of the cases, the Pavlodar City Court indicated that a young family acts as a single subject of legal relations [6]. In another case, the Rudny City Court of Kostanay region indicated that the income received from entrepreneurial activity during the joint residence of the spouses was spent jointly for family needs, and in order to impose on the spouse the obligation to repay borrowed funds, it must be established that the obligation was common, that is, as it follows from the paragraph 2 of the article 34 of the CRKMF, originated on the initiative of both spouses in the interests of a family, or is an obligation of one of the spouses, according to which all received assets were used for the needs of the family [7]. In addition, according to the paragraph 1 of the article 34 of the CRKMF, the management of the common property is carried out by mutual consent of all spouses, that is, the family has a management system, which is one of the signs of a corporation. Any of the spouses can act on behalf of the family.

Thus, in relation to other persons, a family as a private legal community (family legal community) acts as a single entity. In addition, it is worth noting such sign of a family as the need for state registration. The basis of a family is formed primarily by the union of a man and a woman. According to the article 13 of the CRKMF, the rights and obligations of spouses arise from the date of state registration of marriage in the civil registry offices. Kazakhstan legislation recognizes only marriage registered in accordance with the established procedure.

Continuing the study of the family, we note that in the paragraph 29 of the article 1 of the CRKMF, according to which a family is "a group of persons connected by property and personal non–property rights and obligations arising from marriage (matrimony), kinship,

property, adoption or other form of adoption of children for upbringing and designed to promote the strengthening and development of family relations". Thus, family relationships can only be built within the family. Persons who are not related to each other by kinship, marriage, property or adoption cannot enter into family relations. Thus, since a family is not recognized as an independent legal entity in the domestic legislation, taking into account the above arguments, we believe it is possible to consider a family as a quasi-legal entity, similarly with holdings or other quasi-subject entities.

Recent publications review. The theoretical basis of the study was the works of leading pre-revolutionary Russian, Soviet, modern Russian and Kazakhstan scientists, whose works served as a necessary basis for conducting a comparative analysis of family law institutions and identifying the essence of family relations, as well as researchers who directly devoted their works to the sciences of the theory of law, civil and family law. These are such researchers as S. Alekseev, M. Antokolskaya, M. Baideldinova, G. Bogdanova, A. Bogolyubov, S. Boshno, M. Braginsky, S. Bratus, Ya. Webers, V. Vitryansky, V. Gribanov, O. Gridneva, M. Gusev, F. Dalpane, A. Didenko, I. Zhilinkova, V. Zalessky, N. Zvenigorodskaya, A. Ignatenko, O. Ioffe, M. Kazantsev, Sh. Kalabekova, G. Kerimov, A. Kiselev, O. Kosova, L. Krasavchikova, A. Kuzhilina, E. Kurumshieva, A. Kuttygalieva, A. Lozovsky, A. Makovsky, L. Maksimovich, V. Maslov, D. Medvedev, D. Meyer, L. Mikheeva, E. Mitryakova, M. Mukanova, A. Murunova, E. Mukhamedzhanov, A. Nechaeva, O. Nizamieva, I. Novitsky, S. Nugmanov, A. Parchment, L. Petrazhitsky, I. Pokrovsky, M. Prudnikova, L. Pchelintseva, D. Rashidkhanova, N. Rulan, V. Ryasentsev, A. Saidov, G. Sverdlov, B. Sisenova, A. Slepakova, N. Sosipatrova, A. Spirkin, A. Stremoukhov, Sh. Stepanyan, E. Sukhanov, L. Syukiyainen, H. Tarusina, A. Tikhomirov, I. Tokmambetova, Zh. Toriya, G. Turysbekova, D. Ulanova, G. Uakpaeva, N. Ulchenko, O. Khazova, G. Shershenevich, D. Shestakov, I. Shipachev, E. Chefranova, etc.

In Kazakhstan, in recent years, several dissertation studies have been conducted for the degree of Doctor of Philosophy (Ph.D.) on the problems of family institutions.

Methodological foundations of the study. The theoretical and methodological basis of the research falls in the organic combination of the requirements of general scientific and private scientific methodology. In the research process, the dissertator applied the general scientific dialectical method of cognition, as well as private scientific methods: comparative legal, system analysis, formal legal, logical, historical and legal.

The article's objective is to establish a range of contracts in family law regulating both property and non-property relations of subjects of family legal relations, to identify their features based on the analysis of the legal consequences of concluding such contracts due not only to their non-property nature, but also to the family-legal nature, as well as the modernization of these articles for compliance with the concept of mutual family obligations, this is it will serve as additional protection for disabled and needy family members.

Discussion. Understanding the legal status of the family is important in law enforcement activities, since the CRKMF regulates family legal relations, their content, the rights and obligations of the parties, as well as any other aspects that relate to the life of the family.

There are the following methods of state-legal regulation of family relations and their features: prohibitions: have certainty; are intended for direct participants in family relations or for persons intending to become their participants; are associated with the onset of adverse legal consequences or with the possibility of their occurrence; permissions: less defined; addressed to other persons besides the participants; related to procedural norms.

The main aspect of such regulation is the compilation of prohibitions and permits. Each of the spouses independently determines the framework in which the relationship takes place, while the second, agreeing, undertakes to fulfill all the requirements.

The grounds for the emergence, modification and termination of family legal relations are legal facts: a) actions – lawful and unlawful. The legitimate ones include, for example, the registration of marriage, the conclusion of a marriage contract, etc., the illegal ones are the evasion of alimony; b) events – death, illness, which led to the recognition of a citizen as incapacitated; c) sometimes there are very common in family law special types of legal facts – states, for example, kinship, property, adoption, marriage, neediness, etc.

Family legal relations are a rather extensive concept, and it is possible to recognize one or more criteria for such an action only by characteristic signs. Family legal relations have the following features:

– this type of interaction is of public importance and plays an important role in the formation of society;

– rights arise only between certain persons;

– certain legal circumstances form both the rights of each of the participants in the process and his/her obligations;

– these rights operate inextricably with existing regulations and legislation;

– family legal relations, their classification and features depend solely on the will of all parties;

– family legal relations and legal facts based at the time of their action are regulated by law and are dependent on all amendments.

Despite the obvious signs, family legal relations have features that distinguish them in a variety of types of relationships.

So, family legal relations can be classified as follows:

– relative with an absolute nature of protection (for example, legal relations regarding the upbringing of children);

– absolute with some signs of relative (for example, legal relations regarding the common joint property of the spouses);

– relative, not having an absolute nature of protection (for example, personal non-property relations between spouses).

In family legal relations, the subjects are each other's spouses, close relatives, parents or guardians, that is, they are related to each other or in civil relations. Family legal relations, the concept and types of which are predetermined by the CRKMF, are characterized by long-term interaction and are interrupted only after the termination of the relationship at the legal level.

The transfer of any rights of participants in family relationships is strictly prohibited, since family legal relations, the types of which are both non-property and property, are based precisely on personal interaction. The key factor of this interaction is the trusting relationship between each of the members of this cell of society.

The classification and nuances of family legal relations indicate that only personal ties between family members can serve as the emergence of such interaction. Despite the fact that one of the types of relations is of property nature, they can arise only in the case of personal contacts of participants in the entire process. Any family legal relations and their general characteristics are based precisely on the types of such contacts. Each of them has its own characteristics, but they are all dependent on each other and are completely based on them. Without this factor, no family norms and acts can be applied to citizens. In addition, family relationships are built on trust and respect for each other, and as soon as this sign disappears, the family actually ceases to exist. In this case, the family turns into a fiction, which, in principle, generates certain negative legal consequences (marriage, for example, can be dissolved without clarifying the motives, marital property ceases to be considered jointly acquired, custody and adoption can be canceled, etc.).

Each of these types has its own distinctive features, their presence in matters concerning the institution of the family is mandatory. M. Mukanova and E. Arutyunyan rightly note that for proper regulation of relations in the family sphere, it is necessary to investigate the nature of the emerging relations, to identify their legal essence [9]. Like any legal relationship, family relations include three elements: content, subject and object.

The content of family legal relations is formed by the rights and obligations of the participants in these relations. For example, the responsibilities of parents for the maintenance of minor children correspond to the child's right to receive alimony. These rights and obligations are mutual. The rights and obligations of participants in family legal relations cannot be transferred to other persons either by law or by contract, since they are inseparable from the identity of their bearers. So, for example, if a minor child's parents die, then a child in need of assistance acquires the right to receive alimony from his grandparents who have the necessary funds for this (the article 152 of the CRKMF). But the obligation to maintain a child does not pass from parents to grandparents in succession, the obligation of grandparents to support their needy minor grandchildren is independent, not passing from parents and arising only if a minor grandson is unable to receive maintenance from his parents. In our opinion, linking the duties of grandparents with the inability of grandchildren to receive maintenance from able-bodied parents and siblings contradicts the general idea of receiving support in the family. In this regard, we propose to state the article 152 of the CRKMF in the following wording: "Minor grandchildren in need of assistance have the right to receive alimony in court

from their grandparents who have the necessary funds for this".

Taking into account the existence of mutual family obligations, we propose to amend the article 153 of the CRKMF and state it in the following wording: "Disabled grandparents in need of assistance have the right to demand in court alimony from their able-bodied adult grandchildren who have the necessary means for this".

The subjects of family legal relations can only be individuals, family members connected by marriage, kinship, property, adoption or other means of placement of children left without parental care, or former family members. The relations that arise between family members and state bodies (for example, under the registration of acts of civil status or the placement of children left without parental care) are not private law, but public law. Each of the subjects of family legal relations is endowed with family legal capacity, which, like civil, arises from the moment of birth and ceases with the death of a person. The CRKMF does not decipher the concepts of family legal capacity and legal capacity and does not disclose the relationship of these concepts in civil and family law. In this regard, based on the provision of the article 5 of the CRKMF, it can be concluded that these concepts in civil and family law have no special differences.

Interpretations of these concepts are given in the legal literature. For instance, J. Webers defines family legal capacity as the ability of an individual "in accordance with the law to perform family legal acts and have personal non-property and property rights and obligations provided for by the legislation on marriage and family", and family legal capacity as "the ability to acquire and exercise family rights and obligations" [10].

In addition, it should be borne in mind that participants in family legal relations may be persons who do not have civil legal capacity, for example, a minor father can independently file a claim for establishing paternity against his child from the age of 14; when resolving some family issues in court, for example, when determining the child's place of residence when the parents divorce, the consent of the child is required if he has reached the age of 10.

The objects of family legal relations are things and actions. Things act as objects of property relations. For example, when dividing the property of spouses, the objects are movable and immovable things, income, etc.; in alimony obligations the object is cash paid as interest on income or in a fixed amount. Actions are objects in personal legal relations, for example, between spouses it is the choice of surname, occupation, etc.

Any family legal relations, the subjects, objects and content of which are strictly defined by the CRKMF and are clearly regulated by law and they are based, first of all, on interaction in the family, which is understood as a separate cell of society, all participants of which are linked by blood or voluntary consent to receive such a status. It is generally believed that everyone who is a participant in such contact is called a "family member". The state does not establish a clear definition of this concept, however, everyone who is legally or blood related can call himself a participant in such a process and, accordingly, a member of a certain family.

Existing de facto and legally family legal relations, the concept, structure and types of which fully comply with the current legislation, have features related specifically to the content of the relationship itself. Each participant in the interaction has not only special rights, but also obligations that all participants must fulfill under almost any circumstances. The subject composition of family relations is formed only by individuals. State bodies, officials, legal entities, unlike civil legal relations, cannot be subjects of family relations. Participants in most family relationships can be both capable and incapacitated and limited capable persons (including foreign citizens and stateless persons). Thus, the emergence of family relations is due to special circumstances, which include: kinship, marriage, adoption of children for upbringing.

Family legal relations are, first of all, personal property or non-property relations between spouses or immediate relatives. We offer a classification of types of family legal relations in accordance with the norms of the CRKMF.

Personal non – property relations are divided into:

– personal legal relations between spouses;

– personal legal relations between parents and children (adoptive parents and adopted);

– personal legal relations between other family members.

Property relations can be classified:

a) on a subject basis:

– property legal relations between spouses;

– property relations between parents and children;

– property relations between other family members;

b) in relation to the property:

– mandatory (for example, alimony);

– property law (property relations).

Let's consider each of the listed types.

Non-property relations of a personal nature involve the conclusion or dissolution of marriage, the birth of a child or his adoption, and also include decisions that the spouses make together – for example, the choice of a surname and other issues related to living together. Here is also the fulfillment of responsibilities for the upbringing of the child, his education and other important aspects of life. Personal non-property legal relations of family members are regulated by the norms of law relations between family members regarding intangible benefits.

The list of intangible benefits is contained in the paragraph 3 of the article 115 of the Civil Code of the Republic of Kazakhstan. These include life and health, personal dignity, personal integrity, honor and good name, business reputation, privacy, personal and family secrets, the right to free movement, choice of place of residence and residence, the right to a name, the right of authorship, other personal non-property rights and other intangible benefits.

L. Krasavchikova divides intangible benefits into two groups: the rights that ensure the physical existence of citizens (the right to life, health, a favorable environment, etc.) and the rights that ensure the social existence of a person (the right to a name, honor, dignity, personal and family secrets, freedom of movement) [11].

Since intangible benefits cannot be measured by economic, physical, or other indicators, therefore personal non-property relations have no economic content and are not of a material nature. Despite the fact that personal non-property relations are predominant in the family, since they are determined by the very essence of marriage, kinship, based, as a rule, on love, mutual understanding and mutual respect, most of them are outside the scope of legal regulation.

Remaining in the existing paradigm, we will consider the legal regulation of personal non-property relations of spouses, since in family the relations of spouses, in our opinion, are decisive, since whatever content we put into the concept of family, in any case we are talking about community, and the core of this union is the community of spouses. These relationships, of course, have a property aspect, but in reality personal relationships come to the fore. It is well known that the law is only able to regulate the relations of the latter category to an extremely limited extent, which is also true in relation to the relations of spouses.

The personal rights and obligations of spouses are inextricably linked with their personality, and therefore they are inalienable and non-transferable in any way: neither by agreement, nor by universal succession, nor in any other way. The CRKMF enshrines the following personal non-property rights:

1) the right of the spouse to choose the type of occupation, profession, place of residence and residence. This means that each spouse, guided by their abilities, interests, opportunities and available knowledge, independently chooses the sphere of their labor and creative activity. The other spouse can only give advice and recommendations on this issue, but his opinion and objections have no legal significance.

The right to freely choose their place of residence and place of stay means that spouses are not obliged to live together or follow each other when one of the spouses changes their place of residence (for example, in connection with enrollment in a public position or studying in another locality). This also includes the right of the spouse to choose citizenship. The independence of a spouse's choice of citizenship from the desire of another spouse is provided for in the article 7 of the Law of the Republic of Kazakhstan dated December 20, 1991 № 1017-XII "On Citizenship of the Republic of Kazakhstan": the conclusion or dissolution of a marriage between a citizen of the Republic of Kazakhstan and a person who does not have citizenship of the Republic of Kazakhstan does not entail a change in the citizenship of these persons; a change in citizenship by one of the spouses does not entail for a change in the citizenship of the other spouse [12]. These rights of each spouse correspond to the obligation of the other spouse not to cause obstacles in the implementation of their personal non-property rights;

2) the spouse's right to divorce (the article 14 of the CRKMF). As it has been noted more than once, one of the principles of family law is the voluntary nature of the marriage union. This means, in particular, the inadmissibility of forced marriage, so both spouses are entitled to terminate the marriage at any time. The other spouse has the obligation not to

prevent him from exercising this right (for example, by avoiding the dissolution of marriage in the registry office, despite the absence of objections to the divorce);

3) the right of the spouse to appoint him as a guardian (trustee) of the child. This right also corresponds to the obligation of the other spouse not to interfere with the exercise of his right, since the decision of the guardianship and guardianship authority is made taking into account how the family members of the future guardian (trustee) treat the child (the paragraph 3 of the Article 122 of the CRKMF);

4) the right of spouses to jointly resolve issues of family life: issues of motherhood, fatherhood, upbringing and education of children, distribution of the family budget, acquisition of property and others.

The paragraph 4 of the article 30 of the CRKMF also provides for the duty of spouses to build their relationships in the family on the basis of mutual respect and mutual assistance, to promote the well-being and strengthening of the family, to take care of the welfare and development of their children.

The latter right and obligation are declarative in nature, since the legislation does not provide for mechanisms for their enforcement and the possibility of applying sanctions for their violation. After all, if one of the spouses has appropriated the right to resolve issues of family life, then the law does not provide for an effective way to force the spouses to solve them together. It is also impossible to oblige a spouse to respect another spouse, since this relates to the sphere of feelings and may not have an objective expression. If disrespect has received an objective form, then the norms of criminal law, not family law, will already be applied here. However, in some cases, violation of such rights and non-compliance with obligations can have a negative impact on the offending spouse. Thus, according to the paragraph 3, the paragraph 1 of the the article 150 of the CRKMF, in case of improper behavior in the family of a disabled spouse in need of assistance, the court may release the other spouse from the obligation to maintain him.

Another personal non-property right of spouses is the right to choose a surname at the conclusion and dissolution of marriage. Each of the spouses decides for himself what surname he (she) should have, regardless of the consent of the other spouse or third parties (for example, their parents or other relatives). The other spouse has an obligation not to exert unlawful influence and not to abuse his other rights in order to obtain the necessary solution.

At the conclusion of marriage (matrimony), the spouses, at will, choose the surname of one of them as a common surname, either each of the spouses retains his premarital surname, or one (both) joins the surname of the other spouse to his surname. The combination of surnames is not allowed if the premarital surname of at least one of the spouses is double. The surname of one of the spouses or the surname formed by joining the wife’s surname to the husband’s surname may be recorded as the common surname of the spouses. The common surname of the spouses may consist of no more than two surnames connected when writing with a hyphen. In case of divorce, each of the spouses has the right to keep the surname that he acquired when marrying, or to restore his premarital surname regardless of the consent of the other spouse (the paragraph 1 of the article 31 of the CRKMF).

Having outlined the issues of personal non-property relations in the family, we will proceed to the study of property relations, which also develop between all family members, but the most common and significant are the relations between spouses, since they are one of the most important and painful issues of family law. Property relations between spouses presuppose relations regarding the division of property acquired in marriage, the payment of alimony for the maintenance of a spouse, including the former, and others. The marriage and family legislation of the Republic of Kazakhstan provides for the possibility of spouses to settle their property relations both through a marriage contract and without concluding one, based on the norms of the CRKMF.

The paragraph 1 of the article 32 of the CRKMF establishes the following: "The legal regime of the spouses’ property is the regime of their common joint property, unless otherwise established by the marriage contract." By the way, a similar approach can be observed in other post-Soviet republics. The article 31 of the Family Code of Azerbaijan states: "The regime of joint property of spouses is considered the legal regime of their property. The legal regime of the spouses’ property is valid, unless the marriage contract provides for another case." The article 23 of the Family Code of Belarus states: "The property acquired by the spouses during the marriage, regardless of which of the spouses it was acquired or on whom or by whom of the spouses’ funds were deposited, is their common joint property" [13], etc.

The paragraph 1 of the article 41 of the CRKMF states: "By a marriage contract, spouses have the right to change the regime of common joint ownership established by the laws of the Republic of Kazakhstan, to establish a regime of joint, shared or separate ownership of all the property of the spouses, its separate types or the property of each of the spouses. A prenuptial agreement can be concluded both with respect to the existing and future property of the spouses".

The regime of common property established by the norms of the CRKMF does not require additional settlement by a marriage contract, if we are talking about the application of this regime on a general basis, that is, without exclusion or addition of new conditions. This means that the regime of community of property, being a legal regime, will always be applied "by default", even in the absence of a marriage contract [14]. A marriage contract, however, may extend the effect of the community regime to the property that is defined by law as being in separate ownership of the spouses, or, conversely, limit the effect of the legal regime on certain objects. In the same case, when the regime of community of property for some reason does not suit the parties, this regime can be replaced by another through a marriage contract.

Let us consider in more detail what the legal regime of marital property established by the national marriage and family legislation is, and analyze the consequences of its change to one or another regime specified in the article 42 of the CRKMF.

M. Baideldinova and F. Dalpane rightly note [15] that the property regimes of spouses are numerous and diverse, and for the deepest understanding of the essence of these regimes, to identify the relationship between them, their classification should be carried out. In this paper, an attempt is made to classify by generalizing and systematizing different positions of legal scholars, with the justification of their own view. Thus, V. Maslov proposes to divide all marital property regimes into two main groups: compatibility regimes and separation regimes [16]. L. Maksimovich adheres to the same position, emphasizing, however, also the presence of "combined regimes derived from them" [17]. At the same time, I. Zhilinkova suggests taking into account the third component when classifying: the mode of "conditional" or "deferred" community (deferred community) [18].

Having studied the property regimes of spouses established by the marriage and family legislation of the Republic of Kazakhstan, the positions of scientists set out in the legal literature, we consider it possible to systematize them as follows: the regime of joint ownership (common joint ownership and common shared ownership) and the regime of separation.

The paragraph 1 of the article 33 of the CRKMF establishes: "The property acquired by the spouses during marriage is their common joint property".

According to the paragraph 2 of the article 38 of the CRKMF, the court has the right to depart from the beginning of equality of the spouses' shares in their common property based on the interests of minor children. However, in modern law enforcement practice, this rule is rarely applied, since the plaintiff must provide extraordinary evidence pointing to the interests of children, although the customary law of the Kazakhs, which regulated the property rights of women mothers, protected them to a certain extent. So, if during the divorce of the spouses the children remained with the mother, then the father allocated part of his property in their favor and the wife managed this property under the condition that she would not remarry and would not move to live with her relatives [19].

Conclusions. So we believe that it is precisely such norms that can most fully protect the interests of minor children when a marriage is dissolved between parents, and in this regard we believe it is possible to implement them into modern national marriage and family legislation.

The regime of common shared ownership is established by the spouses in the marriage contract, in which the spouses have the right to indicate that the property will be in common joint ownership, for example, three years after the marriage or ten years after the birth of the child, etc.). In addition, the spouses have the right to specify in the marriage contract not all, but only part their property and even a separate thing as an object of joint ownership.

Under the above-described regime of common joint ownership, the spouses' shares in their property are not allocated, and when dividing such property, the spouses have the right to equal parts of it. In the case of shared ownership, the situation is different. Spouses have the right to establish a regime of shared ownership of all or part of the property, strictly determining which share (part, percentage) belongs to each of them, and, accordingly, will belong to the division of property. This means that the spouses will have the right to share this property, but each of the spouses will be able to dispose of their share.

The size of the share in the marriage contract can be determined depending on the income of the relevant spouse or depending on his financial participation in the acquisition of this property [20]. The basis on which the spouse receives this or that share may not be described in the marriage contract at all. The parties, however, should adhere to the condition established by law that none of the parties should be in an extremely unfavorable financial situation. Otherwise, such a contract may be fully or partially invalidated by the court, in accordance with the paragraph 2 of the article 43 of the CRKMF.

Unlike the regime of common ownership, in which all or part of the property of the spouses forms the so-called common property fund, the separation regime implies the absence of any common fund at all. This has its advantages and disadvantages. The advantages are to simplify the proceedings for the judge conducting the divorce proceedings between the spouses who have established such a property regime. The procedure for dividing property is automatically omitted: the property has never been shared. The debts of each of the spouses and other obligations in favor of third parties are also obligations of each of the parties separately.

The disadvantage of such a regime, however, is following. In the event that one of the spouses does not have his own income for any reason (in particular, due to disability, child care or housekeeping), upon the dissolution of the marriage, he will be left with nothing, since he will not have the right to a share in the jointly acquired property. Actually, there will be no property that can be considered jointly acquired. The second establishes certain boundaries of such separation, whether it is a period of time or the occurrence of any circumstance or the inclusion in separate ownership of not all, but only part of the property of the spouses (for example, income from personal property, bank accounts, real estate, etc.).

The traditions of Kazakhstan and all other post-Soviet states, the legislative experience of some European states (France, Italy), as well as the desire of the legislator to protect the property interests of both spouses to the greatest extent allowed the Kazakh legislator to choose the regime of common joint property as a legal regime from all existing regimes. A detailed study of the regime of separate ownership is equally important, since it can become a contractual regime of the spouses' property if they conclude a prenuptial agreement.

Family legal relations, the grounds for the emergence and termination of which are discussed above, are fully regulated by the current domestic marriage and family legislation, while entirely dependent on the parties involved in their conclusion and implementation. This kind of interaction, despite clearly defined norms and the framework of the law, depends entirely on the relationship between people. Despite the fact that more and more people are trying to protect themselves with a marriage contract and other documents, trust is the main factor forming a family, creating the ground for the development of legal relations.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

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ABSTRACT

Understanding the legal status of the family is important in law enforcement. The concept of family legal relations and their types are defined by the Code of Marriage and Family of the Republic of Kazakhstan. Family legal relations in family law regulate almost all spheres of life and relations in the family. The content of family legal relations is formed by the legal and responsibilities of the participants. At the same time, the transfer of any rights of participants in family relations is strictly prohibited, since family legal relations, the types of which are both non-property and property.

Non-property relationships of a personal nature include the conclusion or dissolution of marriage, the birth of a child or its adoption, this also includes decisions that spouses make together – for example, choosing a surname and other points related to joint life. This is also where the duties of raising a child, its education and other important aspects of life are carried out.

Personal non-property legal relations of family members are regulated by law. Despite the fact that personal non-property relations prevail in the family, as they are determined by the very essence of marriage and kinship, most of them are outside the scope of legal regulation.

In this regard, the article establishes a circle of contracts in family law that regulate both property and non-property relations of the subjects of family relations, their features are revealed based on the analysis of the legal consequences of concluding such contracts, as well as those caused not only by non-property nature, but also family-law nature and modernization of the specified articles, can be additional protection for disabled family members.

Keywords: *family, family legal relations, subjects of family legal relations, property, marriage, spouses, joint property.*

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LEGAL REGULATION OF PERSONAL DATA PROTECTION IN THE COUNTRIES OF THE WORLD

Людмила Рибальченко, Олександр Косиченко, Ілля Кліницький. ПРАВОВЕ РЕГУЛЮВАННЯ ЗАХИСТУ ПЕРСОНАЛЬНИХ ДАНИХ В КРАЇНАХ СВІТУ. Відповідно до законодавства персональні дані – це відомості або сукупність відомостей про фізичну особу, яка ідентифікована або може бути конкретно ідентифікована. Технологічний прогрес створює для суспільства дедалі ширший спектр потреб і можливостей, від бізнесу до політики. В останні роки збір і обробка персональних даних все частіше використовується в усіх сферах життя людини. Стрімкий розвиток інформаційних технологій вимагає використання персональних даних не лише для роботи, а й для повсякденного життя, приватного життя, медицини тощо. Є питання щодо порушення прав людини. Тому створення надійного захисту персональних даних від незаконного використання є актуальним для суспільства.

Створення належного рівня системи захисту персональних даних є одним із важливих завдань України на міжнародному просторі. Пріоритетним напрямком побудови державно-правового регулювання захисту прав і свобод суспільства, а також інтеграції до міжнародних та європейських стандартів є вдосконалення існуючої системи захисту персональних даних. Конфіденційність персональних даних захищена Конституцією України. Відповідно до законодавства України підприємства, установи, приватні компанії, банки та інші мають право обробляти персональні дані споживачів, при цьому вони зобов'язані захищати ці дані та несуть відповідальність за порушення їх конфіденційності.

Одним із шляхів запобігання порушенням прав людини на захист персональних даних є підвищення рівня обізнаності щодо правових засад обробки та захисту персональних даних. Запровадження у вітчизняне законодавство найкращих інструментів та європейських стандартів захисту персональних даних, посилення відповідальності за його порушення та моніторинг у сфері захисту персональних даних дасть можливість підвищити та посилити захист прав громадян на невтручання в особисте життя.

Ключові слова: *персональні дані, конфіденційність інформації, захист персональних даних, розвиток інформаційних технологій.*

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Relevance of the study. The implementation of online services provides opportunities for convenient and quick collection and processing of information about a natural or legal entity. The use of personal data may be misused, illegally, which may lead to its leakage. The economic growth of the quality of life of Ukrainians, their well-being is an important component of the modern level of digitalization of society, implemented through electronic services, mobile applications, etc. Under such conditions, the vulnerability of privacy and confidentiality of personal data becomes a frequent phenomenon for violating the rights and freedom of a citizen. Illegal publication of personal data imposes responsibility on violators in accordance with the legislation of Ukraine.

The legislation of Ukraine defines the obligation of the owners to ensure the protection of personal data against accidental loss, destruction, illegal processing and illegal access to them. In Ukraine, the key document in the field of personal data protection is the Constitution of Ukraine [1], the Law of Ukraine "On the Protection of Personal Data" [2] and documents in the field of personal data protection, the Law of Ukraine "On Access to Public Information" [3], the Law of Ukraine "About information" [4]. Many other legal acts also contain provisions regulating the processing of personal data. The collection, storage, use and distribution of confidential information about a person who has not given consent to its processing is prohibited. Exceptions are cases that are defined by law and act in the interests of national security, economic well-being and human rights.

Article 32 of the Constitution of Ukraine [1] states that no one can interfere in personal and family life. Article 6 of the Law of Ukraine "On the Protection of Personal Data" [2] states that "personal data is processed for specific and lawful purposes, determined with the consent of the subject of personal data, or in cases provided for by the laws of Ukraine, in the manner established by legislation". According to Article 5 of the Law of Ukraine "On Protection of Personal Data", personal data can be classified as confidential information about a person by law or by the relevant person [2]. The issue of information security is related to information technologies that are used to ensure information security. Protection of information security consists not only in the application of unauthorized access to information, but also in the use of appropriate methods for its security and protection [14].

Recent publications review. The study of theoretical and practical aspects of personal data protection and information security dedicated to the works of Ukrainian scientists: O. Bodruk, V. Horbulin, V. Krysachenko, O. Manachinskyi, B. Parakhonskyi, T. Starodub, O. Shevchenko, O. Vlasyuk and others. Conceptual problems of information security were investigated by domestic and foreign scientists: R. Aron, K. Clausewitz, K. Hajieva, B. Liddell-Hart, N. Machiavelli, H. Moltke, K. Popper, P. Proudhon, E. Rybkin, S. Tyushkevich, M. Tsyurupa, A. Schweitzer, and others. No matter of wide number of reseaches, personal data protection and information security as scientific field is still in the conditions of the formation and requires more attention.

The article's objective is to systemize and analyze the legal regulation of personal data protection in the the foreign countries and Ukraine.

Discussion. January 28 is recognized as the International Day of Personal Data Protection. Data Protection Day is celebrated in all countries and in European countries. The establishment of such a day is related to the fact that network users do not forget to observe the rules of behavior on the Internet, which help to secure their virtual and real life and to improve the legal regulation of personal data protection at the international level.

For legal regulation in the field of personal data protection, the European Union has developed a regulation on the protection of personal data (General Data Protection Regulation, GDPR, hereinafter – the Regulation), which entered into force on May 25, 2018 [5]. According to the provisions of the Regulation, personal information is information that identifies, relates to, describes, can be linked directly or indirectly to a specific data subject or household.

The deepening of cooperation between Ukraine and the EU in the field of personal data protection is stipulated precisely in our national legislation. If it is necessary to transfer data from the EU to Ukraine, companies sign a document called Standard Contractual Clauses (SCC), which is the proper basis for data transfer in this case. In June 2021, a new version of the SCC was adopted. In June 2018, the law on the protection of personal data was signed in the USA. California Governor Jerry Brown signed the California Consumer Privacy Act 2018 (the "Act") [6]. This Privacy Act includes data security that is important to the safety and well-being of the people of California and the entire nation's economy. It should be noted that the California Consumer Privacy Act is a "victory" and a big step forward in the protection of

personal data in the United States. The Act provides new privacy rights for California consumers, including:

– the right to know about the personal information the company collects about them and how it is used and shared;

– the right to delete personal information collected from them;

– the right to refuse the sale of your personal information;

– the right to non-discrimination to exercise their rights under the CCPA [6].

Many well-known companies pay special attention to the protection of personal data. Thus, the Cisco company, with its obligations, respects the protection of the confidentiality of personal data of its employees, clients, business partners and other interests [9]. For whom, Cisco has run a global privacy program so that I can enforce and uphold high standards of privacy, selection, disclaimer, voice, privacy, privacy, transmission of personal data, and access to them of those other forms. Under the hour of collecting personal data from the entire world, Cisco is subject to ambush, which is designated by the global privacy policy. It expands on personal data, as it is processed by Cisco in the world, like electronic means, so in a familiar look, on paper wear.

The Global Privacy Policy, together with the Global Privacy Policy, the European Privacy Policy and the Business Personal Data Privacy Policy, are also intended to implement appropriate safeguards for the processing of personal data entrusted to Cisco and transferred from countries whose laws require adequate protection. This enables Cisco to share personal data globally. The general principles that establish Cisco's practices regarding the collection, use, disclosure, storage, protection, transfer, access, and other processing of personal data are as follows: authenticity, purpose limitation, proportionality, data integrity, data storage and deletion, data protection, rights of data subjects and reporting [9].

From July to September 2021, European data protection regulators (DPAs) imposed the 2 largest fines for GDPR violations:

– the Luxembourg DPA imposed a €746 million fine on Amazon (it is believed that the reason for the fine is Amazon's use of targeted advertising without proper user consent);

– the Irish DPA imposed a €225 million fine on WhatsApp due to data transparency issues.

These cases confirm a general trend – the efforts of regulators to force large companies to follow uniform rules and prevent another mass abuse during data processing.

The rapid development of information technologies takes place with large volumes of data processing, which is related to personal data, state institutions, banks, supermarkets, mobile communication devices, etc.

The functions of monitoring compliance with the legislation on the protection of personal data have been transferred to the Commissioner for Human Rights of the Verkhovna Rada of Ukraine. The processing of personal data on racial or ethnic origin, political, religious or ideological beliefs, membership in political parties and trade unions, criminal convictions, as well as data related to health, sexual life, biometric or genetic data is prohibited. The processing of these categories of personal data should take place only in exceptional cases with the provision of higher standards of both protection and compliance with the rights of the subjects of personal data. Previously, all personal data, with the exception of depersonalized data, was considered information with limited access. According to the new version of the law, information about receipt of budget funds, state or communal property by an individual in any form does not belong to information with limited access.

Indicative is the attitude towards the protection of personal data in Estonia [7], where each of its citizens has their own online account, in which they can track all requests for their personal data and know who, when and for what purpose applied to them. If a person believes that the request was unreasonable, he can file a complaint with the Personal Data Protection Inspectorate. Employees of the inspection have the right to check all state authorities for compliance with the rules of personal data protection. Since the adoption of the GDPR (General Data Protection Regulation) in Estonia, no violations and fines have been recorded. Estonia's cyber security strategy is based on 4 principles:

1) The protection and promotion of fundamental rights and freedoms in cyberspace and in the physical environment are equally important;

2) Measures to support cyber security in Estonia are considered as a stimulator of the speed of digital development, which is the basis of the socio-economic growth of the country. Security must support innovation, and innovation must support security;

3) Ensuring the security of cryptographic solutions is of unique importance to Estonia, as it is the foundation of the digital ecosystem;

4) Transparency and public trust in the state are important for a digital society. Therefore, Estonia undertakes to adhere to the principle of open public communication.

In addition to the Ministry of Defense of Estonia, national cyber defense is supported by the Cyber Defense Division of the Estonian Defense League, a unit that includes cyber security experts from both public and private institutions [7].

According to the NCSI (National Cyber Security Index) in 2021, the leaders of the level of the national cyber security index in the world were: Greece (96.1), Lithuania (93.51), Belgium (93.51), the Czech Republic (92.21) and Estonia (90,91). Regarding the level of cyber security, Estonia (99.48) ranks 2nd after the United Kingdom (99.54) in the global cyber security index among European countries in 2021 [10, 11].

In Estonia, the legal regulation of information security is provided by the Constitution of Estonia, the Law "On Public Information", the Law "On Protection of Private Data", the Law "On Cyber Security", Cyber Security Strategy for 2019-2022. Estonia's level of information security has been tested by critical situations and has shown its efficiency and effectiveness. All state bodies and private structures of the country systematically interact with each other to prevent and overcome negative consequences. The Estonian experience shows that the issue of regulating information security requires balanced multifaceted solutions.

In France, the control of compliance with the legislation in the field of personal data protection is entrusted to the National Commission for Informatization and Freedoms (Commission Nationale de l'informatique et des Libertés, CNIL) [8]. CNIL is an independent administrative body with state funding, the main task of which is to ensure compliance with human rights, inviolability of private life, and protection of personal or public freedoms in the process of implementation and use of information technologies [8]. The decision of the CNIL can be appealed in the administrative court.

The activity of the French special-purpose state bodies in the field of information security is a component of measures aimed at the implementation of three main tasks inherent in special services: diplomatic intelligence, military defense and protection of economic interests. Individual issues of information security of the state are entrusted to one of the main intelligence agencies – the General Directorate of External Security (La Direction generale de Ia securite exterieure, DGSE), which is subordinate to the Ministry of Defense [8].

Looking at the statistics in the field of personal data protection, one can see that in recent years there has been an increase in the number of appeals received to the Authorized Body regarding violations in the field of personal data protection [13].

Table 1

Violations of personal data protection

Years	Appeals received	Inspections have been carried out	Prepared protocols
2014	928	53	8
2015	638	62	3
2016	1306	76	5
2017	1211	45	34
2018	806	41	14
2019	1061	36	10
2020	2031	67	9

The value of appeals is growing at the same time as the pace of digitization is growing and in the context of a pandemic, when the volumes and risks of personal data processing are growing. Therefore, in the near future, we can reasonably expect an increase in the number of appeals to these mechanisms and their activation.

The transfer of personal data between subjects, owners and managers located in different states is becoming increasingly relevant in the digital economy. Art. 28 of the Law of Ukraine "On the Protection of Personal Data" provide that "violation of the legislation on the protection of personal data entails responsibility established by law". In addition, administrative responsibility for violations in the field of processing and protection of personal data is established by Art. 188-39 of the "Code of Ukraine on Administrative Offenses" [13, 14]. Regarding the EU, according to Article 45 of the Regulation, the transfer of personal data

is possible without restrictions: "if the European Commission has decided that a third country, a territory or one or more defined sectors within such a third country, or a relevant international organization provides an adequate level of protection". As of today, the European Commission has recognized Andorra, Argentina, Canada (certain types of organizations), Faroe Islands, Guernsey, Isle of Man, Israel, Jersey, New Zealand, Switzerland and Uruguay as such states. The transfer of personal data of EU citizens and residents to the USA is possible under a special regime [13-14].

Conclusions. Thus, in each country, appropriate legislative, regulatory documents and standards have been introduced, which are intended to regulate the protection of personal data, processing, liability for violations of protection and privacy rights.

The main risks associated with the use of modern information technologies are the irresponsibility of persons who, during processing, disclose personal data, do not ensure the integrity and confidentiality of information, lack of reliable protection of personal data against leakage and distribution.

The development of Ukrainian legislation on the protection of personal data was oriented towards European standards, which are presented in documents and international treaties of the Council of Europe and the EU. The analysis of the national legal framework on the protection of personal data shows that the legal protection of personal data in Ukraine is insufficient and needs to be updated and improved.

In the current legislation of Ukraine, the regulation of issues of responsibility for violations of personal data protection standards still needs to be refined and adapted to international standards.

Conflict of Interest and other Ethics Statements
The authors declare no conflict of interest.

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ABSTRACT

According to the legislation, personal data is information or a set of information about a natural person who is identified or can be specifically identified. Technological progress creates an ever-widening range of needs and opportunities for society, from business to politics. In recent years, the collection and processing of personal data has been increasingly used in all spheres of human life. The rapid development of information technologies requires the use of personal data not only for work, but also for everyday life, private life, medicine, etc. There are questions about the violation of human rights. Therefore, the creation of reliable protection of personal data against illegal use is relevant for society.

Creating an appropriate level of personal data protection system is one of the important tasks of Ukraine in the international space. Improving the existing system of personal data protection is a priority direction for the construction of state and legal regulation of the protection of the rights and freedoms of society, as well as integration into international and European standards. Confidentiality of personal data is protected by the Constitution of Ukraine. According to the legislation of Ukraine, enterprises, institutions, private companies, banks and others have the right to process personal data of consumers, at the same time they are obliged to protect this data and are responsible for violations of their confidentiality.

One of the ways to prevent violations of human rights to the protection of personal data is to increase the level of awareness of the legal principles of processing and protection of personal data. The introduction of the best tools and European standards for the protection of personal data into domestic legislation, strengthening of responsibility for its violations and monitoring in the field of personal data protection will provide an opportunity to increase and strengthen the protection of citizens' rights to non-interference in their personal lives.

Keywords: *personal data, confidentiality of information, protection of personal data, development of information technologies.*

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U.S. POLICE UNIONS: NEW TROUBLES AND CHALLENGES

Андрій Самотуга, Кирило Недря. ПРОФСПІЛКИ ПОЛІЦЕЙСЬКИХ США: НОВІ ПРОБЛЕМИ ТА ВИКЛИКИ. Стаття присвячена процесам та причинам трансформації поліцейського профспілкового руху у США в бік політизації на шкоду захисту трудових прав і через зловживання повноваженнями щодо захисту професійних прав поліцейських. У більшості демократичних країн працівникам правоохоронних органів гарантовано право на об'єднання у професійні спілки для захисту їхніх трудових прав та професійних інтересів, а в деяких державах – навіть право на страйк. Також це право закріплено й на рівні міжнародно-правових актів, зокрема у прийнятій 1979 р. Радою Європи Декларації про поліцію.

Авторами з'ясовано, що у США, окрім своїх традиційних функцій, поліцейські профспілки необґрунтовано розширили свої повноваження, вдаючись до таких заходів, як «убезпечення» поліцейських від кримінального переслідування, цивільних позовів та дисциплінарних проваджень за фактами неправомірної поведінки та зловживання владою, що призводило навіть до загибелі людей. Більше того, надзвичайні події із втягненням у них поліцейських завжди мають своїм наслідком значний суспільний резонанс в будь-якій країні світу, де сповідуються принципи відкритого суспільства й демократії. Особливої гостроти придають цим подіям факти судових рішень, що стосуються вини чи, навпаки, невинуватості поліцейських у протиправних, як вважає громадськість та її лідери, діях. Спостерігається своєрідний суспільний водорозділ між прибічниками та противниками жорстких поліцейських заходів, особливо коли йдеться про країни зі строкатою етнічною, расовою чи релігійною ознакою, унаочненням чого є США.

Коріння зазначеної проблеми більшість дослідників вбачають передовсім у надмірній децентралізації організації охорони правопорядку, що має наслідком відсутність єдиної системи контролю та обліку резонансних подій за участю працівників поліції, порівняно ліберальному цивільному обігу вогнепальної зброї, що тягне за собою постійні, порівняно з іншими країнами, високі показники загибелі людей як від рук поліцейських, так і самих поліцейських від рук злочинців. Нарешті, рушійною силою американських профспілок правоохоронців є величезна кількість членів та велика фінансова підтримка від обох партій, особливо під час виборів. Як наслідок, найбільш затятими противниками реформування поліцейської сфери у США виявилися саме профспілки, вбачаючи у подібних спробах з боку політиків та громадських активістів певні загрози стабільності системи соціально-правового захисту правоохоронців.

***Ключові слова**: поліція, США, профспілка, контракт, розслідування, контроль, колективні переговори, реформа, захист, критика.*

Relevance of the study. Civil and political rights, which are mostly natural ones, and with the participation (or rather, non-participation) of the government to ensure them, they belong to the negative ones. But economic, social and cultural rights are no less important for the individual. This category of rights, which, on the contrary, is classified as positive, i.e. the ensuring of active participation of the government in their guarantees, is also recorded both at the level of international legal acts and in national constitutions. It is the level of security of these rights that depends on the material and financial capabilities of the country, which, in turn, are

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formed thanks to the contributions of its citizens through the realization of such a central right of theirs in this system – the right to labor, as a result of which a special type of legal relationship arises, the actors of which there are, on the one hand, hired workers, on the other – employers of various forms of ownership. Meanwhile, the structure and content of these relations are still not considered generally accepted and universal. In the Soviet-socialist countries and, unfortunately, in some transition ones, the government remains the sole employer and regulator of labor relations. On the other hand, in the countries of established democracies and market economies, the government determines only the legal limits of such relations, and the issue of resolving conflicts between the administration and employees is left to the discretion of special mediators, which are trade unions (as a rule, independent). Instead, in authoritarian states trade unions, which were united in a kind of power vertical, played the formal role of the owner of social sphere objects of enterprises, institutions and organizations that were exclusively state-owned, and their employees had to be members of primary trade union organizations dependent on the administration in order to use a minimum set of accompanying labor rights, such as rest or rehabilitation of children, etc.

Today, despite the citizens' right to freely join trade unions to protect their labor and socio-economic rights, declared by the Constitution of Ukraine, trade unions in Ukraine, as a component of civil society on the same level as political parties and mass media, have not yet become a real factor of influence and formation of the current political and socio-economic agenda in the country. For their part, the Constitution and legislation of Ukraine establish bans on membership in trade unions for such categories of employees as judges (including judges of the Constitutional Court), members of the Supreme Council of Justice, employees of the Security Service of Ukraine, National Anti-Corruption Bureau of Ukraine, State Investigation Bureau, and military personnel of the Armed Forces of Ukraine. It is important to note that the ban on membership in trade unions also applies in parallel with the ban on membership in political parties for these categories of officials. Instead, prosecutors, police officers and, of course, civil servants in Ukraine enjoy the right to join trade unions, but they are prohibited by law from participating in such a form of protection of labor rights as a strike. Moreover, they cannot be members of political parties and engage in any political activity. Although the right to strike is guaranteed by law, for example, to the police of France and Poland; and in the USA, the first waves of police strikes took place since the beginning of the 20th century, and the most massive one was in 1974 [1].

Trying to act ahead of the American legislator in this area, the Parliamentary Assembly of the Council of Europe adopted the Declaration on the Police on May 8, 1979. The Declaration, in particular, states that Police officers shall have the choice of whether to found professional organizations, join them and play an active part therein. They may also play an active part in other organizations. A police professional organization, provided it is representative shall have the right: to take part in negotiations concerning the professional status of police officers; to be consulted on the administration of police units; to initiate legal proceedings for the benefit of a group of police officers or on behalf of a particular police officer. Membership of a police professional organization and playing an active part therein shall not be detrimental to any police officer. In case of disciplinary or penal proceedings taken against him, a police officer has the right to be heard and to be defended by a lawyer. The decision shall be taken within a reasonable time. He shall also be able to avail himself of the assistance of a professional organization to which he belongs [5].

On the one hand, the police officers' activities are always accompanied by a certain risk, as a result of which there is the possibility of harming the health and life of both persons suspected of committing offenses and the policemen themselves, as well as damage or destruction of the property of individuals and legal entities. On the other hand, extraordinary events involving the police always result in significant public resonance in any country of the world where the principles of an open society and democracy are practiced. The facts of court decisions concerning the guilt or, on the contrary, the innocence of police officers in illegal actions, as the public and its leaders believe, give these events a special relevance. After all, there is a kind of social divide between supporters and opponents of tough police measures, especially when it comes to countries with a motley ethnic, racial or religious identity, of which the United States is the convincing example.

These phenomena, namely both the prohibition and the regulation of police unions activities, including strikes, raise the problem of the use of unions by various political forces to implement their programmatic goals, or the involuntary or conscious growth of unions

themselves into active sources of political influence. This question becomes particularly acute in relation to the activities of trade unions in the ranks of law enforcement officers. In order to highlight the raised issues, we consider it expedient to highlight similar processes using the example of the US police.

Recent publications review. A fairly significant number of works are devoted to the problems of the legal status of trade unions, mainly in the field of labor law (V. Korolenko, Yu. Shchotova, D. Zinkov, F. Tsesarsky, etc.) and administrative law (A. Bilous, A. Shakirova). The issue of the participation of trade unions in the socio-legal protection of law enforcement officers and control over police activities is highlighted in the dissertation studies of V. Vasylenko, O. Synegubov, and O. Cherkunov. However, the problem analyzed in a slightly different way found its coverage in the works of American researchers: C. Fisk, L. Richardson, D. DiSalvo, B. Hodges, I. Kullgren, R. Iafolla, R. Peacock, M. Levi, P. Stinson, B. Levin, T. Fegley, et al.

As we've mentioned in previous research paper, in the 1960^{s}, police associations became more politically active, especially since they were gaining labor rights during a period of urban unrest and public hostility to the police [16, p. 61]. In a 1977 book, Stanford University political scientist Margaret Levi described police unions as a "bureaucratic insurgency" that overcame police commissioner opposition in several major cities. In some instances, the unions even served as platforms for launching the political careers of former officers and officials [13].

The research paper's objective. Hence, the question of our research will be consideration of the processes and reasons for the transformation of the police movement in the USA towards politicization to the detriment of the protection of labor rights and due to the abuse of powers to protect the professional rights of police officers.

Discussion. As some US researchers state in the debate over police unions' response to allegations of excessive force, no issue has been more controversial than statutory and contractual protections for officers accused of misconduct, with opponents criticizing such protections and police unions defending them. Despite all the public debate about police unions, there is relatively little legal research on them. Neither the legal nor the social science literature on policing and police reform has explored the opportunities and limitations provided by labor law when considering organizational change. A lack of scientific research is affecting public policy, as groups ranging from Black Lives Matter[*] to the US Department of Justice propose legislative changes that require the cooperation of police agencies. Hence, scholars have proposed "soft" changes to the law governing police labor relations to promote the transparency, accountability, and constitutionality of police practices that police reformers have championed for at least a generation [9]. Some American experts see several roots of the outlined problem, among which, we believe, it is necessary to highlight the most convincing.

Every year in the United States, more than a thousand people die at the hands of the police. This is a much higher death rate than any other developed country. First of all, such statistics are related to the fact that American police officers face a higher risk during patrols, including attacks on them. In Germany or Great Britain, the number of dead law enforcement officers from attacks by civilians over the years is one. On the other hand, in the USA, the number of dead law enforcement officers is 50 times higher. The main reason is the large number of illegal firearms. According to the American Crime Prevention Research Center, the number of illegal firearms in hands has been increasing for several years in a row, numbering more than 19 million units, which is a 304 % increase compared to the period 10 years ago [3].

For his part, Robert Peacock, Associate Professor of Florida International University, who was project leader of the US Department of Justice's International Criminal Investigative Training Assistance Program (ICITAP) in Ukraine, notes that every democratic nation has problems with misconduct and non-accountability of law enforcement agencies [12]. We cannot forget that the police has become one of the last institutions to appear in the whole world. We've had armies to deal with external threats, fire departments, judges, and prisons, but people have always been hesitant to give to one group guns and the right to take away our

[*] Black Lives Matter is a social movement in the USA, Great Britain and Canada, founded in 2013 in response to the acquittal of the police officer who killed Trayvon Martin, a black man. The mission of this organization is to eradicate white supremacy and build local initiatives to fight against violence, that is forced by the government and law enforcement officers against black communities. [https://blacklivesmatter.com/about/].

freedoms. In the case of the US, the actions of police officers remain largely unpunished, despite efforts to hold them liable for excessive power. According to a study by Philip Stinson and John Liederbach, Bowling Green University criminal justice professors, "Police integrity lost: A study of law enforcement officers arrested", the U.S. averaged just 4,4 % of cases per year between 2000 and 2014 when police officers were charged [19].

Uneven and unsystematic control over the actions of law enforcement officers is due to the US federal structure. At the national level, there is a common criminal code, but each of the 50 states also has its own criminal code and independent agencies. In addition, the US police system is decentralized, rooted in the ideas of home rule and the limitation of central authority. Only a few of America's 18,000 law enforcement agencies are federal, while most are managed and therefore controlled by the state, city, and county governments. Hence, police powers are mostly discretionary [22]. Local prosecutors and officials usually also investigate police behavior. Officer training and firing is the responsibility of municipal police departments and local sheriffs. The most difficult situation is the implementation of the centralized nationwide record of the detainees' deaths in police stations, introduced by the US Department of Justice. At the same time, the FBI does not verify any data provided by local authorities, which may not match reality. In addition, participation in the FBI program is voluntary. But the federal government, according to some authors, can primarily change federal law. For example, a bill that passed the Democratic-led House of Representatives in June, 2020 would make chokeholds a civil rights violation and suspend federal grants to jurisdictions that do not ban them [7].

Another important factor that is our research subject is the police unions' power. It is about protective contracts for officers, which are concluded by such unions. Local governments allow law enforcement officers to bargain collectively over their terms of employment, so this means that unions can also agree on the scope and content of internal disciplinary procedures. So, it can be argued that unions have set the tone for police culture in America since their inception and have at times blocked police reforms on the pretext of police workers' rights. They are mentioned only when there should be some benefit from it. For example, there is almost no discussion within the unions about allowing an officer to have a second job outside the police force. According to R. Peacock, this practice should be put to an end. "Officer Chauvin worked nights as a nightclub security guard. When I see him on video looking at the camera with glassy eyes (referring to the recording of Floyd's arrest[**]), I see an ordinary-looking officer who is so tired that he is almost a zombie during the day on the job. This is unacceptable in modern society", he emphasizes. He said Minneapolis pays police officers very well, almost twice what teachers earn, and therefore should not be allowed to do other outside jobs with rare exceptions, such as training other police officers.

In the context of Floyd's death, Bob Kroll, head of the Minneapolis police union, is a stark symbol of police union arbitrariness. Kroll wrote a letter to his union members, who defend the actions of Chauvin and other officers involved in Floyd's arrest and death, and called the current protests a "terrorist movement". In particular, Reuters reviewed police union filings and found that unions play a critical role in using political power to advance contracts that often protect officers accused of crimes. In addition, most American police unions have managed to negotiate favorable arbitration agreements in their contracts, allowing law enforcement officers guilty of wrongdoing to be reinstated.

There are also clauses that help to "forgive" past cases of offenses by a police officer two years after the incident. Unions are powered by massive membership and generous contributions from both Democrats and Republicans. Legislative initiatives can change the situation. Democrats have introduced a bill called "The Justice in Policing Act of 2020" aimed at combating police brutality and fixing cases of abuse of force across the country.

Over the past five years, as demands for reform have grown in the wake of police violence in cities like Ferguson (Missouri), Baltimore (Maryland), and now Minneapolis, police unions have been one of the most significant obstacles on the way to change. The

[**] On August 26, 2020, in Minneapolis Minnesota, an American police officer Derek Chauvin pressed his knee on the neck of an African-American detainee. As a result, the George Floyd's death caused perhaps the longest protest action in the USA since the 1960s and raised many questions about the alleged abuse of official powers and racial differences within the country's law enforcement agencies. Due to the wave of actions in Floyd's support, the Minneapolis city council even disbanded the police department.

greater the political pressure on reforms, the more defiantly trade unions often resist them. And few city officials, including liberal leaders, are able to overcome their opposition.

They aggressively defend the rights of members accused of misconduct, often in arbitration hearings that they have tried to keep behind closed doors. In addition, they have been remarkably effective at fending off broader change, using their political influence and weight to thwart efforts to improve accountability. Although union membership has halved to 10 % since the early 1980ˢ, higher membership rates in police unions give them resources to spend on campaigns and lawsuits to block reforms. Since 2014, one New York police union spent more than $1 million on local elections.

In St. Louis (Missouri), when Kim Gardner was elected attorney general in 2016, she set out to curb the city's high rate of police violence. But after she proposed establishing a unit in the prosecutor's office to independently investigate misconduct, she ran afoul of the powerful local police union. The union pressured lawmakers to reject the proposal, which many supported but never brought to a vote. Around the same time, a lawyer for the union waged a legal battle to limit prosecutors' ability to investigate police misconduct. The following year, a union leader said Ms Gardner should be removed "by force or election".

When Steve Fletcher, a Minneapolis city councilman and frequent critic of the police department, tried to divert money from hiring officers to a newly created violence prevention office, he said the police stopped responding as quickly to 911 calls from his constituents. "It's a little bit like a protection racket", Fletcher said of the union. A spokesman for the Minneapolis Police Department said he could not comment this.

Days after prosecutors in Minneapolis charged a police officer in the killing of George Floyd, the head of the city's police union condemned political leaders, accusing them of betraying their members and firing four officers without due process. "This is despicable behavior", union president Lt. Bob Kroll wrote in a letter to union members. He also called the protesters a "terrorist movement". Kroll, who has already received at least 29 complaints, also criticized the Obama administration for its "police crackdown" and praised President Trump for "putting handcuffs on criminals instead of us".

In other cases, trade unions did not resist the reforms, but made their implementation difficult. Federal intervention is often one of the few surefire ways to reform police departments. But in Cleveland, the union helped slow the implementation of reforms mandated by the federal settlement agreement order, said Jonathan Smith, a former Justice Department official who oversaw a government investigation into police practices there. He said union officials signaled to rank-and-file officers that changes should not be taken seriously, such as the requirement to report and investigate gun incidents [17].

Police unions have traditionally used their agreements to create barriers to disciplinary action against their officers. According to a paper by researchers at the University of Chicago, incidents of violent behavior in Florida sheriff's offices increased by about 40% after deputies gained collective bargaining rights, and unionization is associated with higher rates of violent misconduct, and therefore appears to be a channel of influence [6].

In many cities, including New York, unions are a political force, with their support and campaign donations coveted by both Republicans and Democrats. Legislation they support tends to pass and their candidates get elected. They insist on public displays of respect and can humiliate mayors they don't like. They defy reformers, including police chiefs, who try to fire even the worst officers. In an era when other unions are steadily declining in membership and influence, police unions are maintaining their numbers and their coffers are filling up. In Wisconsin, Republican Gov. Scott Walker campaigned successfully to eliminate union rights for most public servants, with the only exceptions being firefighters and police.

Police unions seem to be enjoying the current political paradox. Conservatives traditionally hate unions but support the police. The left criticizes aggressive policing, but often mutes its criticism of police unions, which are, after all, public sector unions that are often in deep trouble. Unions even resort to offering their members extraordinary protection. For example, officials accused of misconduct can be provided with legal aid at the city council expense and sufficient time to review the evidence before communicating with investigators. In many cases, suspended workers are guaranteed pay and disciplinary recommendations from civilian oversight boards are ignored; complaints submitted too late are rejected. Records of misconduct may be kept confidential and permanently deleted only after sixty days. Thus, one-way union contracts limit the ability of police management to discipline rank-and-file officers is by mandating that complaints against an officer, even those that were substantiated, be

deleted from the officer's record after a certain period of time. Twenty-five of the 100 largest U.S. cities have agreements that dismiss complaints if they are not filed within a certain period of time, or that prevent an officer from being disciplined if an investigation is not completed within a certain time frame, usually 90 days. For example, out of 178 contracts studied by some experts, 156 contained at least one provision that makes it difficult to legally discipline officers for misconduct [8, p. 166-167].

Concerning the already mentioned civilian oversight boards, we should note that their accelerated creation occurred in the 1960s, when the Civil Rights Movement began to oppose police misconduct in largest cities. By 2006, more than a hundred civil control bodies were founded. Some police unions have succeeded in preventing or even abolishing civilian oversight bodies, as was the case in New York and Philadelphia in the 1960s, since although they have been reinstated there. Some union contracts expressly prohibit officers from being disciplined by civilian oversight bodies, but none of the 16 cities without collective bargaining agreements do so. However, the US currently has no civilian commissions empowered to prosecute police officers; they can only make recommendations to police management. [8, p. 174, 179].

With the rise of the Black Lives Matter movement, criticism of the police has become less muted. There are even calls to liquidate its trade unions. However, the US has several tens of thousands of non-federal police agencies in its hyper-localized system, with more than seven hundred thousand officers represented by unions. Therefore, it is not easy to release them.

Some university sociologists argue that police unions are radically different from others. They write, these organizations function as lobbies to oppose the passage of accountability legislation and cover up for officer-involved misconduct. A public sector union differs from a private sector union primarily in that its negotiations necessarily involve, at least morally, a third party – the public as the taxpayer. Yet many police unions seem to have no provision for this invisible third party in their contracts and bylaws. They protect their members from the public and punish whistleblowers with even greater zeal than the leadership does. Police unions "represent hundreds of thousands of people and, with the exception of very few states, have the ability to organize without any government opposition", as they noted. They believe that the way out of the situation lies in the liquidation of police unions. Some of them have a list of ten steps to achieve this goal, including voiding contracts, mass firings in the event of unlawful delays in investigations, and federal prosecution for persistent obstruction of justice. Other proponents of such abolitionism insist that major labor unions, such as the AFL-CIO[***], sever ties with police unions.

The activities of such an organization as the International Union of Police Associations (IUPA) – the North American union of police officers, which is registered as a national union and represents law enforcement officers and support personnel in the AFL-CIO – has received a mostly negative evaluation among the public and professionals. In addition to assistance with legal representation, IUPA offers financial, insurance, medical and educational services to its members. In addition to police officers, the IUPA also represents some correctional officers and first response medics. A major investigation by the nonprofit Center for Public Integrity found that the IUPA has largely become a sham fundraising organization with little to no benefit to law enforcement. For example, in 2018, IUPA transferred only 2.7 % of the collected funds to the families of law enforcement officers. Most of its operating budget goes to the unreasonably inflated salary of its director and various advertising campaigns. The organization was named to the Tampa Bay Times' list of America's Worst Charities in 2014 due to its low spending on its mission [11]. In September 2019, more than a year before the presidential election, the union officially endorsed Trump's re-election campaign, while saying that Democratic candidates had smeared the police [21].

Some American experts agree that there is an urgent need for reform, but suggest considering more procedural steps, such as: limiting collective bargaining to non-disciplinary matters; opening negotiations to the public; encouraging departments to establish multiple unions representing more diverse views. Many analysts have called for new use-of-force protocols, which are known to save lives, but unions have rejected this proposal.

*** The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) – is the largest federation of unions in the United States. It is made up of 59 national and international unions, together representing more than 12,5 million active and retired workers. In the 21st Century, the AFL-CIO has been criticized by campaigners against police violence for its affiliation with the International Union of Police Associations (IUPA) [2].

All this would require such political will that until recently seemed unthinkable. Back in 1994, then-Senator Joe Biden worked closely with police unions to help write his big crime-fighting bill. He later credited the National Association of Police Organizations. Unions dropped their support for Biden during the Obama presidency when they saw him working on criminal justice reform. And one cannot forget the President D. Trump' speech in 2017, when he smilingly told a gathering of law enforcement officers on Long Island that he personally did not mind if they hit the heads of some suspects on the door frames of their cars. The officers applauded him, and he, for his part, felt his audience. During the 2016 presidential campaign, the The Fraternal Order of Police (FOP), a national union with 350,000 members, officially endorsed him. Just as in 1968, he supported George Wallace, the governor of Alabama, who was distinguished by far right, ultra-conservative and racist views, in particular by his defense of racial segregation in the era of the Civil Rights Movement [10].

Therefore, the coverage of the position of the Democrats led by J. Biden regarding the problems of the police, in general, and its unions, in particular, will be worthy of attention.

The police federation, which twice supported the Obama-Biden party and remained neutral in 2016, endorsed President Trump in July. Soon after, the president of this federation told the Republican convention that Biden and Senator (future vice president) Kamala Harris were "the most radical opponents of the police in history". Such a demarche marked the lowest point in a political relationship that lasted for most of Biden's political career. However, the 2020 election has also highlighted the difficulties Biden may face in achieving this goal. After all, he presents himself as a criminal justice reformer, a friend of decent police officers, and a critic of racism and mass riots. But Biden saw his official support from prominent law enforcement groups crumble as those organizations closed ranks against the reform legislation. They objected to Biden's rhetoric about "systemic racism" in policing and his promises to regulate police services with federal authority, even as reformers on the left pressed him for much bolder changes [4].

In his campaign program, Biden, criticizing his opponents, paid considerable attention to increasing the role of unions in general. It was that Republican governors and state legislatures across the country had developed anti-labor legislation to undermine the labor movement and collective bargaining. States have eroded the rights of public sector workers, who, unlike private sector workers, lack federal protections that guarantee their freedom to organize and bargain collectively. In the private sector, corporations use profits to buy back their own stock and raise CEO compensation, instead of investing in their workers and creating more quality jobs. The results were predictable: rising income inequality, stagnant real wages, loss of pensions, exploitation of workers. Employers steal about $ 15 billion a year from workers simply by paying workers less than minimum wage. In addition, workers experience huge wage losses caused by other forms of theft. For example, employers who do not pay overtime, force them to work after hours and incorrectly classified workers. At the same time, such companies receive billions of dollars in profits and pay managers tens and hundreds of millions of dollars. In addition, employers repeatedly obstruct workers' efforts to organize and bargain collectively by hiring anti-union consultants. So, the Democratic contender has proposed a plan to grow a stronger, more inclusive middle class – the backbone of the American economy – by strengthening public and private sector unions. After all, public sector unions argue that workers, including educators, social workers, firefighters and police officers, need to be confident that they can serve their communities. If elected president, Biden promised to sign the Protecting the Right to Organize Act (PRO) [20].

Introduced in February, 2021, shortly after Biden took office and supported by Democrats, the bill passed the House of Representatives on party lines but was blocked by Republicans in the Senate. Although the White House made it clear back in January that Biden would soon sign an executive order (EO) on police reforms, the changes he can make are limited without the Congress support. The executive order has since been rescinded after fierce protests from police and Republican politicians. Biden's draft EO sought to establish national accreditation standards for police departments and open a national database of "bad cops" – officers who have been found to have engaged in misconduct. But without Congress, Biden cannot limit qualified immunity, which in many cases protects police officers from civil lawsuits brought by victims of their misconduct. At the same time, police circles warned that the change in qualified immunity will have far-reaching dire consequences, increasing, on the contrary, the aggressiveness of the police. So, according to some authors, after more than a year in office, President Joe Biden still hasn't implemented the long-promised police reforms

in the US, disappointing black civil rights activists and community leaders [15].

Even they organized a collection of signatures for the corresponding petition, with the following statements and justifications for the demands: militarized police undermines public confidence in law enforcement agencies; police departments receive surplus military equipment through the Pentagon's opaque program called the "Program 1033", which allowed the transfer of equipment in amount of more than $ 7.4 billion to more than 8,000 law enforcement agencies across the country; Biden has advocated demilitarizing the police and promised to sign an executive order to do so, but now he's bowing to pressure from police unions; we must ourselves exert pressure and demand that he fulfill his promise; but this will not be enough; we must also demand that Congress pass a permanent law to demilitarize the police, ending this waste [18]. Although, in our opinion, one of the objective reasons for such a delay is the complication of the international legal order due to the full-scale war of russia against Ukraine, which requires the American top political establishment to shift more attention to foreign policy and defense affairs.

Thus, there is much work to be done to better understand police unions, their political and legal contexts, and their place in reformist or radical projects, some researchers argue. Emphasizing the role of police unions indicates a welcome move away from court-centric and formalistic approaches to police work. The high assessment of the role of trade unions in the criminal justice system reflects an important turning point in the struggle with the political economy of criminal law. In the end, they believe, one should not agree with the widespread criticism of police unions in the literature. From a formal point of view, there is usually certain regularity here: first, police unions fought to protect their members from public scrutiny and legal liability; second, police unions have repeatedly rallied to support politicians hostile to criminal justice reform, racial equality, and labor rights. But it would be a mistake to miss this criticism, another example of the widespread tendency to view criminal law as exclusive and separate from important conversations about employment policy, workers' power, and the social and political structure of society [14, p. 1400].

Conclusions. In view of the above and supporting some experts' opinions, it is necessary to state the following. By encouraging careful and critical analysis of the subject of police unions and their shortcomings, there are important lessons to be learned for both researchers and police officers. Recognizing the shortcomings of police unions should contribute to a broader understanding of labor law and its theoretical justification. That is, an awareness of "what's wrong with police unions" should help inform what type of labor legislation would be desirable, or at least what regulatory obligations should be developed to regulate police work.

At the same time, police unions must also pose difficult questions for police researchers: to what extent is the call for reform a call for "community" or "democratic" policing, which in turn rests on a particular vision of liberal reform? If so, what kinds of illiberal policies might be acceptable to ensure that regulators can suppress the police? However, because of its radical origins, should this critique redefine the preferred tactic? That is, recognizing "what's wrong with police unions" should help to understand what kind of police oversight might be sufficient and how deep the structural critique of US policing is.

The answer to these questions is not simple. Taking police unions seriously has already paid off for scholars and activists concerned about the police's role as a driver of inequality. But taking police unions seriously requires a deeper understanding of their place not only in the criminal justice system, but also in broader discussions about workers' power and law enforcement in the political economy of postindustrial capitalism.

We consider the following to be one of the main areas of further research into the problems of the location and role of US police unions in the processes of reforming the country's law enforcement system:

1) implementation of the readiness expressed by union representatives to give up protection in exchange for higher monetary compensation;

2) prospects for implementing public demands regarding the demilitarization of the law enforcement system;

3) the possibility of a future political demand to expand the powers of civilian oversight boards if police departments are deemed incompetent or unwilling to properly investigate and prosecute their officers.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

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ABSTRACT

The article deals the processes and reasons for the transformation of the police union movement in the USA towards politicization to the detriment of the protection of labor rights and due to the abuse of powers to protect the professional rights of police officers. In most democratic countries, law enforcement officers are guaranteed the right to unionize to protect their labor rights and professional interests, and in some states even the right to strike. This right is also enshrined at the level of international legal acts, in particular in the Declaration on the Police adopted by the Council of Europe in 1979. The authors found that in the US, in addition to their traditional functions, police unions have unreasonably expanded their

powers, resorting to such measures as "protecting" police officers from criminal prosecution, civil lawsuits and disciplinary proceedings for misconduct and abuse of power, which led to even to the death of people. There is a kind of social divide between supporters and opponents of strict police measures, especially when it comes to countries with a colorful ethnic, racial or religious identity, which the United States is the epitome of. Tthe driving force behind America's law enforcement unions is their massive membership and heavy bipartisan financial support, especially during elections. As a result, trade unions turned out to be the most ardent opponents of the reform of the police sphere in the USA, seeing in such attempts by politicians and public activists certain threats to the stability of the system of social and legal protection of law enforcement officers.

Keywords: *police, USA, unions, contract, investigation, control, collective bargaining, reform, protection, criticism.*

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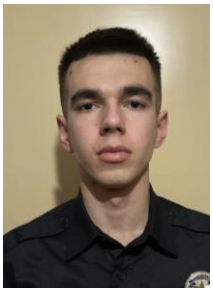

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SEPARATE ISSUES REGARDING THE DIVISION OF MOVABLE AND IMMOVABLE PROPERTY OF THE WIFE IN DIVORCE

Олена Нагорна, Карина Лагун, Микола Сятиня. ОКРЕМІ ПИТАННЯ ЩОДО ПОДІЛУ РУХОМОГО ТА НЕРУХОМОГО МАЙНА ПОДРУЖЖЯ ПРИ РОЗЛУЧЕННІ. У статті описано одну з найпоширеніших проблем сімейно-шлюбних відносин – визначення спільного майна подружжя та його розділ, що виникає при розірванні шлюбу.

В даній роботі визначено, що найпоширенішою проблемою сучасності, на жаль, є поділ майна подружжя, яке у свою чергу виникає при розірванні шлюбу. Проблем поділу майна можна уникнути завдяки своєчасному укладенню шлюбного договору, у якому поділ майна здійснюватиметься з умовами, прописаними у шлюбному договорі, тобто. ця процедура буде здійснюватися на підставі добровільної угоди. Проте, укладання шлюбного договору перестав бути поширеною практикою серед подружніх пар, які ставляться до цієї процедурі як образу почуттів, цим здійснюючи грубу помилку і ускладнюючи собі процедуру поділу майна у разі припинення шлюбних відносин, так як суперечки щодо розподілу майна практично завжди супроводжують розірвання шлюбу.

Охарактеризовано, що розділ спільного майна подружжя (колишнього подружжя) означає, як правило, припинення їхньої спільної власності, у тому числі спільною, яка в деяких випадках може стати частковою неможливості поділу майна в натурі). Розділ спільного майна тягне за собою виділення конкретного майна або його частини кожному з подружжя (колишнього подружжя), а іноді і стягнення різниці в вартості виділеного майна з одного з них на користь

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іншого, якщо розділ не був здійснений відповідно до долі чи не є рівноцінним. Досліджено правові норми, що регламентують порядок створення та поділу спільного майна подружжя у шлюбно-сімейному законодавстві України. Здійснено аналіз деяких прикладів з судової практики визначення часток подружжя в їх спільній спільній власності.

Визначено, що найпоширенішою проблемою сучасності, на жаль, є поділ майна подружжя, яке у свою чергу виникає при розірванні шлюбу. Проблем поділу майна можна уникнути завдяки своєчасному укладенню шлюбного договору, у якому поділ майна здійснюватиметься з умовами, прописаними у шлюбному договорі, тобто, ця процедура буде здійснюватися на підставі добровільної угоди. Проте, укладання шлюбного договору перестав бути поширеною практикою серед подружніх пар, які ставляться до цієї процедурі як образу почуттів, цим здійснюючи грубу помилку і ускладнюючи собі процедуру поділу майна у разі припинення шлюбних відносин, так як суперечки щодо розподілу майна практично завжди супроводжують розірвання шлюбу.

Ключові слова: *шлюб, подружжя, сімейне право, розлучення, рухоме та нерухоме майно, поділ майна.*

Relevance of the study. Today's level of development of Ukrainian society, change social and economic policy of Ukraine, integration in the international community are all factors influencing change current civil and even family legislation of our country. It should be noted that the issues of property rights and division of property between spouses are enshrined in the Constitution of Ukraine [1], the Civil Code of Ukraine [2] and the Family Code of Ukraine [3].

According to current legislation, a spouse may have both common and personal property. The current Family Code establishes that up to the property of each of the spouses may include things, as well as rights that belong to each of the spouses until marriage. As the same determining factors in relation to the property located in the time and grounds for the separate property of the spouses should be attributed the emergence of ownership rights to certain property in one of married couple. At the same time, to the property that belonged to one of the spouses you can also include property that was acquired even during marriage, but for one of the spouses' own funds that belonged to him before the moment of marriage.

It should be noted that they are available in judicial and notarial practice problems of legal regulation of the disposal of the joint joint the property of the spouses causes more and more every day topicality.

Recent publications review. The issue of actual marital relations was investigated on at the scientific level for more than ten years, in particular, problematic aspects of the division of common property in unregistered marriage was investigated in their works by O. Dzer, I. Zhilinkov, M. Antokolska, and S. Fursa. However, as practice shows, the family legislation of Ukraine contains gaps in the regulation of property relations, and therefore the detailed implementation analysis of the norms of family legislation, taking into account court practice, needs more detail study.

The article's objective is analysis and characterization of certain aspects of the division of movable and immovable property of spouses in accordance with current civil and family legislation.

Discussion. The most common modern problem, unfortunately, is the division of marital property, which in turn arises when a marriage breaks up. Property division problems can be avoided thanks to the timely conclusion of a marriage contract, in which the division of property will be carried out with the conditions prescribed in the marriage contract, i.e. this procedure will be carried out on the basis of a voluntary agreement. However, the conclusion of a marriage contract has ceased to be a common practice among married couples, who treat this procedure as an insult to feelings, thus making a gross mistake and complicating the procedure for the division of property in the event of termination of marital relations, since disputes regarding the division of property almost always accompany the dissolution of marriage [4, p. 54].

Division of joint property of spouses (former spouses) means, as a rule, the termination of their joint property, including joint property, which in some cases may become part of the impossibility of dividing property in kind). The division of joint property entails the allocation of a specific property or part of it to each of the spouses (former spouses), and sometimes the recovery of the difference in the value of the allocated property from one of them in favor of the other, if the division was not carried out in accordance with fate or is not of equal value.

If the marriage contract was not concluded, then the property acquired by the spouses during the marriage will be their joint property and will be subject to division. It is necessary to make adjustments to the definition of "common property" and define what is included in it and what is not. The list of property of each spouse is regulated by Art. 63 FC. This property

includes the property belonging to each of the spouses before marriage; received as a gift or by inheritance (also from a husband during marriage); which was bought with the own funds of one of the spouses; personal items. Current legislation recognizes the declaration of the division of joint property of spouses among themselves [5, p. 387].

This means that practically all types of movable and immovable property, on which the spouses have joint ownership, can be divided between them. Separately, it is worth noting that articles 356 of the Civil Code of Ukraine, as well as articles 60-74 of the Family Code of Ukraine and others establish not only the rights to joint property, but also the rights to have loans (debts). When dividing the joint property of spouses, the shares are recognized as equal. The Civil Code of Ukraine establishes a list of common property of spouses - this is real estate; movable things; securities; bank deposits; income received from movable and immovable property; jewelry and other luxury items; income received from labor, commercial, as a result of intellectual activity.

List of non-divisible property:

– gifted or inherited by one of the spouses. The time when the property becomes personal property (before or during the marriage) does not matter. How is an apartment purchased as a gift divided during a divorce in Ukraine? Is the gift apartment not divided in case of divorce? But even in this case there are exceptions.

– all movable and immovable property acquired before marriage.

– privatized property in the form of a residential premises (apartment, house, etc.) or a land plot, if such privatization was free of charge. However, there is an exception to the rule, and it concerns property that was privatized between 11.01.2011 and 17.05.2012. Also an exception is "privatization", which was carried out as a purchase of residential premises from the state. Such property, if it is acquired during marriage, is joint property of the spouses.

– payments under personal insurance policies for any amount.

– personal awards and prizes. But if the court finds that these premiums were obtained with the assistance of the second spouse, then monetary payments of this nature are also divided between the spouses.

– all things of personal use, including jewelry, furs, etc., are not subject to division, even if their purchase was made in marriage.

– compensation for loss or damage to personal property of one of the spouses, as well as moral damage [6, p. 54].

It does not matter which of the spouses the property is registered to. If the property is acquired during marriage, it will be recognized as joint property of the spouses. But you should take into account the nuances of such an acquisition, which are described in this article.

The division of joint property involves two methods: this is the conclusion of an agreement, optionally notarized, and obtaining ownership certificates from a notary; and in court. The statute of limitations arising from the division of joint property is three years after the dissolution of marriage in court (from the date of entry into force of the decision).

If the spouses fail to agree on the division of property, the court, at their request, decides which of the spouses will own certain property. If, in the process of property division, one of the spouses receives property that exceeds the value of the property of the other, the court awards the husband monetary compensation, the amount of which corresponds to this difference, within a certain period established by the court. To be shared between spouses as property, and their jointly acquired debts in marriage are divided into equal parts [7, p. 210].

Undoubtedly, in the process of dividing the joint property of the spouses, the presence of children in the spouses plays a decisive role, the court, based on the interests of minor children, has the right to depart from the principle of equality in the share of the property, and award the majority of the property to the person recognized as the guardian of the child.

The division of property between spouses takes place by signing a contract at a notary, as well as by court order. How to divide property after divorce? This issue is resolved at the notary if there are no disputes between the former spouses. The division of property after divorce is formalized by an agreement on the division of property of spouses. For notaries, this is a standard contract that they usually draw up in their daily practice. If the couple has a lot of different property, and there are also peculiarities: the existence of a marriage contract, special conditions for the use and disposal of property after its division, as well as other nuances, then the help of our lawyers and lawyers will be useful. Our attorneys and lawyers will be able to advise and help draft a contract, participate in negotiations with the ex-husband and his lawyer, as well as other legal assistance [8, p.35].

Division of property in court the most complex, long-lasting, therefore, it is necessary to analyze the norms of family law quite topically.

As a rule, property is divided between spouses in the following ways:

1) "in kind";

2) in the so-called "ideal particles";

3) by paying monetary compensation.

Division of property "in kind" provides for the distribution of property in such a way that specific property becomes the personal property of each of the spouses. For example, the couple acquired during the marriage: a house, a plot of land and a car. As a result of the division of property, the wife gets ownership of the house, and the husband gets a land plot and a car. In such cases, it is possible to collect additional sums of money from the man who acquires more expensive property. Such division takes place on the basis of determining the value of individual property objects and their equivalent division. The value of the property is determined by a forensic expert. The expert can also offer options for such distribution. Often, the common house of the spouses is shared "in kind" when it is technically possible. Monetary compensation**is** paid in two cases: after the illegal (arbitrary) sale of common property by one of the spouses or when one of the spouses agrees to receive monetary compensation, and the dispute between the spouses arose only regarding the amount of such compensation [9, p.377].

Therefore, the use of this method of dividing property in court is not always possible, and when it is possible, it requires a highly qualified lawyer and a convincing evidence base. To make a decision on the division of property between spouses, the court must find out all the circumstances of the case and factors that may affect its outcome. Example:

– list of property to be divided. When distributing land plots, not only the Family Code, but also the Land Code of Ukraine will be applied as a legal basis.

– when, by which of the spouses, and under what conditions the property was purchased.

– availability of credit or other debt obligations.

– determination of the real value of the property for further determination of the payment amount for the transfer of rights to its ownership or sale.

– wishes of spouses in terms of property division.

This list can be expanded depending on the situation and individual circumstances of the case. Often, when dividing property, spouses try to use their relatives to prove that the property was purchased with money they borrowed from their relatives. With the help of such loan agreements, the spouses try to prove that the property acquired during the marriage, which was bought with borrowed money, is therefore their personal property. Such agreements appear so often in cases concerning the distribution of marital property that courts in Ukraine are already used to them. And the courts in their decisions on such contracts often write the following conclusions: the fact that one of the spouses has funds borrowed from her father or mother cannot be unconditional confirmation that the disputed property was purchased with these funds without providing relevant evidence [10, p.143].

These points should be taken into account when preparing the case for trial. The wife with whom the children remained after the divorce has an increased share in the ownership of the joint property, and the property that was purchased for the use of the children is not subject to division and is automatically transferred to the party with whom the children remained during the divorce (the child’s belongings, books, furniture for the child and etc.).

If the property belongs only to the spouses, then the child in this case does not own anything. Accordingly, during the distribution of property, the share of the father, with whom the child remains, does not increase. However, during the division of the property of the spouses, the court may take into account the interests of the child who lives in a particular apartment or house. During the division of the property of the spouses, the court may leave the apartment or house to the spouse with whom the child lives, and to the other – allocate other property that corresponds to the value [11, p. 65]. If the child participated in the privatization, or otherwise became a co-owner of an apartment or house that is subject to division between spouses, then it is obvious that the child is already a co-owner of the apartment (house). Therefore, the child’s share when dividing the property of the spouses will also be taken into account by the court.

When there are reasons to take into account the interests of the child when dividing the property of the parents, then in such cases another rule applies: "the interests of the child prevail over the interests of the parents". Also, one of the parents can register his real estate for

the child in order to pay alimony. This option is possible if both parents agree [11, p. 76]. Sometimes, in the process of considering the case, the parents reached an agreement to transfer the real estate to the child and not to divide it between them. However, we advise parents to approach such an agreement with caution, since when the child reaches 18 years of age, she will have full right to dispose of this property without parental consent.

The fact of the majority or minor of children at the time of division of property or at the time of its acquisition (creation) can be of great importance for the court. Only in Ukraine it is possible to divide immovable property located on the territory of Ukraine. Such real estate cannot be divided abroad. Contracts and court decisions drawn up abroad regarding real estate in Ukraine are not accepted in Ukraine [12, p. 55]. Marriage contracts are often found in cases of property division with a foreigner. Such contracts may be valid in Ukraine, even if concluded in another country. The difference in mentality and legislation often causes many questions and difficulties in court if the marriage contract is concluded in the territory of another country. Movable property (cars, yachts, paintings, antiques, etc.) can be divided in Ukraine, as a rule, regardless of where this property is located. In some countries, there are specifics for the registration of such property, therefore, before making a decision on where and how best to arrange the division of property, it is necessary to additionally consult with the lawyers of the country where the transfer of ownership of this property will be registered.

In the legal process, the task of the court is not only to divide the property between the spouses, but also to establish the property that is not subject to joint ownership and its division, in case the spouses include this property in the claim statement. The property acquired during the separation, before the actual dissolution of the marriage, can also be excluded by the court from the claim, referring to the personal property of one of the spouses. Debt obligations are distributed together with the spouse, who must later repay his or her part of the debt, determined by the court [13, p. 76]. There are also cases when it is impossible to divide or allocate the share of one of the spouses without violating the integrity of the property (car, painting, etc.), then the court can make a decision, taking into account the interest of each party and determining the need for its use, leaving the right to whoever needs it more, and assigns compensation to the second, which is expressed in the form of providing property of equal value, or payment in money, with the condition that the husband has given his consent to receive monetary payments. If the amount is insignificant, the court may decide on the obligation to pay compensation without requiring consent. The court sets a deadline for payment of monetary compensation to one of the spouses, violation of which entails fines.

The division of common property of spouses is often faced with such a practice as falsification of documents, pursuing two goals: the first is to eliminate the division of common property through evidence that the property did not exist, or was purchased by third parties, most often relatives are indicated, or this property is not. jointly acquired; the second is to reduce the real share of the husband in the joint property, proving that the spouses have joint debts, underestimating the value of the property, etc. [14, p. 65].

It is possible to eliminate falsification of evidence during the distribution of joint property upon divorce by securing a lawsuit and imposing a seizure on disputed property. Before seizing the property, it is necessary to collect all possible documents that confirm the fact that the spouses acquired the property before the separation of the brother (documents, photos, etc.). Also, if necessary, a forensic commodity examination should be conducted in the course of the trial, it is needed in order to establish the real value of the disputed property; judicial – technical documents, handwriting examination, it is necessary to establish the statute of limitations of compliance of receipts, or to make any changes to them [15, p. 174]. In order to establish the fact of falsification of evidence, in the event that a party provides fictitious documents confirming the payment, it is necessary to send requests to the tax authority in order to clarify the fact of the existence of this organization, its location, and its field of activity.

Conclusions. Thus, the problem of dividing the property of the spouses is quite relevant. It is the contractual regulation of property relations between spouses that will avoid many complications in the event of a divorce. However, in order to implement the conditions on the contractual regime of marital property in practice, it is necessary to ensure an increase in the legal literacy of the population, so there is still a lot of work to be done in this direction. The division of marital property is a complex process due to the large number of legal nuances and individual circumstances of each family.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

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ABSTRACT

The article describes one of the most common problems of family and marital relations – the determination of the common property of the spouses and its division, which occurs in the event of a divorce. It is characterized that the division of joint property of spouses (former spouses) means, as a rule, the termination of their joint property, including joint property, which in some cases may become part of the impossibility of dividing property in kind). The division of joint property entails the allocation of a specific property or part of it to each of the spouses (former spouses), and sometimes the recovery of the difference in the value of the allocated property from one of them in favor of the other, if the division was not carried out in accordance with fate or is not of equal value. The legal norms regulating the procedure for creation and division of joint property of spouses in the marriage and family legislation of Ukraine have been studied. An analysis of some examples from the judicial practice of determining the shares of spouses in their common joint property was carried out. It was determined that the most common problem of modern times, unfortunately, is the division of property of the spouses, which in turn arises in the event of a divorce. Property division problems can be avoided thanks to the timely conclusion of a marriage contract, in which the division of property will be carried out with the conditions prescribed in the marriage contract, that is, this procedure will be carried out on the basis of a voluntary agreement. However, the conclusion of a marriage contract has ceased to be a common practice among married couples, who treat this procedure as an insult to feelings, thus making a gross mistake and complicating the procedure for the division of property in the event of termination of marital relations, since disputes regarding the division of property almost always accompany the dissolution of marriage.

Keywords: *marriage, spouse, family law, divorce, movable and immovable property, division of property.*

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PROBLEMATIC ISSUES AND PROPOSALS FOR IMPROVING THE INSTITUTION OF JUDGMENTS REVISION TO NEWLY DISCOVERED OR EXCEPTIONAL CIRCUMSTANCES

Олег Журавель. ПРОБЛЕМНІ ПИТАННЯ ТА ПРОПОЗИЦІЇ ЩОДО ВДОСКОНАЛЕННЯ ІНСТИТУТУ ПЕРЕГЛЯДУ СУДОВИХ РІШЕНЬ ЗА НОВОВИЯВЛЕНИМИ АБО ВИНЯТКОВИМИ ОБСТАВИНАМИ. Процес удосконалення законодавства складний і тривалий. Формулювання нових правових норм, а також внесення змін і доповнень до чинних нормативно-правових актів, як правило, базується на глибоких теоретичних дослідженнях питань і зроблених на їх основі аргументованих висновках. Результатом такого багатоетапного процесу, до якого поряд із законодавцями залучаються науковці та фахівці відповідних галузей права, є прийняття нормативно-правових актів, які відповідають не тільки вимогам нормотворчої техніки, але, перш за все, потребі демократичної та правової держави. Наведені міркування набувають важливого значення при перенесенні їх на процес удосконалення цивільного процесуального законодавства, яке регулює конкретну сферу суспільних відносин, що потребує максимально продуманого прийняття законодавчих рішень за результатами досліджень вчених-процесуалістів, які беруть участь у нормотворчій діяльності. процес.

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Незважаючи на високий рівень розвитку цивільно-процесуальної науки, багато проблемних питань не отримали свого однозначного вирішення. Серед останніх привертає увагу питання теоретичного осмислення стадії провадження у справах за нововиявленими обставинами, зокрема проблема визначення ключового терміну стадії цивільного процесу «Провадження у цивільних справах у зв'язку з нововиявленими обставинами» відповідно до законодавства України – поняття нововиявлених обставин.

Справа в тому, що незважаючи на значну роль цього терміна в характеристиці стадії провадження у цивільних справах за нововиявленими обставинами, у цивільному процесуальному законодавстві його визначення відсутнє. Крім того, у науковій, навчальній та навчальній літературі даному питанню не приділяється належної уваги, досі немає єдиної думки щодо змісту поняття «нововиявлені обставини». Для достатнього аналізу та дослідження даної теми необхідно звернути значну увагу на розвиток інституту перегляду судових рішень за нововиявленими обставинами, а саме відповідно до вимог Конвенції про захист прав людини та основоположних свобод та практика Європейського суду з прав людини щодо права на справедливий розгляд цивільних справ.

Ключові слова: *випадково виявлені обставини, надзвичайні обставини, цивільний процес, право на позов, судочинство в цивільному порядку.*

Relevance of the study. In the legislation of foreign countries, the practice of reviewing court decisions based on newly discovered circumstances in civil cases operates at a sufficient level, as a separate type of review of court decisions that have entered into force. The current civil procedural legislation of Ukraine also distinguishes between the review of court decisions based on newly discovered and exceptional circumstances, unlike the previous version of the Code of Criminal Procedure. After analyzing the changes made to the Civil Procedure Code of Ukraine, I concluded that in the field of reviewing court decisions on newly discovered or exceptional circumstances, on the one hand, the institution of reviewing judicial decisions on newly discovered or exceptional circumstances has been improved, and on the other hand, new issues of a theoretical and practical nature have arisen that are subject to thorough research and solution, therefore, reforming the system for reviewing judicial decisions requires detailed study and elaboration by analyzing and comparing legal norms with international standards of law.

Recent publications review. Many scientists had paid attention to the study of the problems of reviewing court decisions based on newly discovered circumstances in civil proceedings, namely: K. Pochynok, S. Senyk, V. Tertyshnikov, L. Nikolenko, D. Menyuk, A. Sultanov and others.

The article's objective is to study the concept, signs and grounds of reviewing court decisions under newly discovered or exceptional circumstances, as well as formulating a proposal for improving the institution of reviewing court decisions under newly discovered or exceptional circumstances.

Discussion. An important guarantee of the protection of human rights and freedoms in the field of civil justice is the right to review court decisions in the appeal, cassation procedure, as well as review court decisions based on newly discovered circumstances. Review of court decisions that have entered into force is an additional way to ensure the justice of a court decision, it is a backup mechanism for the protection of rights and legal interests and must fulfill its purpose when all other means of procedural and legal protection are impossible. Such types of review include the institution of review of court decisions based on newly discovered circumstances.

The current legislation provides that any court decision made by the court at the appropriate stage of civil proceedings may be subject to review under newly discovered circumstances after it has entered into force. This provision of the law is aimed at protecting the rights, freedoms and interests of private individuals, the rights and interests of legal entities in the field of public-law relations, as well as ensuring fair and effective justice. Any court decision due to the effect of the dispositive principles of civil proceedings and constitutional guarantees for judicial protection can be appealed in the appeal, cassation procedure, and in the presence of grounds established by law – in newly discovered circumstances [4, p. 90].

At the same time, the legislation, including the Code of Civil Procedure of Ukraine, does not contain a definition of the concept of "newly discovered circumstances". Therefore, this issue causes discussions in science and has different interpretations in practical activities. By newly discovered circumstances, scientists understand legal facts which have significant importance for the resolution of the case on its merits, but which were not known to either the parties during the consideration of the case in court, or to the court itself when issuing a court decision, as well as circumstances, that are equated by the legislator, to the newly discovered [5].

Newly discovered circumstances are circumstances essential to the case, which

objectively existed at the time the case was considered by the court, but were not and could not be known to the applicant, as well as to the court, at the time of the consideration of such a case [2, p. 112]. In essence, this definition of newly discovered circumstances is the formulation of the first basis for reviewing a court decision based on newly discovered circumstances, which is specified by the Civil Code of Ukraine. And scientists agree that the first circumstance, namely the circumstances essential to the case, which were not and could not be known to the person who makes the application at the time of consideration of the case, is formulated quite flexibly, in fact, as a definition of a newly discovered circumstance. For example, this circumstance covers the failure of the court to take measures to involve a person, whose rights, freedoms, interests or obligations were affected by the court decision, to participate in the administrative case, if the court did not know and could not know about the interest of such a person, and this person did not know on consideration of this case (this can be a basis for review only at the initiative of this person). In the same way, the establishment by the Constitutional Court of Ukraine of the constitutionality of a provision of a legal act erroneously not applied by the court in an administrative case can be brought under this circumstance, if the decision in it has not yet been implemented [6, p. 68].

Grounds for reviewing the court decision based on newly discovered circumstances are:

1) circumstances essential to the case, that were not established by the court and were not and could not be known to the person making the application at the time of the case consideration;

2) established by a sentence or resolution on closing criminal proceedings and releasing a person from criminal responsibility, which have entered into force, the fact of providing a knowingly incorrect expert opinion, knowingly false testimony of a witness, knowingly incorrect translation, falsity of written, physical or electronic evidence that led to the adoption of an illegal decision in this case;

3) annulment of the court decision, which became the basis for the adoption of the court decision subject to revision [12].

Grounds for reviewing court decisions due to exceptional circumstances are:

1) the unconstitutionality (constitutionality) of the law, other legal act or their separate provision, applied (not applied) by the court when deciding the case, if the court decision has not yet been implemented, established by the Constitutional Court of Ukraine;

2) determination by an international judicial institution, the jurisdiction of which is recognized by Ukraine, of Ukraine's violation of international obligations when resolving this case by the court;

3) establishment of the judge's guilt in the commission of a criminal offense by a court verdict, which has entered into force, as a result of which a court decision was passed [13].

Revision of court decisions in connection with newly discovered circumstances is not a supplement to appeal and (or) cassation methods and a type of their verification. This is an independent type of verification of the legality and validity of judicial acts. This difference lies in the nature of the grounds for revision, the objects and subjects of the latter, the competence of the court and the procedural and legal position of the persons participating in the case, the deadlines for submitting an application for revision.

According to O. Butska, the task of the proceedings based on the newly discovered circumstances is:

1) to renew the violated rights, freedoms and interests of a person in the field of public-legal relations, when the possibilities have been exhausted or mechanisms of other types of revisions cannot be applied;

2) to carry out a full thorough and objective review of the newly discovered circumstances through the implementation of the principles of the rule of law, legal certainty, dispositiveness, official clarification of all the circumstances of the case;

3) cancel an illegal and unreasonable court decision in connection with the establishment of newly discovered circumstances, excluding at the same time the possibility of canceling a resolution or a court decision that has entered into force without sufficient grounds [8].

If we consider in more detail the place and significance of the proceedings in connection with the newly discovered circumstances, we should pay attention to its specific tasks, which boil down to the following:

1) to give the court an opportunity to resolve the civil case in full accordance with the truth in the case, taking into account the fact that the circumstances that are of essential importance for the case, for reasons independent of the court, were not known to it and the act

of justice has already acquired legal force;

2) at the same time ensure the establishment of these circumstances through a comprehensive in-depth study of them with the participation of interested persons; guarantee the annulment of judicial acts that raise doubts about their legality, reasonableness, compliance with the truth in the case in connection with newly discovered circumstances, at the same time eliminate the annulment of judicial acts that have entered into legal force without sufficient grounds for that.

At the stage of consideration of the application for review of the judicial act, the court does not establish the illegality or groundlessness of the decision, but only records the presence of newly discovered circumstances, verifies the validity and timeliness of the applicant's appeal to the court for the review of the civil case in connection with the newly discovered circumstances. However, the court is obliged to establish why the judicial act was adopted without taking into account the newly discovered circumstances. A final conclusion on whether the annulled decision was illegal and unreasonable can only be made after a full investigation and consideration of the case.

The essence of the institute under investigation is to establish facts essential to the case, which were not known to the court and the applicant at the time of the adoption of the judicial act under review, for reasons independent of them, and which, as a result, raise doubts about the legality, reasonableness and veracity of this act, with the aim of cancellation of the latter with subsequent adoption of a new decision in its place, taking into account all the circumstances of the case. The essence of consideration of civil cases in connection with the newly discovered circumstances cannot be considered in full, unless the place of this type of review in the system of civil procedure, and the institution that regulates it – in the system of civil procedural law, is shown.

The location of the research institute is determined primarily by the fact that it can review judicial acts issued at any stage of civil proceedings. The correct determination of the place of review of judicial acts in connection with newly discovered circumstances in the system of civil procedure and its mediated institution in the system of civil procedural law has not only theoretical, but also great practical importance, in particular when regulating this proceeding. Only on this basis is it possible to further improve the legislation regulating the consideration of civil cases in connection with newly discovered circumstances.

So, we understand that newly discovered circumstances are legal facts that have a new significance for the consideration of the case, these facts existed from the very beginning, but were not known to the applicant, as well as circumstances that arose after the court decision entered into force and are classified by law as newly discovered circumstances. The main purpose of the proceedings under the newly discovered circumstances is to restore the violated right and cancel the illegal court decision, etc.

Proceedings based on newly discovered circumstances are an exceptional (extraordinary) type of court proceedings for the review of court decisions in connection with the discovery after they have entered into force of such circumstances, which, if they had been known to the court in a timely manner, would obviously have led to the adoption of a completely different decision by the court. Similar proceedings take place in the legal processes of Germany, France (fr. pourvoi ep revision), the USA (eng. writ of coram nobis) and others [1].

The procedural legislation of Ukraine also provides for the possibility of reviewing court decisions after they have entered into legal force. The main type of such review is a proceeding in the court of cassation instance, to which the interested participants in the proceedings have the right to address the relevant cassation complaints. At the same time, the Civil Procedural Code of Ukraine defines the right of interested parties to review a court decision that has entered into legal force in connection with newly discovered or exceptional circumstances, the list of which is defined in the legislation [10].

Revision of court decisions that have entered into legal force is possible in the presence of newly discovered or exceptional circumstances provided for by current legislation. Analysis of these circumstances shows that they are characterized by the following features:

1) were unknown to the court for reasons beyond its control;

2) essential in the case;

3) existed before the court decision in objective reality;

4) they could not be taken into account when considering the case and making a decision due to the unknown nature of the court and interested parties.

As the analysis shows, the implementation of the proceedings under the newly

discovered circumstances is provided for not only by the provisions of the Code of Criminal Procedure of Ukraine. Thus, this proceeding is provided for by the Universal Declaration of Human Rights of 1948 (Articles 7, 8, 10), the International Covenant on Civil and Political Rights of 1966 (Article 14), the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) (Article 6) of 1950, Protocol No. 7 to this Convention (Article 4). As you know, these international acts play an important role in the legal regulation of human rights, establishing their priority.

One of the international treaties that is important as a source of civil procedural law of Ukraine is the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (hereinafter referred to as the Convention for the Protection of Human Rights and Fundamental Freedoms), to which Ukraine joined in 1997. The peculiarity of this treaty is that the Convention is subject to application together with the decisions of the European Court of Human Rights, which contain the interpretation of its provisions.

The main attention should be paid to clause 1 of Art. 6 of the Criminal Code, which states that everyone has the right to a fair and public hearing of his case within a reasonable time by an independent and impartial court established by law, which will resolve a dispute regarding his rights and obligations of a civil nature. The analysis of this convention provision and the practice of the ECtHR regarding the interpretation of the relevant article allows us to conclude that the main components of the right to a fair trial are: a) access to a judicial institution unencumbered by legal and economic obstacles; b) proper judicial procedure; c) public trial; d) reasonable term of court proceedings; e) consideration of the case by an independent and impartial court established by law [7].

The Law of Ukraine "On the Implementation of Decisions and Application of the Practice of the European Court of Human Rights" dated February 23, 2006 (hereinafter – the ECHR) indicates the obligation of the state to implement the decisions of the ECHR in cases against Ukraine, with the need to eliminate the causes of Ukraine's violation of the ECHR and Protocols to it, with the introduction of European human rights standards to the Ukrainian judiciary and administrative practice, with the creation of prerequisites for reducing the number of applications to the ECtHR against Ukraine. In Art. 17 of this Law enshrines the duty of courts to apply the Criminal Procedure Code and the practice of the ECtHR as a source of law in considering cases [3].

Based on the above, we consider it necessary to draw attention to the special importance of the provisions enshrined in Art. 4 of Protocol No. 7 to the 1950 Convention. Thus, it is determined that "No one may be brought to court or punished a second time in proceedings under the jurisdiction of one and the same state for an offense for which he has already been finally acquitted or convicted in accordance with the law and procedure of this state" (clause 1); "The provisions of the previous paragraph do not prevent the resumption of the proceedings in accordance with the law and procedure of the relevant state in the presence of new or newly discovered facts or in the event of the discovery of significant deficiencies in the preliminary court proceedings that could affect the results of the proceedings" (clause 2) [11].

Comparative analysis of the content of the Civil Code of Ukraine and Art. 4 of Protocol No. 7 to the Convention of 1950 indicates that the list of circumstances defined by the CPC, under which it is possible to review court decisions that have entered into force, does not correspond to that defined by Art. 4 of Protocol No. 7 to the Convention of 1950. After all, Art. 459 of the Criminal Procedure Code of Ukraine mentions only "newly discovered or exceptional circumstances", while Art. 4 of Protocol No. 7, in addition to "newly discovered facts", also indicates "new facts", as well as "significant deficiencies in the preliminary trial, which could affect the results of the case".

Based on this, as well as the provisions of the Civil Procedure Code of Ukraine, the Law of Ukraine "On the Implementation of Decisions and Application of the Practice of the European Court of Human Rights" dated February 23, 2006, it can be considered indisputable that interested persons in civil proceedings have the right to apply to the court with a statement of opening of proceedings, and courts are obliged to open such proceedings not only in newly discovered or exceptional circumstances, but also in those that are of a new nature or in case of discovery of significant deficiencies in the previous court proceedings that could affect the results of the proceedings.

Unfortunately, as evidenced by the judicial practice in Ukraine, virtually all interested persons apply to the court with applications for review of court decisions only in connection with newly discovered or exceptional circumstances provided for by the Code of Criminal Procedure

of Ukraine. This shows that the provisions of clause 2 of Art. 4 of Protocol No. 7 are not actually used by Ukrainian lawyers or other persons who have the right to submit such a statement, whether due to ignorance of this European norm or for other reasons. Such a situation practically nullifies this European norm, significantly narrows the rights of interested persons regarding the possibility of reviewing court decisions that have entered into legal force [9].

Based on the above, as well as with the aim of eliminating this legal gap in Ukrainian procedural legislation, we consider it necessary to introduce in it the possibility of reviewing court decisions that have entered into legal force, not only in newly discovered or exceptional circumstances, but also in those that provided by Art. 4 of Protocol No. 7 to the Convention of 1950. Of course, this will not be possible unless appropriate changes and additions are made to the Civil Code of Ukraine.

Conclusions. Review of court decisions, resolutions and resolutions that have entered into legal force in connection with newly discovered circumstances is one of the independent types of their verification, verification of legality and reasonableness in civil cases.

Revision of court decisions in connection with newly discovered circumstances is not an addition to appellate and (or) cassation methods and types of their review. This is an independent type of verification of the legality and validity of judicial acts. This difference lies in the nature of the grounds for consideration, the objects and subjects of the latter, the competence of the court and the procedural legal status of the persons participating in the case, the deadlines for submitting an application for consideration.

Newly discovered circumstances are understood as legal facts of significant importance for the case, which existed at the time of the decision, but were not and could not be known to either the applicant or the court, which fulfilled all the requirements of the law regarding the collection of evidence and the establishment of the objective truth.

To resolve the issue of annulment of a decision or resolution in connection with newly discovered circumstances, it is not necessary to check the correctness of the court's application of substantive law, the implementation of certain procedural actions, the correctness of the evaluation of evidence, but it is important to establish the presence or absence of newly discovered circumstances.

When reviewing decisions in connection with the incorrect application of the norms of substantive law or a significant violation of the norms of civil procedural law, the verification activity in the court prevails. During the review in connection with the newly discovered circumstances, the materials on the circumstances already present in the case and submitted additionally are checked and evaluated.

The necessity of this institution in civil proceedings is explained by the fact that sometimes, due to the fault of one of the parties or for other reasons beyond its control, the court fails to discover the necessary facts related to the given case. Thus, the main task of reviewing court decisions based on newly discovered circumstances is to assess their justice in order to effectively restore the violated rights of individuals. The constitutional right to judicial protection is not subject to any restrictions, and the competence of the court extends to all cases of protection of rights, freedoms and interests protected by law, without exception.

During the development of the mentioned topic, the author discovered a gap where it becomes clear that the provisions of clause 2 of Art. 4 of Protocol No. 7 to the Convention on the Protection of Human Rights and Fundamental Freedoms is not taken into account and is not used by Ukrainian lawyers or other persons who have the right to submit an application for consideration of the case under newly discovered circumstances. Such a situation practically nullifies this European norm and significantly narrows the rights of interested persons regarding the possibility of reviewing court decisions that have entered into legal force.

Therefore, in order to eliminate such a shortcoming, the author proposes to make appropriate changes and additions to the Civil Code of Ukraine and to introduce the possibility of reviewing court decisions that have entered into legal force, not only under newly discovered or exceptional circumstances, but also under those provided for in Art. 4 of Protocol No. 7 to the Convention on the Protection of Human Rights and Fundamental Freedoms of 1950.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

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ABSTRACT

The article pays attention to the issue of theoretical understanding of the stage of proceedings in cases on newly discovered circumstances, in particular the problem of definition and the key term of the stage of civil process "Proceeding in civil cases in connection with newly discovered circumstances" in accordance with the legislation of Ukraine – the concept of newly discovered circumstances.

The fact is that despite the significant role of this term in characterizing the stages of civil proceedings on newly discovered circumstances, its definition is absent in civil procedural legislation. In addition, in the scientific, educational and methodological literature this issue is not given the necessary attention, there is still no consensus on the content of the concept of "newly revealed circumstances". For sufficient analysis and study of this topic, we paid considerable attention to the study of the institute for the review of judicial decisions on newly discovered circumstances, in accordance with the requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms and the practice of the European Court of Human Rights regarding the right to a fair hearing in civil cases.

Keywords: *newly discovered circumstances, exceptional circumstances, civil process, right to a fair trial, civil proceeding.*

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PROBLEMS OF LEGAL REGULATION OF ECONOMIC ACTIVITIES IN UKRAINE

Наталія Протопопова, Бісваджит Дас. ПРОБЛЕМИ ПРАВОВОГО РЕГУЛЮВАННЯ ГОСПОДАРСЬКОЇ ДІЯЛЬНОСТІ В УКРАЇНІ. У контексті динамічного розвитку господарських відносин виникає ряд питань, які взагалі не можна розглядати і вирішувати у рамках протистояння окремих правових шкіл – господарників з одного боку, цивілістів та адміністративістів – з іншого.

Час усвідомити, що жодна галузь законодавства (права) не може бути монополістом у регулюванні суспільних відносин у певній сфері. Прикладом тому є земельне, водне, екологічне, сімейне та інші галузі законодавства, що регулюють особисті немайнові та майнові відносини, які мають певні особливості, що зумовлюють їх самостійний характер і відмінність від цивільних відносин. Кінцеве завдання полягає не в тому, щоб скасувати врешті Господарський кодекс України чи домогтися поступового вихолощення сутності господарського права. Сьогодні на законодавчому рівні за участю вчених та за допомогою національної правової доктрини необхідно забезпечити насамперед високу якість регулювання відносин, які становлять основу розвитку країни, в тому числі й у царині економіки, бізнес-середовища. В іншому разі наука стикається з проблемою заперечення природного стану розвитку речей, упорядкованого ще з часів появи права як такого. Складно заперечувати відому істину, – право є регулятором суспільних відносин, відтак, воно у своїй природі обумовлене потребами людини, суспільства, видозмінюється відповідно до потреб людства. Це вказує на об'єктивну обумовленість належного правового регулювання у тій чи іншій сфері, у тому числі й у сфері господарювання, робить його залежним від середовища.

Ключові слова: *правове регулювання, господарська діяльність, актуальні проблеми правового регулювання, перспективи реформування господарської діяльності, класифікація актуальних проблем, правове забезпечення державного регулювання.*

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Relevance of the study. Economic activity is essentially a very special type of employment that covers all spheres of social life and acts as a driving force for the creative activity of citizens and, of course, is subject to significant influence and control from the state, from taxation to pricing. So, legal regulation creates the environment in which entrepreneurs operate, ensuring the protection of property rights, the fulfillment of contractual obligations, which are essential for the activities of entrepreneurs.

However, now, under the influence of global economic transformations, war in Ukraine and the world, subjects of economic activity found themselves in completely new economic conditions, which requires state authorities to build the latest effective concepts of state regulation and support of economic activity. That is why finding the optimal and effective interaction of the state and business sectors is an urgent problem, first of all, for legal reality.

Recent publications review. Solving modern issues of improving the legal regulation of economic activity in Ukraine traditionally arouses increased interest in the scientific community. Among legal scholars, it is worth noting the works of such researchers as L. Khomko, H. Kulhavets, D. Breathed, V. Makhinchuk, V. Selivanov, O. Garagonych, V. Shcherbina, B. Sorkin, K. Lebyodkin, etc.

Today, in the conditions of a pandemic and war, the very process of building economic ties has changed radically. In particular, a significant part of business in Ukraine has stopped due to the impossibility of conducting economic activities due to the occupation – factories, shops, beauty salons and cosmetic offices, gyms and group sections, shops (except household and grocery stores), markets, cafes and restaurants (except delivery), long-distance carriers, etc. Part of the enterprises moved exclusively to the online space, which also reduced the markets for the sale of goods and services, and, the amount of income from commercial business [1].

The article's objective is to investigate the problems of legal regulation of economic activity in Ukraine and ways of it's improvemrnt.

Discussion. Economic (business) legislation, which is a set of normative legal acts and legal norms that regulate relations regarding the direct implementation of economic activity and management (including organization) of such activity, is characterized by its branching and multiplicity. Today, the number of legal acts regulating various spheres of business has reached a critical mass. The existence of a codified act, which is the Economic Code of Ukraine, no longer solves the problem. There are objective (dynamism and complexity of economic life and, accordingly, legal regulation) and subjective (insufficient attention to the regulation of economic legislation by the legislator and numerous experiments in the field of economics, each of which requires special legal support) reasons for this.

It is obvious that some of the acts of economic legislation are outdated and are not able to effectively regulate economic relations in modern economic realities, so they require revision and appropriate response from the legislator.

It should be noted that the current state of legal regulation, organization and direct implementation of economic (business) activity is characterized by a number of problems, including:

– irregularity and inconsistencies in approaches to the definition of organizational and legal forms of management, types of economic (business) entities, the presence of contradictions and gaps in determining their legal status, lack of incentives regarding the corporate social responsibility of such entities;

– violation of a reasonable balance in determining the degree and limits of participation of state authorities and local self-government bodies in economic (business) relations, ineffectiveness of management of enterprises of the state and communal sectors of the economy, insufficient economic and legal incentives for the implementation of large-scale infrastructure projects on the basis of public-private partnership, imperfection approaches to the provision of state aid to economic entities, the use of separate means of state regulation and the implementation of state control and supervision in the field of economic (business) activity;

– imperfection of the procedure for consideration by the Antimonopoly Committee of Ukraine of cases of violation of legislation on the protection of economic competition, incomplete compliance of the system of control over the admissibility of state aid for competition with the legal acts of the European Union;

– insufficient level of legal support for the use of property during the organization and implementation of economic (business) activities;

– lack of clear systemic legal provisions regarding methods and legal forms of commercialization of intellectual property rights in the field of business;

– imperfection of the legal basis of accounting and financial reporting of entities

of economic (business) activity;

– insufficient legal regulation regarding the conclusion, execution and termination of contracts in the field of economic (business) activity;

– lagging of legal regulation from the existing practice and trends regarding the digitalization of economic (business) activity, the use of the latest electronic and other technologies in this activity, the spread of electronic commerce, the circulation of cryptocurrencies, the introduction of smart contracts, etc.;

– low level of ensuring the protection of the rights and legitimate interests of participants in economic (business) relations;

– imperfection of the provisions on responsibility for the commission of certain types of offenses by business entities, partial inconsistency with the needs of today of the list of grounds for such responsibility and sanctions for the commission of offenses in the field of business;

– excessive regulation and at the same time the presence of gaps, contradictions in the regulation of activities in certain sectors and spheres of the economy;

– unfavorable legal conditions for carrying out innovative, investment, foreign economic activities, integration of Ukraine into the global economic space;

– controversial definition of special management regimes (economic (business) activity in the Armed Forces of Ukraine, economic (business) activity in the state of emergency, carrying out EO, etc.).

The specified problems in the legal sphere, along with other factors, have a negative impact on the state of Ukraine's economy, which is manifested, in particular, in a high level of its "shading", limitation of entrepreneurial initiative, reduction of industrial production, low attractiveness of Ukraine for foreign investors.

It will be necessary to make changes to a significant number of normative legal acts in which there are references to the Civil Code of Ukraine. However, this is a technical job that can eventually be done, although it will take some time.

The other is more difficult:

– How to fill the gaps that will definitely arise in connection with the cancellation of the Civil Code?

– Which current or new laws will include norms related to state regulation of economic activity, without which no state with a developed economy can do?

– By what means and with the help of which mechanisms will the state influence the economy?

– What to do with the right of economic administration and the right of operational management, which, by the way, are used not only in the Civil Code of Ukraine, but also in a number of laws to indicate actually existing rights?

After all, the rejection of these rights in the current Civil Code of Ukraine and their non-acceptance by the representatives of the science of civil law, who make up the majority in the working group on the recodification of civil legislation, did not find support and confirmation in practice. The same can be said about such a business entity as an enterprise, instead of which the current Central Committee of Ukraine proposes the term "company", or about existing economic associations (associations, corporations, concerns, consortia, etc.) that are not at all are mentioned in the Central Committee of Ukraine, as they "do not fit" into the civilian understanding of the concept of a legal entity. By the way, the very term "business entity" is used in Art. 13 of the Constitution of Ukraine, part 4 of which states that the state ensures the protection of the rights of all subjects of ownership and management, the social orientation of the economy. Along the way, the question arises whether the state will be able to ensure the social orientation of the economy with the help of the Civil Code, if there is no such term as "economy" and terms derived from it in the current Central Committee of Ukraine.

We can cite many more similar examples, from which a conclusion is suggested regarding the expediency of maintaining a separate (special) legal regulation of relations in the economic sphere. Representatives of the science of economic law are perfectly aware of the need to modernize economic (business) legislation, since, apparently, no sphere of social relations in our country develops and changes as rapidly as relations in the sphere of economy. Since a lot has already been written and said about the expediency of constant improvement of economic legislation, I will only draw attention to the fact that back in 2005, scientists of the Institute of Economic and Legal Research of the National Academy of Sciences of Ukraine developed the Concept of Modernization of Economic Legislation on the basis of the

Economic Code of Ukraine (draft), which, on unfortunately, it was never implemented.

Of course, today it is already somewhat outdated, but the very fact of its development 2 years after the adoption of the Civil Code of Ukraine is evidence of the urgency of the problem of modernization of economic (business) legislation. This problem, which was at least partially solved by making changes to the Civil Code of Ukraine and other normative legal acts of economic legislation, became even more urgent 16 years after the adoption of the Civil Code of Ukraine.

The problem of codification of economic (business) legislation has recently been hotly discussed among business scientists. Scientists express their vision and offer different ways of solving it, relying on the experience of those countries in which, along with civil codes, there are special, as a rule, codified legal acts, the norms of which regulate relations in the economic sphere – trade, commercial, economic, business codes, and the application of which in practice has proven its viability.

The main thing, in our opinion, is not whether Ukraine is capable of developing and adopting such a special code. It is definitely capable and we have a significant potential for that. It is important that representatives of our authorities, primarily the Cabinet of Ministers of Ukraine, the Ministry of Justice and other specialized ministries of Ukraine, show interest in this problem and take the necessary measures to create a working group to develop such a code [4].

At the current stage, Ukraine is going through a complex process of forming a new economic legal order, which is characterized, on the one hand, by the rapid development of economic legal relations, and on the other, by the presence of certain problems in law-making and legal practice when solving issues of legal regulation of economic activity in the conditions of the transition to the market economy [2]. In addition, a complete restructuring of the economic system taking into account the challenges of today, is important. Now it is extremely important to take into account the experience of the international community, as well as to build our own model of economic activity, adaptation to new economic conditions. This must be done in a fairly short period of time.

The draft Law No. 8058 "On accelerated review of instruments of state regulation of economic activity" is registered on the VRU website. Its purpose is to create a favorable environment for the accelerated development of business entities and economic growth of Ukraine. Thus, it is proposed to establish the principles of a quick and high-quality revision of the instruments of state regulation of economic activity. In particular, they plan to establish a Commission on accelerated revision of instruments of state regulation of economic activity. She will [1]:

– carry out an analysis of the application of tools of state regulation of economic activity by state authorities that shape policy in the relevant field;

– to make decisions regarding the approval of an exclusive list of instruments of state regulation of economic activity in the relevant field and a plan for converting licenses, permitting documents, the results of the provision of administrative services included in such a list, and other public services into electronic form;

– to make decisions on the approval of draft acts that ensure the transfer into electronic form of licenses, documents of a permissive nature, the results of the provision of administrative services, included in the exclusive list;

– make decisions on the approval of draft acts on the abolition of state regulation in the relevant spheres of economic activity;

– provide for the procedure for accelerated review of instruments of state regulation of economic activity and adoption of relevant decisions;

– from 01.01.2023 on the entire territory of Ukraine, establish a double requirement for the validity of instruments of state regulation: they must be defined by laws and included in the resolution on the exclusive list of state regulation;

– provide that from January 1, 2023, instruments of state regulation of economic activity not defined by laws and not included in the exclusive list are considered invalid;

– to establish that from January 1, 2023, the introduction of a new instrument of state regulation of economic activity in the relevant field is carried out by including the new instrument in the exclusive list of instruments of state regulation of economic activity with the simultaneous cancellation of no less than 2 other instruments of state regulation in such a field.

The government has created an interdepartmental working group on issues of accelerated revision of instruments of state regulation of economic activity. This decision was made at a meeting of the Cabinet of Ministers of Ukraine on January 13, 2023. According to

the results of the analysis of the regulatory and legal field in the field of state regulation of economic activities, more than 1,000 instruments of state regulation were identified, in particular: 528 permits, 224 licenses, 157 approvals, 145 conclusions, 121 certificates, 55 declarations, 42 notifications, 33 identity certificates.

The presence of a large number of instruments of state regulation has a negative effect on the initiation of economic activity by economic entities and their entry into the market. It is worth noting that the bureaucratic procedure for obtaining documents of a permissive nature requires large time and financial costs of economic entities, creates an additional administrative burden on them

Therefore, to solve these issues, the Interdepartmental Working Group on Issues of Accelerated Review of Instruments of State Regulation of Economic Activity was created. The co-chairs of the group are the First Vice Prime Minister of Ukraine – Minister of Economy and the Vice Prime Minister of Ukraine – Minister of Digital Transformation.

It is assumed that the main tasks of the working group will be:

– coordination of actions of state bodies in terms of reduction and optimization of state business regulation tools;

– improvement of the regulatory framework in terms of converting state regulatory instruments into electronic form.

Modern conditions of conducting economic activity indicate that an enterprise alone can have certain gains in a certain area, however, achieving real success and obtaining profits, which are evidence of successful business conduct, depends on cooperation with other economic entities that carry out related activity in the relevant field. And the entrepreneurs themselves realized that in order to work successfully in the conditions of market competition and to implement significant financial and industrial projects, it is no longer enough for enterprises to function within the framework of separate separate entities, and therefore they seek to unite into groups of enterprises by industry, territorial or another principle.

Such groups of enterprises in the theory of economic law are defined as economic associations, which have a number of significant features and differences from economic partnerships, among which the following should be noted.

First, the association is formed on the basis of certain common economic interests with the aim of combining the production, scientific and technical, commercial activities of the members of the association, centralizing management, coordination functions, etc.

Secondly, the association has property that is legally separated from the property of the members of the association, and this property includes fixed assets and working capital transferred by the members of the association to its balance sheet in accordance with the contract or charter, and property acquired by union as a result of economic activity. The property of the members of the association is not included in the property of the association. Taking this into account, the responsibility of the association and its members as legal subjects is delimited: the association is not responsible for the obligations of its members, and the latter are not responsible for the obligations of the association and each other.

Thirdly, for the purpose of centralized management by the association bodies of the activities of the participants, they delegate certain functions and powers to the association as a subject of law. The composition of the functions centralized by the association is determined by its founders in the contract or statute. These can be industrial and economic, scientific and technical, commercial and other functions.

The fourth feature of an association is a special (complex) legal entity. Its peculiarity is due to the organizational structure of the association. Only enterprises (organizations) – legal entities, each of which, upon joining the association, retains the rights of a legal entity. In this way, the association differs from an enterprise that does not have other legal entities in its composition. That is, enterprises as members of the association remain independent subjects of economic law, at the same time, the association of enterprises is also an independent subject of law. Therefore, from the point of view of legal personality, the association is a set of independent legal entities whose common property rights and interests are realized by the association.

Thus, an economic association is a complex economic organization, which was created on the basis of a combination of material interests of participating enterprises, acts on the basis of a founding agreement or statute as a legal entity.

In the current conditions, the need for the existence of large business organizational structures – associations, concerns, business associations, consortia – is due to the objective

reasons for their formation and functioning:

a) the need to combine all stages of the technical process, which enables the comprehensive use of raw materials and materials;

b) cooperation of interconnected specialized productions, which makes it possible to manufacture the final product in a complex manner;

c) ensuring the completeness of the cycle "science – technical developments – investments – production – sales – consumption";

d) the mass production of products, a stable assortment, which significantly reduces costs per unit of production, makes it cheaper, and makes it available to the population.

The legislation of Ukraine provides for a variety of forms of association by economic entities of their activities. One of the most interesting are economic associations, which provide a combination of economic activities of economic entities with the aim of achieving a single goal – economic associations.

The creation of an economic association provides its participants with strategic advantages over competitors, in particular in the field of technological development, provision of resources, and opportunities to implement the results of scientific research; allows to integrate the life cycle of the product from design development to its customer service, as they can include research organizations, design bureaus, experimental and serial factories, coordinate the activities of all links of the technological chain and attract large financial resources.

Today in Ukraine, economic associations have been created in the most important spheres of state activity: aircraft construction (State Aircraft Construction Concern "Aviatsiya Ukrainy"), peat mining (State Concern "Ukrtorf"), nuclear energy (State Concern "Nuclear Fuel"), alcohol (State concern "Ukrspirt"), broadcasting (Concern of radio broadcasting, radio communication and television) and others.

The procedure for the formation and operation of economic associations is regulated by the provisions of the Economic Code of Ukraine (Chapter 12). In accordance with the current legislation, an economic organization formed by two or more enterprises for the purpose of coordinating their production, scientific and other activities to solve joint economic and social tasks is recognized as an association of enterprises.

Associations of enterprises are formed by enterprises on a voluntary basis or by the decision of bodies that, in accordance with this Code and other laws, have the right to form associations of enterprises. Enterprises formed under the legislation of other states may be included in the association of enterprises, and enterprises of Ukraine may be included in the association of enterprises formed on the territory of other states.

Depending on the order of establishment, associations of enterprises can be formed as economic associations or as state or communal economic associations. At the same time, the Code provides specifics for the formation and activity of state economic associations, which is due to the special status of such associations as subjects exercising powers to manage state-owned objects. The following main forms of enterprise associations are distinguished: associations, corporations, consortia, concerns, while the Economic Code provides for the possibility of forming other forms of enterprise associations provided for by law.

An association is a contractual association created for the purpose of permanent coordination of the economic activities of the united enterprises, through the centralization of one or more production and management functions, the development of specialization and cooperation in production, the organization of joint productions on the basis of the association of financial and material resources of participants to meet mainly the economic needs of association members.

A corporation is recognized as a contractual association created on the basis of a combination of industrial, scientific and commercial interests of the united enterprises, with their delegation of separate powers of centralized regulation of the activities of each of the participants to the corporation’s management bodies.

A consortium is a temporary statutory association of enterprises for the achievement by its participants of a certain common economic goal (implementation of targeted programs, scientific and technical, construction projects, etc.). The consortium uses the funds provided by the participants, the centralized resources allocated to finance the relevant program, as well as the funds coming from other sources, in the manner determined by its charter. If the goal of its creation is achieved, the consortium ceases its activity.

A concern is recognized as a statutory association of enterprises, as well as other

organizations, based on their financial dependence on one or a group of association participants, with the centralization of the functions of scientific, technical and industrial development, investment, financial, foreign economic and other activities. Participants of the concern grant it part of their powers, including the right to represent their interests in relations with authorities, other enterprises and organizations. Members of a concern cannot simultaneously be members of another concern.

The Code provides that enterprises – participants in the association of enterprises retain the status of a legal entity regardless of the organizational and legal form of the association, and the provisions of this Code and other laws on the regulation of the activities of enterprises apply to them. An enterprise – a member of an economic association has the right to:

– voluntarily withdraw from the association under the conditions and in the order specified by the founding agreement on its formation or the charter of the business association;

– to be a member of other associations of enterprises, unless otherwise established by law, the founding agreement or the charter of the business association;

– to receive information related to the interests of the enterprise from the business association in accordance with the established procedure;

– to receive part of the profit from the activities of the economic association in accordance with its charter. The enterprise may also have other rights provided for by the founding agreement or the charter of the business association in accordance with the law.

Also, the Economic Code has resolved the issue of management of the association of enterprises. Thus, business associations have higher management bodies (general meetings of participants) and form executive bodies provided for by the statute of the business association.

At the same time, the current regulatory framework is insufficient and needs to be improved, taking into account the real needs of development. Today, the only legislative act that contains norms regulating the procedure for the creation and operation of associations of economic entities is the Economic Code of Ukraine. However, the Commercial Code regulates these issues quite schematically, since it is an act that establishes the legal foundations (fundamentals) of economic activity (management) and regulates a wide range of social relations, which makes it impossible to regulate in detail issues related to the activities of economic associations. especially state ones.

This led to the emergence of gaps in the legal regulation of relations in this area, in particular, in matters of formation and termination of associations, formation of management bodies, formation of authorized capital, withdrawal of members from the membership of the association, relations of the association with its members, peculiarities of formation and activities of business associations with the participation of business entities based on state and communal property. The imperfection of the legislation on economic associations, in turn, has a negative impact on subjects of economic activity who need to combine their activities to achieve a certain social or economic goal.

So, in particular, the current legislation provides for the possibility to join an association only for enterprises. However, as practice has shown, it is also necessary for institutions and organizations to be part of an economic association (for example, for the purpose of implementing scientific and innovative inventions, developments, proposals). Also, the given provision of the current legislation limits the possibility of individual entrepreneurs to join business associations, which also limits their potential production opportunities.

Currently, the legislation does not provide for the possibility of forming so-called "mixed" economic associations, that is, those formed with the participation of state economic entities and economic entities of other forms of ownership. However, the need for legislative consolidation of the possibility of their existence is obvious and conditioned. In particular, the unification of state-sector enterprises with non-state economic entities will contribute to the attraction of investments in joint projects, will provide an opportunity to use management methods, knowledge, and skills developed in the private sector of the economy.

Also, in the field of regulation of the order of formation, activity and management of state economic associations, the legislation contains many gaps and contradictions, which make it very difficult to control the effective management and use of state-owned objects. Thus, the powers of state management entities in relation to state economic associations are often duplicated, and the state economic associations themselves are endowed with narrow powers, which generally nullifies the very idea of creating an association of economic entities - directing and coordinating the activities of its members.

Improvement of the regulation that exists today is possible through the adoption of a

separate Law on the Association of Business Entities, which will provide an opportunity to regulate in detail the relations related to the activities of state business associations. In a separate law, which will be aimed exclusively at determining the legal status and specifics of the activity of economic associations, maximum attention can be paid to the regulation of all aspects of the functioning of these entities.

The relevant project has already been prepared and submitted by the Cabinet of Ministers of Ukraine as a legislative initiative to the Verkhovna Rada of Ukraine – the draft Law of Ukraine "On Business Associations" (registration No. 5045 dated August 6, 2009).

The draft Law of Ukraine "On Business Associations" provides for:

– define the concept of economic association and their types;

– regulate the procedure for the formation of an economic association;

– to establish the rights and obligations of the participants of the economic association;

– determine the management bodies of the economic association, their powers, the order of formation and decision-making;

– to establish the legal regime of the property of the economic association;

– determine the conditions and grounds for the participant's exit from the business association;

– regulate the procedure for termination of the business association;

– to establish the specifics of formation, activity, termination and management of a state economic association.

The draft Law contains different approaches to regulating the activities of state and communal economic associations and economic associations created by economic entities based on private property. In addition, the project envisages the possibility of forming so-called "mixed" economic associations, that is, those formed with the participation of state economic entities and economic entities of other forms of ownership.

The draft law envisages changing the existing status of such structures from associations of enterprises, which can include only legal entities carrying out production activities, to an economic association, which can unite economic entities of any organizational and legal form. In particular, this will provide an opportunity to involve scientific institutions in order to implement the latest developments and achievements of scientific thought and implement innovative projects.

The project envisages clearly defining the management bodies that can be formed by the business association, their powers and the procedure for their decision-making. Thanks to the proposed provisions, the gaps in the regulation of the activities of the management bodies of the economic association will be eliminated. Particular attention in the project is given to determining the legal status of the state economic association. This is due to the fact that today such associations are created mainly in sectors strategically important for the economy and the state as a whole and require detailed and clear regulation of the powers of the authorities that exercise control over their activities on behalf of the owner-state, while simultaneously ensuring the freedom of economic activities of state enterprises, institutions and organizations that will be part of them.

The project envisages changing the legal status and scope of powers of the state economic association as a subject of management of state-owned objects, which are defined by the Law of Ukraine "On the Management of State-owned Objects". This is due to the fact that today state business associations have very limited powers in relation to the enterprises that are part of them, which complicates (makes impossible) the process of their effective management of state-owned objects, as well as the fulfillment of the goal their formation (coordination of economic activity of participants).

In addition, the current legislation provides that enterprises that are part of a state economic association are under the management of this economic structure and at the same time remain in the sphere of management of the authorized management body (ministry). At the same time, the legislation does not clearly outline the powers and the sphere of influence on the participants of the body exercising control over the activities of the state economic association, which leads to the emergence of double management, duplication of powers and significantly complicates the exercise of control over the effective management and use of state property by the participants of the state economic association association.

Also, in order to strengthen control over the state economic association, the project clearly defines that the most important and essential powers in relation to it are exercised by the Cabinet of Ministers of Ukraine (establishment and termination of the state economic

association; approval and amendments to its charter; appointment and dismissal of the head; inclusion and withdrawal of a participant from a state economic association).

Considering that the project makes significant changes to the legal status of the economic association and to the regulation of relations related to the management of state economic associations, the project also envisages recognizing Chapter 12 of the Economic Code of Ukraine as having lost its validity and amending the article 168 of the Economic Code of Ukraine, the Law of Ukraine "On Management of State Property Objects" [5].

Conclusions. Thus, we hope that the adoption of the aforementioned Law will result not only in the improvement of the legislation, but also in the improvement of the efficiency of business associations. Being constantly dependent on the efficiency of enterprises, the state, in turn, affects the economic processes taking place on them by adopting laws that activate or slow down investment activity by applying mechanisms and means of management and regulation and stimulation.

Conflict of Interest and other Ethics Statements
The authors declare no conflict of interest.

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ABSTRACT

In the context of the dynamic development of economic relations, a number of issues arise that cannot be considered and resolved within the framework of the opposition of individual legal schools – businessmen on the one hand, civilists and administrativeists – on the other.

It's time to realize that no branch of legislation (law) can be a monopoly in regulating social relations in a certain area. An example of this is land, water, environmental, family and other areas of legislation that regulate personal non-property and property relations, which have certain features that determine their independent nature and difference from civil relations.

The final task is not to finally abolish the Economic Code of Ukraine or to achieve a gradual emasculation of the essence of economic law. Today, at the legislative level, with the participation of scientists and with the help of national legal doctrine, it is necessary to ensure, first of all, high quality regulation of relations that form the basis of the country's development, including in the field of economy, business environment. Otherwise, science is faced with the problem of denying the natural state of development of things, which has been ordered since the time of the appearance of law as such. It is difficult to deny the well-known truth – the law is a regulator of social relations, therefore, it is in its nature determined by the needs of man, society, and changes according to the needs of humanity. This indicates the objective conditionality of proper legal regulation in one or another sphere, including in the sphere of economy, making it dependent on the environment.

Keywords: *legal regulation, economic activity, current problems of legal regulation, prospects for reforming economic activity, classification of current problems, legal support of state regulation.*

ISSUES OF PUBLIC AND PRIVATE LEGAL REGULATION OF SEPARATE SOCIAL RELATIONS

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CRIMINAL LAW PROTECTION OF THE RIGHT TO PRIVACY IN THE MEDICAL FIELD: INTERNATIONAL AND NATIONAL CONTEXT

Олена Рябчинська, Едуард Стоматов. КРИМІНАЛЬНО-ПРАВОВА ОХОРОНА ПРАВА НА ПРИВАТНЕ ЖИТТЯ У МЕДИЦИЧНІЙ СФЕРІ: МІЖНАРОДНИЙ ТА НАЦІОНАЛЬНИЙ КОНТЕКСТ. У статті проаналізовано основні положення правового регулювання змісту інформації про стан здоров'я особи у міжнародних документах, так і в національному законодавстві, та її співвідношення з такими поняттями як особисте та сімейне життя, конфіденційна інформація, медична інформація, лікарська таємниця, медична таємниця, враховуючи міжнародно-правові стандарти у цій сфері, а також наукові дослідження з теорії права та галузевих дисциплін, зокрема конституційного, кримінального, адміністративного та цивільного права, законодавства у сфері інформації, охорони здоров'я та практики ЄСПЛ, тощо.

Перспективними напрямками досліджень у сфері кримінально-правової охорони недоторканності приватного життя в медичній сфері є: аналіз співвідношення права особи на особисте та сімейне життя як об'єкта кримінально-правової охорони та об'єкта кримінальних правопорушень, передбачених ст. 132 та ст. 145 КК України; уточнення змісту понять «лікарська таємниця», «медична таємниця», «конфіденційна інформація про стан здоров'я» з метою усунення існуючих нечітко визначених, суперечливих положень, прогалин нормативно-правової бази в частині інформаційних та правовідносини, що негативно впливають на забезпечення конституційних прав і свобод людини і громадянина; встановлення осіб, які можуть мати доступ до такої конфіденційної інформації, з метою з'ясування кола осіб, які можуть бути визнані суб'єктами кримінального правопорушення, передбаченого ст. 145 КК України; удосконалення правового регулювання порядку збирання, зберігання, використання та обігу інформації, зокрема, про психічний стан особи, її примусового обстеження та лікування, використання конфіденційних даних у сфері психіатрії, до якої Конституційний Суд України звернув увагу при тлумаченні статей 3, 23, 31, 47, 48 Закону України «Про інформацію» тощо.

***Ключові слова**: право на повагу до приватного життя, інформація про стан здоров'я людини, конфіденційна інформація, лікарська таємниця, медична таємниця.*

Relevance of the study. The European Convention on Human Rights (ECHR) states that everyone has the right to respect for their private and family life, their home, and correspondence. To comply with these requirements, the Constitution of Ukraine guarantees the inviolability of the dwelling place (Art. 30), the secrecy of mail, telephone conversations,

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telegraph and other correspondence (Art. 31), and non-interference in private and family life, except in cases envisaged by the Constitution of Ukraine (Art. 32). The right to secrecy of private (personal) and family life is considered in the aspect of the right to information privacy [1, p. 95]. According to Pt. 2 of Art. 8 of this Convention, public authorities shall not interfere with the exercise of this right, except in cases where the interference is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety, or the economic welfare of a country, for the prevention of riot or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Protection of a person from interference in their private and family life is one of the basic principles of information relations in the state (Art. 2), and ensuring everyone's access to information is the direction of the state information policy (Art. 3) [2]. Information about the condition of human health also belongs to this sphere of privacy.

Recent publications review. Admission of information about the human health condition as an element of their lives' privacy is declared, first of all, at the international level in such documents as: the Directive 95/46/EC of the European Parliament and of the Council "On the protection of individuals with regard to the processing of personal data and on the free movement of such data" in terms of regulation of provisions on access to medical information; the Geneva Declaration of the World Medical Association (1948); the Declaration on the Promotion of Patients' Rights in Europe (adopted by the World Health Organization in 1994), which contains a provision that all information about the patient's health status, diagnosis, prognosis, and treatment of their disease, as well as any other personal information, should be kept confidential, even after the patient's death, etc.

The need for special legal protection of the patient's interests is also enshrined in a number of declarations and conventions adopted by international organizations of doctors and patients, in particular the World Health Organization (WHO) and the World Medical Association (WMA). Among them: the WHO Declaration of Alma-Ata on Primary Health Care (1978), the WHO Ljubljana Charter on Reforming Health Care in Europe (1996), the WMA Tokyo Declaration on Guidelines for Physicians Covering Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment in Relation to Detention and Imprisonment (1975), the WMA Declaration of Lisbon on the Rights of the Patient, the WMA Declaration on Euthanasia (1987), and the WMA Declaration on Transplantation of Human Organs (1987) [3, p. 79].

Among the international documents on patients' rights, the most important are the Declaration on the Promotion of Patients' Rights in Europe (1994) and the European Charter of Patients' Rights of 2002 [4, p. 126]. In the Declaration on the Promotion of Patients' Rights (1994), among the principles of patients' rights, along with such as respect for human dignity, self-determination, physical and mental inviolability and protection, respect for moral, cultural, and religious values, the possibility of protecting one's own health to the extent that existing measures of prevention and treatment of diseases allow, and the possibility of achieving the highest level of health for oneself, the principle of respect for confidentiality is also indicated [5].

The article's objective is to analyze the fundamental provisions of legal regulation of the content of information about a person's health status and its correlation with such concepts used both in international documents and national legislation as private and family life, confidential information, medical information, medical secrecy, and medical privacy, taking into account international legal standards in this field as well as academic research in the theory of law and branch disciplines, in particular constitutional, criminal, administrative, and civil law, legislation in the field of information, health care, and ECHR practices, etc.

Discussion. Today, the European Charter of Patients' Rights of 2002 defines the optimal scope of patients' individual rights. Among them are: 1) the right to preventive measures; 2) the right to accessibility of medical services; 3) the right to information, i.e. the right to receive any information about own health status, about medical services and ways of receiving these services; 4) the right to consent, i.e. the right to receive any information that will allow the patient to actively participate in decision-making about their health; 5) the right to freedom of choice between different medical procedures and institutions (specialists) on the basis of relevant information; 6) the right to privacy and confidentiality of personal information; 7) the right to respect for the patient's time; 8) the right to comply with quality standards of medical care; 9) the right to safety; 10) the right to innovation; 11) the right to prevent, if possible, suffering and pain; 12) the right to an individual approach to treatment; 13) the right to appeal; 14) the right to compensation in case of physical or moral and

psychological harm caused by the actions of a medical institution [6].

According to Pt. 2 of Art. 11 of the Law of Ukraine "On Information" it shall not be allowed to gather, store, use, and disseminate confidential information about a person without their consent, except in cases determined by law and only in the interests of the national security, economic welfare, and protection of human rights [2]. Confidential information1 about an individual includes health data (Pt. 2 of Art. 11 of the Law of Ukraine "On Information"). Moreover, everyone is provided with free access to information that concerns them personally, except in cases provided by law. According to Art. 286 of the Civil Code of Ukraine, an individual has the right to secrecy about their health status, the fact of seeking medical care, the diagnosis, as well as information obtained during their medical check-up. It is prohibited to demand and submit information about the diagnosis and methods of treatment of an individual at the place of work or study. An individual is obliged to refrain from spreading information specified in Pt. 1 of this Article, which became known to them in connection with the fulfillment of their official duties or from other sources (Art. 286) [7]. Thus, the secrecy about the health status in the context of this Article is information about: 1) the fact of seeking medical care; 2) the diagnosis; 3) information obtained during the medical check-up; 4) information about the methods of treatment of the person.

The Constitutional Court of Ukraine emphasizes that "when studying this issue, it is necessary to clearly distinguish the rules for the use of information related to medical privacy (information about the patient) as opposed to medical information (information for the patient)" [8]. The obligation to provide medical information is stipulated in Art. 39 of the Fundamentals of Legislation of Ukraine on Healthcare and consists in the fact that the doctor is obliged to provide the patient, their family members, or their legal representatives with such information in full and in an accessible form.

The content of medical information is evidence of the status of a person's health, their medical history, the purpose of the offered examinations and treatment measures, and the prognosis of the possible development of the disease, including the existing risk to life and health. According to the legal regime, medical information is confidential, i.e., restricted access information. In cases of refusal to provide medical information or intentional concealment of it from the patient, their family members, or their legal representative, they can appeal the actions or inactions of the doctor directly to the court or, at their own choice, to a medical institution or health authority. Intentional concealment of medical information from the patient is a violation of the right to access information.

The analysis of Art. 39, 391 and 40 of the Law of Ukraine "Fundamentals of the Legislation of Ukraine on Healthcare" shows that the patient's right to secrecy about their health status, the fact of seeking medical care, the diagnosis, as well as information obtained during their medical check-up (medical information), corresponds to the prohibition of medical workers and other persons who, in connection with the fulfillment of professional or official duties, became aware of the disease, medical check-up, examination, and their results, of intimate and family life of a citizen, to disclose this information, except in cases provided for by legislative acts. It is also prohibited to demand and provide information about the diagnosis and treatment methods of the patient at the place of work or study.

Criminal law protection of human privacy field in terms of information about their health status is currently limited to criminalization of medical privacy disclosure (Art. 145 of the Criminal Code of Ukraine) and disclosure of information about medical check-up to detect infection with human immunodeficiency virus or other incurable infectious disease (Art. 132 of the Criminal Code of Ukraine).

Therefore, in the context of criminal law, it is about medical privacy, which, according to Art. 40 of the Law of Ukraine "Fundamentals of the Legislation of Ukraine on Healthcare", is a broader concept than confidential information about the health status of a person, because along with information about the disease, medical check-up, examination, and their results, it also includes information about the intimate and family aspects of a citizen's life.

In the criminal law doctrine, the objective side of the illegal disclosure of medical privacy is interpreted, in particular, as the disclosure of the following information: 1) the fact of applying for psychiatric care and treatment in a psychiatric institution or staying in psychoneurological institutions for social protection or special training, as well as other

[1] As well as data on their ethnicity, education, marital status, religious beliefs, address, date and place of birth, etc.

information about the condition of person's mental health, their private life; 2) infection of a person with a sexually-transmitted infectious disease, conducted medical check-ups and examinations in this regard, data of an intimate nature obtained due to performing professional duties by officials and medical workers of health care institutions; 3) results of medical check-up of persons who have applied for marriage registration [9].

Specialists, studying the legal status of the patient, emphasize the consideration of such fundamental aspects that make up the content of such status as: "the object of confidentiality is personally sensitive information for the patient, the disclosure of which will lead to significant moral suffering; a significant range of subjects who must comply with the rules of confidentiality; a multi-component subject of confidential information; a permanent confidentiality of information.

Compliance with medical privacy is considered one of the legal guarantees of patients' rights as a basic structural element of the patient's legal status" [10, p. 6; 17]. Among the offers for improving the principle of confidentiality at the regulatory level, the following deserve attention in particular: harmonization of terminology by replacing it with a single "medical secrecy" term; development of clearly defined instructions for the preservation of medical privacy, a list and forms of documents on the transfer of such information, permits of subjects of primary medical information, obligations of medical workers not to disclose medical secrecy; clear definition of subjects that must keep patient information confidential, in particular healers, pharmacists, employers, if personal medical records are kept at the place of work [10, p. 23].

The research literature suggests that "in recent years, the number of crimes committed in the medical field is constantly growing. Attention is drawn to crimes related to non-compliance with patient rights and violation of medical privacy, especially by law enforcement agencies of Ukraine" [11, p. 57]. We cannot unconditionally agree with this point of view, based on statistics for the last five years2 (from 2017 to 2021), because for the commission of criminal offenses under Art. 132 and Art. 145 of the Criminal Code of Ukraine, for all these years, 9 criminal proceedings under Art. 132 of the Criminal Code of Ukraine and 44 criminal proceedings under Art. 145 of the Criminal Code of Ukraine were registered, while no one was notified of suspicion and no one was sentenced [12].

Despite the existing mechanism for preventing violations of this right in the legal system of the country, the statistics of applications of Ukrainian citizens to the ECHR due to violation of this conventional right is considered disappointing [13, p. 100]. In particular, the ECHR has in its portfolio more than one decision on the violation of the rights, for example, of patients to respect for private life, as such recognizes the following situations: disclosure without the patient's consent of medical records (case histories) containing confidential personal data about the patient by the clinic to the Social Insurance Administration and, accordingly, to a wider range of civil servants (see M.S. v. Sweden, 27 August 1997, § 35, Reports 1997-IV); disclosure of medical data by medical institutions, in particular to the patient's employer (see Radu v. the Republic of Moldova, no. 50073/07, § 27, 15 April 2014) (count 35 of the judgment); the hospital's failure to inform the applicant of the results of her HIV test and the disclosure of the applicant's positive HIV status to her mother and workplace (M.K. v. Ukraine (no. 24867/13)). Any interference with the individual rights under Art. 8 of the European Convention on Human Rights may only be justified under Par. 2 Art. 8 of this Convention if it is in accordance with the law, pursues one or more of the legitimate aims referred to in that Paragraph and is necessary in a democratic society for the achievement of that aim (see Azer Ahmadov v. Azerbaijan, no. 3409/10, § 63, 22 July 2021) (count 36 of the judgment) [14].

The ECHR has previously recognized that employers may have a legitimate interest in information about the physical health of employees, especially in the context of assigning them certain professional duties related to specific skills, functions, or competencies, but emphasized that the collection and processing of relevant information must be lawful and ensure a fair balance between the interests of the employer and the candidate's privacy concerns (see Surikov v. Ukraine, no. 42788/06, § 91, 26 January 2017) (count 54 of the judgment).

Conclusions. It is advisable to define the following as a promising area of research in the field of criminal law protection of private life of a person in the medical field: analysis of the correlation between the right of a person to private and family life as an object of criminal

[2] In between 2008-2012, no one was sentenced under Art. 132 and Art. 145 of the Criminal Code of Ukraine.

law protection and the object of criminal offenses under Art. 132 and Art. 145 of the Criminal Code of Ukraine; clarification of the content of the "medical privacy", "medical secrecy", and "confidential information about the health status" concepts in order to eliminate the existing unclearly defined, conflicting provisions, and gaps in the regulatory framework in the part of informational and legal relations that negatively affect the ensuring of constitutional rights and freedoms of a person and a citizen; identification of persons who may have access to such confidential information in order to clarify the circle of persons who may be recognized as subjects of a criminal offense under Art. 145 of the Criminal Code of Ukraine; improvement of the legal regulation of the procedure for collection, storage, use and circulation of information, in particular, on the mental state of a person, their compulsory examination and treatment, use of confidential data in the field of psychiatry, to which the Constitutional Court of Ukraine drew attention when interpreting Articles 3, 23, 31, 47, 48 of the Law of Ukraine "On Information", etc.

Conflict of Interest and other Ethics Statements
The authors declare no conflict of interest.

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ABSTRACT

The article analyzed the fundamental provisions of legal regulation of the information content about a person's health status and its correlation with such concepts used both in international documents and national legislation as private and family life, confidential information, medical information, medical secrecy, and medical privacy, taking into account international legal standards in this field as well as academic research in the theory of law and branch disciplines, in particular constitutional, criminal, administrative, and civil law, legislation in the field of information, health care, and ECHR practices, etc.

The following are the promising areas of research in the field of criminal law protection of a person's privacy in the medical field: analysis of the correlation between the right of a person to private and family life as an object of criminal law protection and the object of criminal offenses under Art. 132 and Art. 145 of the Criminal Code of Ukraine; clarification of the content of the "medical privacy", "medical secrecy", and "confidential information about the health status" concepts in order to eliminate the existing unclearly defined, conflicting provisions, and gaps in the regulatory framework in the part of informational and legal relations that negatively affect the ensuring of constitutional rights and freedoms of a person and a citizen; identification of persons who may have access to such confidential information in order to clarify the circle of persons who may be recognized as subjects of a criminal offense under Art. 145 of the Criminal Code of Ukraine; improvement of the legal regulation of the procedure for

collection, storage, use and circulation of information, in particular, on the mental state of a person, their compulsory examination and treatment, use of confidential data in the field of psychiatry, to which the Constitutional Court of Ukraine drew attention when interpreting Articles 3, 23, 31, 47, 48 of the Law of Ukraine "On Information", etc.

Keywords: *the right to respect for private life, information about the human health status, confidential information, medical secrecy, medical privacy.*

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CRIMINOLOGICAL CHARACTERISTICS OF THE IDENTITY OF THE ABUSER WHO COMMITS A CRIMINAL OFFENSE IN THE HOME SPHERE

Катерина Буряк. КРИМІНОЛОГІЧНА ХАРАКТЕРИСТИКА ОСОБИ КРИВДНИКА, ЯКИЙ ВЧИНЯЄ КРИМІНАЛЬНЕ ПРАВОПОРУШЕННЯ У ПОБУТОВІЙ СФЕРІ. У статті досліджено особу кривдника, який вчиняє домашнє насильство. Запропоновано визначення кривдника, який вчиняє побутовий злочин, як сукупність суспільно значущих характеристик і відносин особи, що характеризують її як вчинення злочинів у сфері сімейно-побутових відносин. Проаналізовано структурні елементи кримінологічної характеристики особи злочинця, а саме: соціально-демографічні; кримінально-правовий; соціально-рольові; морально-психологічні. Соціально-демографічні характеристики особистості злочинця висвітлюються відомостями про стать, вік, освіту, місце народження і проживання, громадянство та іншими демографічними даними.

Кримінально-правова характеристика – це відомості про склад вчиненого злочину, спрямованість і мотивацію злочинної поведінки, одноосібність чи груповий характер злочинної діяльності, форму співучасті (виконавець, організатор, підбурювач, пособник), інтенсивність злочинної діяльності, характер злочинної діяльності, характер злочинної діяльності. наявність судимостей і так далі. Соціально-рольові характеристики розкривають функції особистості, зумовлені її становищем у системі існуючих суспільних відносин, належністю до певної соціальної групи, взаємодією з іншими людьми та організаціями в різних сферах суспільного життя. До моральних якостей людини належать її світогляд, духовність, погляди, переконання, установки, ціннісні орієнтації.

Злочинців відрізняє негативне або байдуже ставлення до виконання своїх громадських обов'язків, дотримання правових норм, вибір протиправних засобів задоволення особистих потреб, егоїзм, ігнорування суспільних інтересів тощо. Сформовано портрет злочинця, який вчиняє домашнє насильство. Запропоновано ефективну систему заходів із запобігання та протидії домашньому насильству, яка має базуватися на ефективній просвітницькій діяльності щодо спричинення побутових злочинів.

Ключові слова: *кривдник, домашнє насильство, портрет обличчя злочинця, протидія домашньому насильству.*

Relevance of the study. With Ukraine obtaining candidate status, there are many social issues that need to be addressed, the introduction of European regulation and values, the sphere of family relations and the problem of domestic crime is no exception. For the correct selection of the mechanism for regulating the counteraction and prevention of domestic crime, we decided to study in detail the identity of the abuser who commits a criminal offense in the

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home sphere.

This is very important, because the family is the main unit of society and it must be protected by the state. The commission of a criminal offense by the abuser in the family causes a public outcry, undermines the foundations of the family, causes physical, psychological and moral disintegration among family members.

Recent publications review. Some issues related to the identity of the abuser who commits domestic crime were considered in their works by such scientists as A. Blaga, P. Bilenko, I. Botnarenko, O. Bogatyreva, I. Bogatyrev, A. Bogatyrev, B. Golovkin, O. Humin, O. Juzha, A. Zelinsky, M. Kuznetsov, O. Kostenko, Yu. Lukyanova, U. Mytnik, M. Puzyrev, L. Samaray, V. Topchiy.

Despite the significant contribution of these authors to the study of this problem, the issue of criminological characteristics of the identuty of the abuser who commits a criminal offense in the home sphere is insufficiently studied. The above made it necessary to prepare a scientific article and its title.

In criminological science, there are constant discussions about determining the identity of a criminal and forming a criminological portrait of such a person. L. Samaray sees that the identity of the offender is a consequence of the commission of illegal activity and not the type of person that precedes it [1, p. 191].

Ukrainian criminologist A. F. Zelinsky believes that the identity of a criminal should be considered as a set of socio-demographic, psychological and moral characteristics, which are more or less typical of persons guilty of criminal activities of one type or another [2, p. 22-23].

A well-known Ukrainian criminologist, academician of the Academy of Legal Sciences of Ukraine A. Kostenko gives his own understanding of the identity of the criminal. So, according to the opinion of this scientist, a person is a "three-dimensional" creature and consists of a layer: "physical thing", "biological creature", "social personality". On the last layer the criminal behavior of a person and his/her social pathology are determined, because it is a manifestation of a complex of arbitrariness and illusions [3].

I. Bogatyrev notes that the concept of criminal identity should be considered as a set of socially significant features, connections and relationships that characterize a person with a low level of self-control and guilty of violating the norms of Criminal Law [4, p. 79].

V. Golina says that the person of a criminal is a set of essential and stable social properties and signs, socially significant biopsychological features of an individual, which are objectively realized in a particular crime, give the character of public danger for the committed act and the responsible person for it – the properties of public danger, in connection with which he/she is brought to justice under the Criminal Law [5, p. 37].

O. Dzuzha notes that the person of a criminal is a set of socially significant properties, signs, connections and relationships that characterize a person guilty of violating the criminal law in combination with other (non-personal) conditions and circumstances that affect his/her criminal behavior [6, p. 94].

The article's objective is to study the identity of the abuser who commits domestic crime.

Discussion. We believe that the abuser who commits domestic crime is a set of socially significant properties and relationships of a person that characterize he/ she as committing crimes in the sphere of family and domestic relations.

For the study of the abuser who commits domestic crime, we consider the most successful classification proposed by A. Blagoy, according to which the main elements of the structure of the criminal's personality of this category are the following:

1) socio-demographic;

2) criminal law;

3) social and role-playing;

4) moral and psychological [7, p. 92].

Socio-demographic characteristics of the perpetrator's identity are covered by information about gender, age, education, place of birth and residence, citizenship, and other demographic data.

If we study the *gender* of persons who commit domestic crime in Ukraine, according to our research, 95 % of crimes in this category are committed by men and 5 % by women. In foreign countries, men are also more likely to be involved in family crimes, as evidenced even by the regulations that have been adopted to protect the rights of women suffering from domestic crime: The Violence Against Women Act, the Council of Europe Convention on

preventing and combating violence against women and domestic violence (Istanbul Convention). The activity of men in the role of an abuser is explained by the fact that men are more impulsive, prone to alcohol consumption, physically stronger, and less burdened with running a household.

According to our data, the *age* limit for persons who commit crimes in the family and household sphere is 25-35 years for women and 30-40 years for men. This age of abusers can be explained by a number of reasons, so V. Topchiy notes that most often violent crimes are committed by middle-aged persons during marriage and the birth of children; physical condition at this age is not limited to serious illnesses; at this age, abusers most often face stressful situations (at work, with friends, in the family), the consequences of which are aggressiveness, conflict [8, p. 87]. P. Golovkin suggests that such an age limit is due to crisis periods of personal and family life [9, p. 45].

For the most part, people who have a full or incomplete general secondary *education* are prone to crimes related to domestic crime. This can be explained by the fact that education is the key to upbringing and instilling humanistic ideals. However, if we turn to the position of V. Topchiy, he notes that the presence of higher education cannot guarantee a negative attitude to violence against family members [8, p. 89]. Therefore, it is important to distinguish between the availability of education and erudition, the latter is an integral component of family education, instilled ideals and self-development of the individual.

Place of birth and residence. We join the research conducted by A. Blagoy, who states that the vast majority of persons who committed crimes related to domestic violence were residents of cities, in second place-residents of villages and urban - type settlements, in third – representatives of regional centers, in fourth-settlements [7, p. 97].

Citizenship is a significant criterion in multinational marriages. There are no borders in the modern international space, and more and more marriages are being concluded between representatives of different nationalities and faiths. Due to ignorance, Ukrainian women face situations when the fact of marriage does not acquire the citizenship of the country of a foreign husband, because due to changes in the migration policy of many countries, marriage is not a sufficient basis for obtaining citizenship, but is only one of them. It is necessary to take into account such important criteria for obtaining citizenship as the residency requirement, successful passing of the language proficiency exam, and in Muslim countries-acceptance of a different faith. As a result, Ukrainian women in marriages with foreigners can remain emigrants and when faced with domestic crime, they keep silent about it. And in the case of appearing a child before the Ukrainian woman acquires citizenship of her husband, the situation becomes more complicated, because the husband and child are citizens of a foreign country for the Ukrainian woman, and in the case of domestic violence, she becomes even more vulnerable, because the child often becomes the object of blackmail of the husband.

Criminal-legal characteristics are information about the structure of the committed crime, the direction and motivation of criminal behavior, the sole or group nature of criminal activity, the form of complicity (performer, organizer, instigator, accomplice), the intensity of criminal activity, the presence of criminal records, etc. [10].

According to research of A. Blagoy, every third criminal in this category has previously committed crimes dominated by self-serving crimes, namely theft (36 %), robbery (9 %), brigandage (4 %), intentional destruction or damage to someone else's property (2 %), fraud and extortion (1 %), as well as violent crimes (24 %), in particular sexual crimes (6 %). It should be noted that among persons brought to administrative responsibility for committing domestic violence, failure to comply with a protective order or failure to comply with a correctional program, almost every fifth person continues illegal behavior every year, repeatedly committing such actions. However, an analysis of the sentences of criminal cases under Article 126-1 of the Criminal Code of Ukraine allows us to argue that 62 % of persons who have committed domestic violence have not previously been brought to criminal responsibility, 19 % of whom are considered not convicted under Article 89 of the Criminal Code of Ukraine and 19 % – convicted. The latter category of abusers (persons with a criminal record) were brought to criminal responsibility for committing such crimes as: theft (13.79 %), intentional grievous bodily harm (3.44 %), illegal possession of a vehicle (3.44 %), threat of murder (1.72 %), beatings and mutilation (1.72 %), threat of destruction of property (1.72 %), violation of administrative supervision rules (1.72 %), fraud (1.72 %), robbery (1.72 %), intentional light bodily injury (1.72 %), illegal handling of weapons, military supplies or explosives (1.72 %), theft by dismantling and other means of electrical networks, cable

communication lines and their equipment (1.72 %), violation of the secrecy of correspondence, telephone conversations, telegraph or other correspondence transmitted by means of communication or through a computer (1.72 %), illegal production, manufacture, acquisition, storage, transportation or transfer of narcotic drugs, psychotropic substances or their analogues without the purpose of marketing (1.72 %) [7, p. 220].

Among those ones who commit domestic crime in the form of sexual violence, persons who have committed rape and sexual intercourse with a person who has not reached puberty predominate. In second place-forced satisfaction of sexual passion in an unnatural way [11, p. 61]. It should be noted that during the commission of domestic crime, about 70 % of abusers are drunk [12, p. 390].

The study of criminal-legal features of a person who commits domestic crime is complicated by the fact that this type of crime has a high latency, so the criminological portrait of the offender is compiled on the basis of cases that have become clear.

Socio-role characteristics reveal the functions of an individual due to his position in the system of existing social relations, belonging to a certain social group, interaction with other people and organizations in various spheres of public life (worker or employee, ordinary performer or manager, single or head of a family, able-bodied or disabled, unemployed, etc.). These data show the place and significance of a person in society, which roles he prefers and which he ignores, reveal his social or antisocial orientation [13].

According to statistics of A. Blagoy, depending on family roles, criminals usually become 20.9 % – husband, 15 % – wife, 12.1 % – father, 15.9 % – mother, 13.3 % – son, 2.4 % –daughter, 4 % – brother, 1.8 % – sister, 1.3 % – uncle/aunt, 0.7 % – nephew/niece, 1 % –grandfather, 2.5 % – grandmother, 3.1 % – grandson, 0.5 % – granddaughter, 3.9 % – son-in-law, 0.7 % – daughter-in-law, 0.5 % – father-in-law, 0.3 % – each-father-in-law and mother-in-law. At the time of committing the crime, the vast majority of family abusers-53.5%, did not work or study, 6 % did not have a permanent job [7, p. 290].

According to K. Filipenko, domestic criminals spend the most time with friends (66.6 %), less at home (26.6 %), with neighbors (10 %), colleagues (5.3 %). They consider friends (70 %), relatives (14.6 %) and neighbors (15.3 %) to be the best their environment. They get aesthetic pleasure from watching TV and using the internet (75.3 %), from reading newspapers and magazines (22 %). 84.6 % of them consider a friend to be the most respected person [14].

If we consider the type of activity of abusers, it should be noted that most of them are unemployed – 55.6 % and student youth – 41.6 %, then representatives of working professions –17.9 %, pupil youth – 12.6 %, military personnel – 7.7 %, civil servants – 6.3 %, law enforcement officers – 6.1 %, entrepreneurs – 5.4 %, agricultural workers – 4.8 %, cultural and artistic figures – 3.4 % [15, p.194].

L. Kryzhnaya claims that among abusers who commit domestic crime, the largest share falls on unmarried people (cohabitants) – 47.2 %, then divorced ones – 37.6 % and married ones – 15.2 % [16, p. 86].

Moral and psychological signs. The moral characteristics of a person include their worldview, spirituality, views, beliefs, attitudes, and value orientations. Criminals are characterized by a negative or indifferent attitude to the performance of their public duties, compliance with legal norms, the choice of illegal means of satisfying personal needs, selfishness, ignoring public interests, etc. [17].

The psychological characteristics of the criminal's personality include the features of his/her intellectual, emotional and volitional qualities. Intellectual properties include: the level of mental development, the amount of knowledge, life experience, breadth or narrowness of views, the content and variety of interests, and so on. Criminological studies show that the majority of persons who have committed crimes, especially violent ones, are characterized by a reduced level of general education knowledge, a narrow worldview, or even mental retardation, and limited abilities for some socially useful activity [17].

Criminologists in the system of moral and psychological features distinguish four main elements:

1) orientation (a set of socially significant personality traits related to legal consciousness, in particular worldview, personal orientations, social attitudes, key motives, etc.);

2) mental forms of relationships that manifest themselves in cognitive processes, mental, emotional states of the individual;

3) temperament and other biological, hereditary properties that, along with social factors, affect the formation of a person's character;

4) experience (knowledge, skills, habits and other qualities that determine the choice of forms of activity) [18, p. 286].

Criminologists note the following factors of illegal behavior of criminals of this category:

1) personality traits (rigidity, dominance, anxiety, rapid irritation, low self-esteem, repression, impulsivity, addiction, low level of empathy and openness, stress tolerance, emotional lability, aggressiveness, isolation, suspicion and self-identification problems);

2) negative attitude towards the family and inadequate expectations from their representatives;

3) low level of social skills (lack of negotiation skills, peaceful solution of problems, inability to make moderate decisions, seek help from others);

4) the presence of psychological health disorders (pronounced psychopathological abnormalities, increased nervousness or repression, suicidal tendencies);

5) alcoholism and / or drug addiction as a psychopharmacological problem that causes affective mental disorders (aggressiveness, hypersexuality, irritability, coordination disorders, destruction of self-criticism, etc.), which result in loss of control over one's own behavior and irreversible process of personality degradation;

6) problems with physical health (pathological course of pregnancy, interrupted pregnancy, difficult childbirth, disability, etc.), which increase the likelihood of violent manifestations due to the powerful effect on the nervous system;

7) underdevelopment of parental skills and feelings is most often observed in young parents, whose difficulties in raising children cause nervousness, repression, anxiety, fear, which reduce self-esteem and the ability to cope with the duties of fatherhood, lead to neuropsychiatric disorders [19, p. 30].

A. Gumin believes that the greatest influence on the formation of moral and psychological qualities of a person is exerted by the family and the closed environment. Moral formation of personality is the result of interaction between reality and personality [20, p. 175].

Criminologists note that people who commit domestic crime have low or high self-esteem, are quickly irritated, aggressive, anxious, closed in on themselves, self-centered, rude and vindictive. They are characterized by a dismissive attitude towards their family members, who have high expectations from them. It is difficult for such individuals to negotiate, solve problems peacefully, and ask for help from others. They often have psychological abnormalities, nervous States, apathy, suicidal tendencies, and various addictions. Such addictions often lead to loss of control over behavior and gradual degradation. Physical disabilities also affect the identity of the perpetrator, which constantly occur on the person's nervous system.

Various factors contribute to domestic crime: the crisis of male gender identity, the difficult economic situation, the taboo on male "emotionality", the suppression of real emotions, stress, upbringing in the Family, School formation, low level of interests and culture [12, p. 390].

Conclusions. Based on our research, we can form the following forensic portrait of the identity of the abuser who commits a criminal offense in the home sphere – this is a man (or woman) aged 30-40 years who is married, with an average level of education, is a resident of the city, has a low level of intellectual development and social consciousness, mostly does not have a permanent place of work or is a low-skilled employee, with signs of deviant behavior (prone to the use of alcoholic beverages, narcotic substances, committing various offenses, ignoring legal norms), has a low level of social skills, emotional intelligence, previously brought to administrative or criminal responsibility, with a stereotypical view of gender roles, he is characterized by affective mental disorders (within the limits of sanity) and committed violent acts against his family.

Successful formation of a forensic portrait of the identity of the abuser who commits a criminal offense in the home sphere is the key to develop an effective system of measures to prevent and counteract domestic crime. In our opinion, the most effective is educational activities on causing domestic crime, because our state has a strong legislative framework for its counteraction and prevention, international projects and programs are being implemented to protect victims of violence, but public awareness remains at a rather low level.

The actual definition of the abuser's personality is a person who is characterized by a

set of socially significant properties and relationships and intentionally commits a criminal offense in the family sphere.

Conflict of Interest and other Ethics Statements
The author declares no conflict of interest.

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ABSTRACT

The article examines the identity of the abuser who commits domestic violence. The definition of an abuser who commits domestic crime as a set of socially significant characteristics and relations of a person that characterize him as committing crimes in the sphere of family and household relations is proposed. The structural elements of the criminological characteristics of the offender are analyzed, namely: socio-demographic; criminal-legal; socio-role; moral and psychological. Socio-demographic characteristics of the criminal's personality are covered by information about gender, age, education, place of birth and residence, citizenship, and other demographic data. Criminal law characteristics are information about the composition of the committed crime, the direction and motivation of criminal behavior, the sole or group nature of criminal activity, the form of complicity (performer, organizer, instigator, accomplice), the intensity of criminal activity, the presence of criminal records, and so on. Socio-role characteristics reveal the functions of an individual determined by his position in the system of existing social relations, belonging to a certain social group, interaction with other people and

organizations in various spheres of public life. A person's moral qualities include their worldview, spirituality, views, beliefs, attitudes, and value orientations.

Criminals are distinguished by a negative or indifferent attitude to the performance of their public duties, compliance with legal norms, the choice of illegal means of satisfying personal needs, selfishness, ignoring public interests, and so on. A portrait of a criminal who commits domestic violence has been formed. An effective system of measures to prevent and counteract domestic violence has been proposed, which should be based on effective educational activities on causing domestic crime.

***Keywords**: abuser, domestic violence, portrait of the face of a criminal, counteract domestic violence.*

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CRIMINAL OFFENCES COMMITTED IN IMPRISONMENTS OF THE STATE CRIMINAL EXECUTIVE SERVICE OF UKRAINE

Дмитро Колодчин. КРИМІНАЛЬНІ ПРАВОПОРУШЕННЯ, ЩО ВЧИНЯЮТЬСЯ В МІСЦЯХ ПОЗБАВЛЕННЯ ВОЛІ ДЕРЖАВНОЇ КРИМІНАЛЬНО-ВИКОНАВЧОЇ СЛУЖБИ УКРАЇНИ. У статті здійснено ґрунтовний аналіз видів кримінальних правопорушень, що вчиняються засудженими у місцях несвободи Державної кримінально-виконавчої служби України (ДКВС). Доведено, що вчинення засудженими у місцях несвободи кримінального правопорушення волі є не лише небезпечним посяганням на мету і завдання правосуддя та нормальну діяльність установ виконання покарань ДКВС України, а й перешкоджає досягненню мети покарання та насамперед його протидії та запобіганню.

До найбільш важливих теоретичних і практичних питань, які вплинули на судову і виконавчу практику та які нині потребують опрацювання і дослідження, автором віднесено вчинення засудженими у місцях несвободи Міністерства юстиції України таких резонансних кримінальних правопорушень, як: злісна непокора вимогам адміністрації установи виконання покарань; дії, що дезорганізують роботу установ виконання покарань; втеча з місця позбавлення волі або з-під варти. Найбільшу небезпеку у виправних колоніях України становлять кримінальні правопорушення, поєднані з нападом засуджених на особовий склад варти з метою усунення перешкод для здійснення задуму і заволодіння зброєю, яку вони використовують для збройного опору при подальшому їхньому затриманні, а також для вчинення нових злочинів.

Сформульовано авторське визначення кримінального правопорушення в місцях несвободи ДКВС України. Це передбачене кримінальним законом, суспільно-небезпечне діяння (дія або бездіяльність), вчинене спеціальним суб'єктом, в місцях несвободи ДКВС України і яке посягає на мету і завдання правосуддя та нормальну діяльність установ виконання покарань, а також перешкоджає досягненню мети покарання, виправлення і ресоціалізації засуджених.

***Ключові слова:** кримінальне правопорушення, засуджений, персонал, місця несвободи, запобігання, виправна колонія.*

Relevance of the study. The problem of convicts committing criminal offenses in imprisonments of the State Criminal Executive Service of Ukraine (hereinafter – the SCES Ukraine) is not only a dangerous encroachment on the justice goal and task and on the normal operation of correctional institutions, it primarily prevents the achievement of the purpose of punishment, correction and resocialization of convicts.

Therefore, domestic penitentiary scholars are of the same opinion that a criminal

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offense committed in imprisonments is a certain type of criminal activity, both of convicts and of the personnel of correctional institutions, and therefore the government is forced to spend significant funds to combat and prevent this socially dangerous phenomenon. Unfortunately, as evidenced by the practice of the correctional institutions of the Ministry of Justice of Ukraine, the public danger of committing a criminal offense by convicts and a staff is very often combined with the commitment of other criminal offenses, in particular, the commitment of serious crimes against life and health of another convicted person or even of a correctional officer.

The above circumstances together indicate the need and possibility of consideration within the framework of a separate independent study of the concept and types of criminal offense committed by a special perpetrator in imprisonments of the SCES of Ukraine and has determined the relevance of this research paper. The scientific achievements of domestic and foreign scholars in the field of criminal and criminal executive law and criminology testify to a number of systematic provisions and conclusions that directly or indirectly relate to the concept and types of criminal offenses committed in imprisonments and make methodological prerequisites for its effective research in today's realities. Thus, the study of types of criminal offenses committed in imprisonments provides an opportunity to further deepen theoretical knowledge about them, their history and development, as well as to determine ways to improve regulatory and organizational-management support.

Recent publications review. The theoretical and practical basis of this scientific article was made by the research of well-known domestic and foreign specialists in criminal, criminal executive law and criminology, in particular Yu. Antonyan, Yu. Baulin, O. Bandurka, V. Bilous, A. Bohatyryov, I. Bohatyryov, Ye. Bodyul, V. Vasylets, V. Vasylevych, P. Vorobey, V. Hryshchuk, I. Helfand, A. Hetman, V. Holina, O. Dzhuzha, V. Dryomin, T. Denysova, V. Yemelyanov, O. Zhytniy, A. Zelinskyy, O. H. Kalman, I. Karpets, A. Kyrylyuk, O. Kostenko, O. Kulyk, O. Lemeshko, O. Lytvynov, O. Lytvak, S. Lukashevych, V. Makoviy, M. Melnyk, P. Mykhaylenko, V. Navrotskyi, V. Osadchyy, M. Panov, M. Puzyryov, A. Savchenko, V. Stashys, E. Streltsov, V. Tatsiy, V. Tykhyy, V. Trubnykov, P. Fris, S. Khalymon, Yu. Shemshuchenko, V. Shakun, S. Yatsenko and others.

Their achievements contain a number of systematic provisions and conclusions that directly or indirectly relate to criminal offenses committed by convicts in imprisonments and make methodological prerequisites for an effective study of the mentioned issues. The specified circumstances, as well as the need for further development of theoretical issues and practical recommendations regarding the study of criminal offenses committed by convicts in imprisonments, require a comprehensive understanding and adequate scientific interpretation and testify to the relevance of the chosen topic of this scientific article.

The article's objective is to investigate the criminal offences committed in imprisonments of the state criminal executive service of Ukraine.

Discussion. The main content of the article. Among the most important theoretical and practical issues that have influenced judicial and executive practice and that currently require elaboration and research, we include the commitment of such high-profile criminal offenses by convicts in imprisonment of the Ministry of Justice of Ukraine as: "Malicious disobedience to the requirements of the administration of correctional institutions" (Article 391 of the Criminal Code (hereinafter – CC of Ukraine); "Actions that disorganize the work of correctional institutions" (Article 392 of the CC of Ukraine); "Escape from a place of imprisonment or from custody" (Article 393 of the CC of Ukraine) [1].

Among the types of criminal offenses listed above, which are committed in imprisonment of the SCES of Ukraine, in particular, by convicts, there is Art. 391 of the CC of Ukraine, the socio-legal conditionality of which, according to domestic scholar K. Bondareva, is that criminal liability for malicious disobedience to the requirements of the administration of a correctional institution is an effective preventive measure that contributes to the maintenance of proper law and order in correctional institutions and plays an important role in the organization of the use of basic means of correction and resocialization of convicts, as well as in the prevention of new criminal offenses among them [2, p. 11].

By the way, the study of the criminal offense provided for in Art. 391 of the CC of Ukraine, in foreign countries has shown that the legislation of the most developed countries of the world (United States of America, Great Britain, France, Germany, Japan) lacks a criminal article on malicious disobedience to the requirements of the administration of penal institutions. This is due to the fact that in the penitentiary institutions of these countries there is

such a system of prevention of the commitment of criminal offenses, in which malicious disobedience to the requirements of the administration of these institutions is impossible.

At the same time, the study of malicious disobedience to the requirements of the administration of penal institutions shows that the criminal codes of the Republic of Kazakhstan, the Republic of Moldova, and the Republic of Uzbekistan contain articles related to malicious disobedience to the requirements of the administration of the said institutions.

Therefore, ambiguous approaches to Art. 391 of the CC of Ukraine in foreign countries, gives us reason to pay attention to the draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine" (regarding the elimination of the corruption scheme in the penitentiary system by removing Article 391 of the CC of Ukraine) reg. No. 2079 dated September 6, 2019.

By the way, this draft law цфі proposed to remove Art. 391 of the CC of Ukraine "Malicious disobedience to the requirements of the administration of a correctional instution", as well as a reference to the specified article in Art. 140 of the Criminal and Executive Code (hereinafter – CEC) of Ukraine. We also draw attention to the fact that this is not the first attempt to remove Art. 391 of the CC of Ukraine. Previous attempts for various reasons did not receive legislative implementation. Let us recall draft law No. 2708 "On Amendments to Certain Legislative Acts of Ukraine" (regarding liability for malicious disobedience to the requirements of the administration of a correctional institution)" dated April 23, 2015 and Draft Law No. 9228 "On Amendments to Certain Legislative Acts of Ukraine" (regarding the removal Article 391 of the CC of Ukraine) dated October 19, 2018.

Sharing the opinion of the initiators of the draft law that the current version of Art. 391 of the CC of Ukraine is characterized by the presence of a number of conceptual shortcomings (corruption risks; inconsistency with the provisions of the Criminal Procedure Code; the need to exclude from the provisions of Article 391 of the Criminal Code of Ukraine such forms of socially dangerous behavior of convicts as other opposition to the administration in the legal exercise of its functions, etc.), we note that the exclusion of Art. 391 from the structure of the CC of Ukraine may lead to the specified negative consequences.

Therefore, the correct solution should not be the decriminalization of malicious disobedience to the legal requirements of the administration of the correctional institution, but the improvement of the rule that provides for criminal liability for it in order to make it more effective and substantiated in practice and eliminate the risk of corruption. Therefore, we suggest that the national legislator, taking into account the latest theoretical achievements of criminal-legal science and modern realities of social and legal practice, should consider the criminal offense stipulated in Art. 391 of the CC of Ukraine as a misdemeanor.

The next type of criminal offense is actions that disorganize the operation of correctional institutions (Article 392 of the CC of Ukraine). The social danger of actions that disorganize the operation of correctional institutions is determined by the fact that they seriously interfere with the normal operation of imprisonments, the achievement of the goals of punishment, and in some cases may lead to other serious consequences (murders, bodily harm, mass riots). According to the national researcher A. Tkachenko, actions that disorganize the operation of imprisonments, hinder the strengthening of the regime of detention of convicts, their involvement in socially useful work, conducting social and educational work and training with them, cause damage to all means of correction and resocialization of convicts [3, p. 9].

Therefore, this criminal offense damages all means of correction and resocialization of convicts. It hinders the strengthening of the regime of detention of convicts, their involvement in socially useful work, social-educational work and training with them. In addition, these actions cause serious damage to the self-employed organizations of convicts.

The greatest danger in the correctional colonies of Ukraine, according to the national scholar I. Bohatyryov, is criminal offenses combined with an attack by convicts on the guard personnel with the aim of removing obstacles to the implementation of the plan and taking possession of weapons that they use for armed resistance during their subsequent detention, and as well as for committing new crimes [4, p. 27].

It is worth emphasizing that the prerequisite for the criminalization of socially dangerous acts is, first of all, the needs of society to combat such acts by criminal legal means. These needs arise when actions that begin to pose a serious public danger, become sufficiently widespread in society, or there is a real possibility of increasing their number under certain conditions, as well as when they are ineffectively combated by other, less repressive measures and methods.

It is also worth noting that the public danger of the criminal offense stipulated in Art. 392 of the CC of Ukraine, is determined by a number of factors, including: the threat of use of violence against the convict or correctional officer. Commitment such actions in the correctional institution can cause not only a violation of their normal activities and significantly complicate the operational situation, but also make a negative atmosphere among the convicts themselves, question the ability of the correctional administration to ensure the safety of the convicts and the correctional staff.

The next type of criminal offense is escaping from an imprisonment or from custody (Article 393 of the CC of Ukraine). By the way, the criminalization of crime in correctional institution has always put before the government the need for criminal-legal regulation to ensure the implementation of the order and conditions for convicts to serve the sentence by imprisonment. And therefore, establishing criminal liability for escaping from an imprisonment or from custody, the legislator takes into account many circumstances that form the prerequisites for such a decision.

These prerequisites, according to the national scholar O. Nekrasov, forming a certain system, are interconnected and mutually conditioned. At the same time, their difference in the conditioning mechanism is obvious, which undoubtedly affects the legislative consolidation, legal nature and punishment for crimes that encroach on the established order of sentence serving in the form of imprisonment [5, p. 13].

Therefore, despite the relatively small statistical indicators of the prevalence of escapes from imprisonments or from custody during the period of the development of the legal state in general and the reforming of the SCES of Ukraine in particular, the legislative regulation of criminal liability for encroachment on the normal operations of correctional institutions and institutions of pre-trial detention, to achieve the goal of criminal executive legislation [6], as well as the aim of pre-trial detention [7] is of particular importance.

Therefore, escapes from imprisonments or from custody, as a rule, encroach on a set of social relations, which gave researchers a reason to talk about the so-called "multi-object crimes". In our opinion, the position of I. Kopotun in this context is of interest, since crimes that lead to emergency situations in correctional institutions (and escapes from them) that cause damage or threaten to cause real harm to those social relations, which go beyond the scope of one generic object within the general object.

That is, as this expert notes, the above-mentioned criminal offenses committed in imprisonments of the SCES of Ukraine not only violate the legal procedure for the administration of justice and safe conditions for staff and convicts, the life of the correctional colony, but also public safety, public order, property relations, authority of state power bodies, etc. The essence of these criminal manifestations is that they are defined a priori by criminal-legal science as a multiplicity of crimes [8, p. 113-114].

It is also worth supporting the position of the Ukrainian penitentiary scientist I. Bohatyryov, who explains the social danger of escapes from correctional institutions by the following factors: as a result of committing an escape, the principle of the inevitability of punishment is violated; the very fact of escape has a negative effect on other convicts, as well as on criminals who are at large, giving rise to the former hope of evading punishment, and the latter – a feeling of impunity for the crimes committed; the public danger of escapes also increases due to the fact that convicts who have escaped are in an illegal situation, obtain funds for their existence through crime, and in some cases involve other people, especially young people, in criminal activities [9, p. 442].

Public danger of the criminal offense stipulated in art. 392 of the CC of Ukraine, is especially large, because it is committed by persons who have already been convicted for crimes (mostly serious and especially serious ones) and are serving their sentences. The increased social danger of recurrent crime, compared to primary crime, has been repeatedly pointed out in the legal literature.

Since it is the degree of disorganization of the work of the correctional institution of the SCES of Ukraine that describes the public danger of this type of criminal offense, we determine it on the basis of some objective data, in particular: it is the use of violence by convicts or the threat of its use against representatives of the administration, or the terrorizing of convicts who have become correction path; as well as the duration of violation of the order established in the correctional colony by both the guilty party and other convicts, which is expressed in forced refusal from work, disruption of production tasks, withdrawal from amateur organizations of convicts due to fear of further reprisals, etc.

Conclusions. The above made it possible to formulate the author's definition of a criminal offense committed in imprisonment of the SCES of Ukraine. This is a socially dangerous act (action or inaction) stipulated in the criminal legislation, committed by a special perpetrator, in places of imprisonment of the SCES of Ukraine and which encroaches on the goal and task of justice and the normal operation of correctional institutions, as well as hinders the achievement of the goal of punishment, correction and resocialization of convicts.

Conflict of Interest and other Ethics Statements
The author declares no conflict of interest.

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ABSTRACT

The article provides a thorough analysis of the types of criminal offenses committed by convicts in places of detention of the State Criminal Enforcement Service of Ukraine (SCSU). It has been proven that the commission of a criminal offense of free will by convicts in places of deprivation of liberty is not only a dangerous encroachment on the goal and task of justice and the normal operation of the penal institutions of the State Security Service of Ukraine, but also prevents the achievement of the goal of punishment and, above all, its counteraction and prevention.

Among the most important theoretical and practical issues that have influenced judicial and executive practice and that currently require elaboration and research, the author includes such high-profile criminal offenses as: malicious disobedience to the requirements of the administration of the penal institution; actions that disorganize the work of penal institutions; escape from the place of deprivation of liberty or from custody. The greatest danger in the correctional colonies of Ukraine is criminal offenses combined with an attack by convicts on the guards in order to remove obstacles to the implementation of the plan and to take possession of weapons, which they use for armed resistance during their subsequent detention, as well as to commit new crimes.

The author's definition of a criminal offense in places of deprivation of liberty of the State Security Service of Ukraine is formulated. This is a socially dangerous act (action or inaction), committed by a special subject, in places of deprivation of liberty of the State Security Service of Ukraine and which encroaches on the goal and task of justice and the normal operation of institutions for the execution of punishments, as well as prevents the achievement of the goal of punishment, correction and resocialization of convicts.

Keywords: *criminal offense, convict, staff, places of imprisonment, prevention, correctional colony.*

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LEGAL REGULATION AND MECHANISMS FOR COMPENSATION FOR DAMAGE CAUSED BY A CRIME UNDER LEGISLATION OF THE REPUBLIC OF MOLDOVA

Наталія Паустовська, Дмитро Попушной. ПРАВОВЕ РЕГУЛЮВАННЯ ТА МЕХАНІЗМИ ВІДШКОДУВАННЯ ЗАПОДІЯНОЇ ЗЛОЧИНОМ ШКОДИ ЗА ЗАКОНОДАВСТВОМ РЕСПУБЛІКИ МОЛДОВА. У статті йдеться про сучасні особливості правового регулювання та механізми відшкодування заподіяної злочином шкоди за молдовським законодавством. Відновлення порушених злочином прав і законних інтересів, зокрема шляхом відшкодування заподіяної злочином шкоди, – одне із найважливіших завдань кримінального судочинства. Однак, суть проблеми полягає навіть не так у тому, що права цієї категорії не передбачені в чинному законодавстві, а в тому, що реалізація цих прав насправді часто пов'язана

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із безліччю труднощів. 29 липня 2016 р. в Республіці Молдова було прийнято Закон про реабілітацію жертв злочинів. Положення цього закону націлені на створення законодавчої бази для забезпечення мінімальних умов реабілітації потерпілих від злочинів осіб, захисту та забезпечення дотримання їхніх прав та законних інтересів, а також регулює категорії потерпілих від злочинів осіб, на які поширюються його положення, механізми захисту та реабілітації жертв злочинів, порядок та умови надання державою фінансової компенсації завданої злочином шкоди.

Потерпілі від торгівлі людьми та від насильства в сім'ї користуються допомогою на умовах Закону про запобігання та припинення торгівлі людьми від 20 жовтня 2005 р. або, залежно від обставин, Закону про запобігання та припинення насильства в сім'ї від 1 березня 2007 р. На фінансову компенсацію мають право потерпілі від злочинів, передбачених деякими статтями Кримінального кодексу (злочини проти життя та здоров'я особи).

Незважаючи на те, що в Республіці Молдова вживаються деякі заходи щодо створення законодавчої бази для забезпечення умов реабілітації та механізмів для відшкодування шкоди жертвам злочинів, автори вважають, що ці заходи мало ефективні на тлі зростання злочинності. На їхню думку, молдовське законодавство має розвиватися шляхом удосконалення заходів та способів захисту прав потерпілих шляхом створення державних компенсаційних фондів з виплат потерпілим, у тому числі з подальшим стягненням у порядку регресу виплачених сум з боржників-засуджених.

Ключові слова: *потерпілий, злочин, відшкодування шкоди, механізм, кримінальне судочинство.*

Relevance of the study. In current realities, when the influence of negative social factors on the area of public relations has become more pronounced systemic, the number of criminal encroachments on human life and health, unfortunately, is increasing – the problem of compensation for harm caused by a crime is acute for today's society. Poverty, unemployment, social insecurity and a difficult geopolitical situation are factors that give rise to crime. In this regard, we should expect an increase in such types of crimes as robberies, thefts, looting. The level of detection of violent and mercenary-violent crimes does not exceed 50 percent, and more than a third of the victims are deprived of the opportunity to compensate for the damage caused to them, since the persons responsible for their commitment have not been identified.

Accordingly, with the development of crime, the harm that it causes increases. Restoration of the rights and legitimate interests violated by the crime, including by means of compensation for the harm caused by the crime, is one of the most important tasks of criminal proceedings. However, the essence of the problem lays not so much in the fact that the rights of this category are not provided for in the current legislation, but in the fact that the implementation of these rights in reality is often associated with many difficulties. Compensation for harm to the victim, a rarity for the criminal proceedings of the Republic of Moldova.

Recent publications review. The problems of compensation for harm caused by a crime have been dealt with by many scientists at different times. In particular, in the pre-revolutionary period, these issues were studied by: M. Dukhovskoy, V. Sluchevsky, I. Foinitsky. In the soviet period by: B. Bezlepkin, V. Bozhev, A. Gulyaev, V. Daev, V. Dubrivny, S. Efimichev, P. Marfitsin, I. Petrukhin, I. Poteruzha, V. Savitsky, M. Strogovich, M. Cheltsov, L. Kokorev, V. Shadrin, S. Shcherba, N. Yakubovich, P. Yani. Currently, the works of S. Aleksandrov, F. Bagautdinov, V. Bykov, T. Galimov, A. Grinenko, V. Grigoriev, V. Dubrovin, A. Dyk, Yu. Zvereva, Z. Zinatullina, D. Ivanov, V. Ionova, E. Kleshchina, S. Koldina, D. Mantsurova, L. Maslennikova, O. Michurina, N. Muratova, E. Nagieva, E. Nikolaev, M. Samitova, E. Smirnova, O. Selednikova, N Senina, S. Sinenko, S. Turov, V. Khatuaeva, O. Khimicheva, R. Khasanshina, D. Chekulaev, D. Sharov, A. Erdelevsky and others are devoted to this problem.

The process of formation of the criminal procedural legislation of the Republic of Moldova on the issues of compensation for harm to the victim has common features with the formation of the legislative base of the Republic, however, there are some peculiarities. This calls for a detailed comparative legal study in order to develop new legal means, modern methods and criminal procedural measures that contribute to the effective provision of compensation for harm caused by a crime.

The article's objective is to consider current features of legal regulation and mechanisms of compensation for damage caused by crime under Moldovan law.

Discussion. Practice has shown that in criminal proceedings the victim has two goals: firstly, he/she wants to receive compensation for the harm caused by the committed crime; secondly, to punish the guilty person. The desire of the criminal process to restore social justice corresponds to the unity of these desires. Thus, Article 23 of the Code of Criminal Procedure of

the Republic of Moldova guarantees the right of victims of crimes to compensation for the moral, physical and material damage caused to them, but in practice this right is not always realized. Firstly, compensation for harm is not an unconditional obligation of the perpetrator and is made only by a court verdict. Secondly, the victim cannot count on compensation if the guilty person does not want to compensate for the harm or does not have the necessary funds, and also if the guilty person is simply not identified or is hiding from the investigation and, accordingly, there is no one to recover the amount of damage caused.

In addition, the terms of investigation and consideration of criminal cases in courts are sometimes not respected, although some types of crimes do not tolerate delay, and as a result, the statute of limitations for criminal liability expires. For these reasons, again, the victims' rights to restoration of social justice are violated. These situations predetermine the formulation of the question of the need for other legal mechanisms for compensation for harm from crimes, except for those for the functioning of which a guilty person is required, who undertakes to compensate for the harm caused to him/her. We should note that in the Criminal Code of the Republic of Moldova, the prevention by the perpetrator of the harmful consequences of the crime committed, the voluntary compensation for the damage caused or the elimination of the harm caused is considered as a circumstance mitigating criminal punishment, and as an integral part of the condition for exemption from criminal liability [2].

At the same time, according to the principle of the presumption of innocence, no one is obliged to prove his innocence [3]. The burden of proving the prosecution and refuting the arguments put forward in defense of the suspect or the accused lies with the prosecution. In accordance with these provisions, the burden of proving the guilt of the accused in both considered cases should be assigned to the victim as well. It should be noted that the victim, being unable to collect the evidence base he needs, is forced to resort to the help of the preliminary investigation bodies and the court. It seems that this assistance should consist, for example, in resolving the petitions of the victim to obtain additional evidence through investigative and other procedural actions.

One of the mechanisms that significantly simplifies the procedure for considering criminal cases in courts is provided by Article 3641 of the Code of Criminal Procedure of the Republic of Moldova, according to which the trial can be conducted on the basis of evidence collected at the stage of criminal prosecution only if the defendant confesses to committing all the acts indicated in the indictment, and does not require the presentation of new evidence [3].

The defendant who confessed to the acts specified in the indictment and demanded a trial on the basis of evidence collected at the stage of criminal prosecution shall be reduced by a third the limits of the statutory punishment in the event of a sentence to imprisonment or unpaid labor in favor of society and by a quarter the limits of punishment prescribed by law are reduced in the event of a fine being imposed. If the petition is satisfied, the presiding judge explains to the victim the right to file a civil claim and addresses the civil plaintiff, civil defendant with a question whether they offer to present evidence. After that, the court proceeds to the judicial debate, consisting of the speeches of the prosecutor, defense counsel and the defendant, who can once again take the floor for a cue. If the victim, the civil plaintiff and the civil defendant participate in the meeting, they are also given the floor in the debate. However, this procedural norm still does not guarantee real compensation for the damage caused.

Another mechanism that speeds up the investigation and trial process is plea bargaining. A plea guilt is an agreement between the prosecutor and the accused or, as the case may be, the defendant, who has agreed to plead guilty in exchange for a reduced sentence, which must be drawn up in writing with the mandatory participation of the defense counsel, the accused or the defendant in the case of all crimes under the Special part of the Criminal Code, except for the crimes provided for in Articles 135 and 1351 of the Criminal Code of the Republic of Moldova, i.e. genocide and crimes against humanity. A plea guilt can be entered into at any time after the indictment is filed before the start of the judicial investigation [3]. This institution leads to a significant reduction in the expenditure of funds from the state budget, spent from the moment a person is informed of suspicion of a crime and until the court announces the verdict. Also, the cooperation of the suspect or the accused with justice helps to effectively solve crimes and provides significant assistance to law enforcement agencies in the fight against organized crime. However, this proceeding does not oblige the accused and the defendant to compensate for the damage caused by the committed crime.

It should be clarified that in the Republic of Moldova, when concluding plea bargains, the interests of the victim are not taken into account, his consent is not a condition for

concluding a deal between the parties. It should also be noted that at present, the Ministry of Justice of the Republic of Moldova is considering a draft amendment to the criminal procedure legislation, namely, it may introduce the possibility of concluding a judicial agreement on the admission of guilt between the prosecutor and the accused legal entity. A mechanism that exists in most EU member states and the US. Such a measure may lead to faster redress for the damage caused to the State. If approved by parliament, such a measure would provide an opportunity to redress the damage caused to the state by the accused person, who would also have to pay a large fine.

Nevertheless, we note that recently the state has paid quite a lot of attention to the observance of the rights of the accused and defendants. The conditions of detention of arrested persons and those sentenced to deprivation of liberty have been improved, compensation is being awarded for violation of conditions of detention in correctional institutions. Thus, according to part (5) of Article 385 of the Code of Criminal Procedure of the Republic of Moldova, if serious violations of the rights of the defendant arising from the procedural status of the defendant are established during the criminal prosecution or trial, the court considers the possibility of reducing the punishment as compensation for the violations committed [3]. And in the event of a violation of the rights in relation to the conditions of detention guaranteed by Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, in the light of the jurisprudence of the European Court of Human Rights, the reduction in punishment is calculated as follows: two days of imprisonment for one day of preliminary arrest.

The rules adopted in 2019 also provide for monetary compensation for the conditions of detention, the equivalent of five euros per day, i.e. a little over a hundred lei. Thus, in almost three years, more than 600 prisoners have obtained through the courts a reduction in their terms of detention due to degrading conditions in prisons. As for financial compensation: they amounted to more than 5 million lei. Perhaps this is correct, and humane treatment of those who have broken the law is necessary, however, we believe that the condition for the application of these procedural mechanisms should be, first of all, the satisfaction of a civil lawsuit. Often, when considering a criminal case and deciding a judicial act, civil claims are left without consideration and the victims are invited to file a claim in civil proceedings.

That is, a person who has suffered harm from a crime has an alternative choice: the law has given him the right to file a civil claim in the process of considering a criminal case and the right to present a claim for compensation for harm in civil proceedings. However, in civil proceedings, the victim himself, and not the prosecutor, who should act on the side of protecting the rights of the victim, proves the amount of damage, the causal relationship, independently prepares and files a claim, and acts in civil proceedings.

The victim, who has experienced physical, moral suffering, suffered material damage, is forced to seek protection of his rights himself, while receiving additional inconvenience and suffering, there are no material resources to pay for a lawyer, it is impossible to figure it out on his own. The result is a sad statistic, an extremely low percentage of claims for compensation for harm to victims of crime. As an example, the United States has developed a mechanism that allows the victim of a crime to receive compensation, regardless of any causes and conditions related to the accused. We are talking about compensation for harm caused by a crime to the victim by the state. On July 29, 2016, the law on the rehabilitation of crime victims was adopted in the Republic of Moldova. The provisions of this law are aimed at creating a legislative framework to ensure minimum conditions for the rehabilitation of crime victims, to protect and ensure their rights and legitimate interests, and also regulates the categories of crime victims that are subject to its provisions, mechanisms for the protection and rehabilitation of crime victims, the procedure and conditions provision by the state of financial compensation for the damage caused by the crime.

Psychological and legal consultation at the expense of the state, as well as financial compensation is provided to victims of crimes if the crime is committed on the territory of the Republic of Moldova, or if it is committed outside the Republic of Moldova and the victim is a citizen of the Republic of Moldova, a citizen of a foreign state or a stateless person legally residing in territory of the Republic of Moldova.

Thus, the following support services are provided to victims of crime:

a) informing victims of crime about the rights and services that can be provided to them;

b) psychological counseling;

c) legal assistance guaranteed by the state;

d) financial compensation by the government for the damage caused by the crime.

It should also be noted that victims of human trafficking and victims of domestic violence receive assistance under the terms of the law on the prevention and suppression of trafficking in persons no. 241-XVI of October 20, 2005 or, depending on the circumstances, the law on the prevention and suppression of domestic violence no. 45-XVI dated March 1, 2007.

In addition, victims of torture, inhuman or degrading treatment are provided with legal assistance, guaranteed by the state, on a mandatory basis. Victims of crimes under the following articles of the Criminal Code are entitled to financial compensation: article 145 (premeditated murder), article 146 (murder committed in a state of passion), article 149 (deprivation of life by negligence), part (4) of article 151 (deliberate infliction of grievous bodily injury or other grievous bodily harm resulting in the death of the victim), article 158 (trafficking in human organs, tissues and cells), clause b) of part (3) of article 164 (kidnapping of a person, negligently causing grievous bodily injury or other grievous harm health or death of the victim), article 165 (trafficking in human beings), paragraph (3) of article 166 (illegal deprivation of liberty), article 1661 (torture, inhuman or degrading treatment), article 167 (slavery and conditions similar to slavery), article 168 (forced labor if the crime is committed against a minor), articles 171-175 (crimes related to the sexual sphere), art. Article 2011 (domestic violence), Article 206 (trafficking in children), Article 2081 (child pornography), Article 2082 (obtaining child prostitution services) [5].

When determining the amount of financial compensation provided by the state for damage caused by violent acts that accompanied the crime, the following are taken into account:

a) hospitalization, treatment or other treatment-related costs incurred by the victim of the crime;

b) damage to prostheses and other items that replenish the functionality of individual parts of the human body;

c) damage caused by the destruction, damage or seizure of the property of the victim by committing a crime under paragraph 2 of Article 12;

d) damage caused by loss of ability to work, if caused by criminal acts;

e) in the event of the death of the victim of the crime, the costs of his/her burial.

The Interdepartmental Commission for State Financial Compensation for the Damage Caused by the Crime consists of a representative of the Ministry of Justice, a representative of the Ministry of Health, Labor and Social Protection and a representative of the Ministry of Finance, and considers an application for financial compensation along with the attached documents within 30 days from the date of submission.

Financial compensation is paid from the state budget and amounts to 70 % of the amount of damage calculated in accordance with Article 15, but not more than 10 average monthly wages in the economy according to the forecast for the year in which the victim submitted the application for financial compensation. And the transfer of financial compensation to victims of crimes is carried out by the Ministry of Justice within 30 days after the acquisition of a final character by the order of the Minister of Justice on state financial compensation for the damage caused by the crime [5].

Nevertheless, we would like to emphasize that the possibilities of state compensatory assistance to crime victims, even in developed countries, are very limited. Therefore, in most countries, including the Republic of Moldova, compensation provisions cover the limited types of crime presented above. In September 2022, the Ministry of Justice of the Republic of Moldova took the initiative to change and improve the regulatory framework and the law on the rehabilitation of crime victims. In this regard, this item was included in the Strategy for Ensuring the Independence and Integrity of the Justice Sector for 2022-2025 and in the Action Plan for its implementation.

Conclusions. It should be noted that despite the fact that in the Republic of Moldova some measures are being taken to create a legislative framework to ensure the conditions for rehabilitation and mechanisms for compensating victims of crime, we believe that these measures are not very effective against the backdrop of an increase in crime. It seems to us that domestic legislation should develop along the path of improving measures and methods for protecting the rights of victims by creating state compensation funds for payments to crime victims, including with the subsequent recovery of the amounts paid from convict debtors in the order of recourse (for example, budget revenues in connection with the confiscation of valuables and property of the perpetrators or the extended confiscation of the convicted person, fees for legal costs, fines, etc.). Any obstruction of the execution of a sentence in terms of a civil claim should entail negative consequences for the

convicted person, in the form of a refusal to apply parole from punishment or other mechanisms that reduce the limits of punishment provided for by law. It is also necessary to further improve the legal mechanisms for compensation for harm from crimes, except for those that require a guilty person to function.

Conflict of Interest and other Ethics Statements
The author declares no conflict of interest.

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ABSTRACT

The article deals with modern features of legal regulation and mechanisms of compensation for damage caused by crime under Moldovan law. Restoring the rights and legitimate interests violated by the crime, in particular by compensating the damage caused by the crime, is one of the most important tasks of the criminal justice system. However, the essence of the problem lies not so much in the fact that the rights of this category are not provided for in the current legislation, but in the fact that the realization of these rights is often associated with many difficulties.

Despite the fact that some measures are being taken in the Republic of Moldova to create a legislative framework to ensure conditions for rehabilitation and mechanisms to compensate victims of crimes, the authors believe that these measures are not very effective against the background of the increase in crime. In their opinion, Moldovan legislation should be developed by improving the measures and ways of protecting the rights of victims by creating state compensation funds for payments to victims, including the subsequent recovery of the sums paid from convicted debtors.

Keywords: *victim, crime, compensation, mechanism, criminal proceeding.*

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REGULATORY FRAMEWORK FOR POLICE ACTIVITIES IN THE FIELD OF COMBATING SEXUAL VIOLENCE AGAINST CHILDREN

Вадим Фурса. НОРМАТИВНО-ПРАВОВА ОСНОВА ДІЯЛЬНОСТІ ПОЛІЦІЇ У СФЕРІ ПРОТИДІЇ СЕКСУАЛЬНОМУ НАСИЛЬСТВУ НАД ДІТЬМИ. У статті здійснено правовий аналіз законодавства, безпосередньо спрямованого на протидію сексуальному насильству над дітьми, та законодавства, що регулює діяльність поліції у сфері протидії сексуальному насильству над дітьми. Автор зазначає, що всебічний захист прав і законних інтересів дітей, у тому числі захист дітей від сексуальних зловживань, є одним із пріоритетних напрямів державної політики нашої країни, який реалізується через розгалужену систему державних органів, серед яких і Національна поліція України. Відповідно до поставлених завдань на поліцію покладено широке коло обов'язків щодо забезпечення та захисту прав і законних інтересів людини, забезпечення публічної безпеки і порядку, запобігання, виявлення та припинення кримінальних і адміністративних правопорушень, запобігання та протидії домашньому насильству або насильству за ознакою статі тощо. Ефективність та якість виконання покладених на поліцію завдань щодо протидії сексуальному насильству над дітьми насамперед залежить від нормативно-правового забезпечення такої діяльності.

Також встановлено, що значна кількість міжнародних нормативних документів спрямована на запобігання сексуальній експлуатації дітей. Основним нормативним документом, спрямованим на захист дітей від сексуального насильства, є Конвенція Ради Європи про захист дітей від сексуальної експлуатації та сексуального розбещення 2007 року. Підкреслено, що ратифікація міжнародних нормативних актів призводить до позитивних змін у національному законодавстві та сприяє розвитку системи забезпечення прав та інтересів дитини.

Також встановлено, що нормативно-правове забезпечення діяльності поліції у сфері протидії сексуальному насильству щодо дітей представлено значною кількістю нормативних джерел. Детальний аналіз цих джерел дозволив виявити низку правових колізій, які потребують негайного усунення, оскільки такі колізії можуть створити умови, за яких захистити дитину від сексуального насильства буде неможливо. Також встановлено, що розгалужена система підзаконних нормативно-правових актів не сприяє належному захисту дітей від сексуального насильства. Дублювання повноважень, відсутність чіткої системи координації та контролю, розгалужена система державних органів з однаковими функціями, все це в сукупності створює умови для недобросовісного виконання державними службовцями, в тому числі працівниками поліції, своїх обов'язків щодо захисту дітей від сексуальних зловживань та сексуальної експлуатації.

Ключові слова: *Національна поліція, поліцейська діяльність, правові засади діяльності поліції, протидія злочинності, сексуальне насильство.*

Relevance of the study. The topic of sexual crimes, and in particular sexual crimes against children, remains relevant today. They pose an increased public danger, and the provision that a child, due to his physical and mental immaturity, needs enhanced protection and care, has long been universally recognized. As a result of committing a sexual crime against a person under the age of 18, their further normal physical and mental development is often disrupted. Such persons may form incorrect, from a moral point of view, ideas about sexual relations, and subsequently deformation of the personality is not excluded. It should also

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be borne in mind that sexual crimes are characterized by high latency, so the registered cases of this category of crimes do not reflect the real reality. At the same time, the comprehensive protection of the rights and legitimate interests of children, including the protection of children from sexual abuse, is one of the priorities of our state policy. This policy is implemented through an extensive system of state bodies, including the National Police of Ukraine.

The professional activity of the police is carried out in specific conditions. In accordance with the tasks, the police is entrusted with a wide range of responsibilities to ensure and protect human rights and legitimate interests, ensure public safety and public order, prevent, detect and suppress criminal and administrative offenses, prevent and combat domestic violence or gender-based violence, etc. The effectiveness and quality of the implementation of the tasks assigned to the police to combat sexual violence against children primarily depends on the regulatory and legal support of such activities.

Recent publications review. The problems of counteracting crimes against sexual freedom and sexual inviolability are reflected in the works of S. Avramenko, I. Bandurka, V. Borisov, L. Brych, V. Vitvitska, S. Denysov, O. Dzhuzha, A. Dzhuzha, L. Dorosh, O. Dudorov, A. Zadoya, L. Kozliuk, S. Kosenko, K. Kulyk, A. Lukash, G. Martynyshyn, T. Mykhaylychenko, L. Moroz, V. Navrotskyi, O. Ryabchynska, S. Romantsova, A. Savchenko, O. Svitlychnyi, O. Synieokyi, V. Stashys, V. Tatsiy, M. Khavroniuk, P. Khryapinskyi, A. Sheremet, S. Chmut, I. Chugunikov, and others.

Despite the fairly thorough scientific developments in the field of combating crimes against sexual freedom and sexual inviolability, the issues of regulatory and legal support of police activities in this area are still poorly understood.

The article's objective is to provide a legal analysis of the legislation directly aimed at combating sexual violence against children and the legislation regulating the activities of the police in the field of combating sexual abuse of children.

Discussion. Article 3 of the Law of Ukraine "On the National Police" states that the police shall be guided in its activities by the Constitution of Ukraine, international treaties of Ukraine ratified by the Verkhovna Rada of Ukraine, this and other laws of Ukraine, acts of the President of Ukraine and resolutions of the Verkhovna Rada of Ukraine adopted in accordance with the Constitution and laws of Ukraine, acts of the Cabinet of Ministers of Ukraine, as well as acts of the Ministry of Internal Affairs of Ukraine issued in accordance with them, and other regulatory legal acts. Undoubtedly, the Constitution of Ukraine has the highest legal force. Laws and other normative legal acts are adopted on the basis of the Constitution of Ukraine and must comply with it. At the same time, the Constitution of Ukraine contains a number of provisions, ideas and principles aimed at protecting children from sexual violence, borrowed from international law. That is why we will start our research with the analysis of international legal acts. We also add that the norms of international law/international treaties ratified by the Verkhovna Rada of Ukraine are a source of law and are binding on the entire territory of the state. A ratified international act has a higher legal force than a local one. Given Ukraine's desire to integrate into the European community and recent changes in national legislation on the protection of minors from sexual abuse, there is a need to analyze international normative acts that directly or indirectly address sexual violence against children.

The first international document that directly protects children from sexual abuse by adults is the Convention on the Rights of the Child of 1989 [1], which was ratified by Ukraine on February 27, 1991. The Convention is a universally agreed set of obligations and standards that are non-negotiable. These core standards, which are human rights, establish minimum rights and freedoms for children. These rights and freedoms must be respected by all governments. They are based on respect for the dignity and worth of every child, regardless of race, colour, sex, language, religion, opinion, birth, wealth, disability or ability, and therefore apply to every human being everywhere. With these rights comes the duty of both governments and individuals not to violate the rights of others.

Art. 19 of the Convention states that States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical and mental violence, injury or abuse, neglect or negligent and maltreatment and exploitation, including sexual abuse, by parents, legal guardians or any other person who has the care of the child, and in Art. 34 – States Parties are obliged to protect the child from all forms of sexual exploitation and sexual abuse In fact, the Convention on the Rights of the Child is the first modern international document aimed at combating sexual violence against minors.

The next international document directly aimed at protecting children from sexual abuse

is the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of 2007 – Lanzarote Convention [2], which was ratified by Ukraine on June 20, 2012. The Convention is the first instrument that defines various forms of sexual violence against children as criminal offences, including such violence committed at home or in the family through the use of force, coercion or threats. In addition to the offenses traditionally committed in this area – sexual abuse, child prostitution, child pornography, forced participation of children in pornographic performances – the text also refers to such concepts as "grooming" and "sex tourism". This Convention obliges the participating countries to prosecute any sexual activity against a child under a certain age – the age of sexual consent. In particular, Article 18 of the Convention states that each Party shall take the necessary legislative or other measures to ensure the criminalization of such intentional conduct as:

a) engaging in sexual activity with a child who has not reached the legal age for engaging in sexual activity

b) engaging in sexual activity with a child when:

– coercion, force or threats are used, or the violence is committed with the deliberate use of trust, authority or influence over the child, in particular within the family, or the violence is committed in a particularly vulnerable situation for the child, in particular due to mental or physical incapacity or dependence.

In order to implement the provisions of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the Laws of Ukraine of March 14, 2018 and February 18, 2021 amended Articles 155 and 156 of the Criminal Code of Ukraine.

Another international document aimed at protecting minors from sexual abuse is the Council of Europe Convention on preventing and combating violence against women and domestic violence of 2011 - the Istanbul Convention [3]. The Istanbul Convention is the first document in Europe that sets legally binding standards, in particular for the prevention of gender-based violence, protection of victims of violence and punishment of perpetrators. The main purpose of the Convention is to protect women from violence and to protect them from domestic violence. The Convention also aims to achieve the goal of zero tolerance for gender-based violence and lays the foundation for raising awareness and ensuring the safety of women's lives both within and beyond European borders. A number of articles of the Convention are also aimed at protecting minors from sexual abuse. In particular, Article 36 states that Parties shall take the necessary legislative or other measures to ensure that the following forms of intentional conduct are criminalized:

a) performing, without consent, vaginal, anal or oral penetration of a sexual nature into the body of another person using any part of the body or object;

b) performing, without consent, other acts of a sexual nature with a person;

c) forcing another person to perform, without consent, acts of a sexual nature with a third person.

Article 40 states that the Parties shall take the necessary legislative or other measures to ensure that any form of unwanted verbal, non-verbal or physical conduct of a sexual nature, the purpose or effect of which is to violate the dignity of a person, in particular by creating an intimidating, hostile, degrading or humiliating environment, is subject to criminal or other legal liability.

At the same time, it should be noted that despite the fact that the Istanbul Convention was not ratified by the Verkhovna Rada of Ukraine by June 20, 2022, it had a significant impact on the legislation of Ukraine in terms of protecting a person from sexual abuse and sexual exploitation. In particular, amendments based on the provisions of the Istanbul Convention have already been introduced to the Criminal Code of Ukraine by the Law of Ukraine of December 06, 2017 "On Amendments to the Criminal Code and the Criminal Procedure Code of Ukraine in order to implement the provisions of the Council of Europe Convention on preventing and combating violence against women and domestic violence". Ratification of the Istanbul Convention, in our opinion, is a new starting point for further reform of national legislation aimed at protecting individuals, including children, from various forms of sexual exploitation and sexual abuse.

As for national legislation, the Basic Law of our state is the Constitution of Ukraine [4]. The norms enshrined in the Constitution have the highest legal force, and all other normative acts cannot contradict its provisions. The norms, provisions and ideas that are enshrined in the Constitution, their main purpose is to protect the rights, freedoms and interests of man and

citizen. With regard to the subject of our study, we note that the Constitution enshrines the main provisions on the protection of children from sexual abuse, as well as the main directions of state policy in this area. Thus, Article 3 of the Constitution states that a person (including a child – V.F.), his life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value. Article 51 of the Constitution states that childhood is protected by the state, and Article 52 – that any violence against children and their exploitation are prosecuted by law. The Constitution of Ukraine also states that human rights and freedoms and their guarantees determine the content and direction of the state. The state is responsible to the individual for its activities. Affirmation and ensuring of human rights and freedoms is the main duty of the state, which it implements through the system of state bodies. One of such state bodies whose activities are directly aimed at combating sexual violence against children is the National Police of Ukraine.

The basic principles of the National Police, including in the field of combating sexual violence against children, are enshrined in the Law of Ukraine "On the National Police" [5]. Thus, Article 1 of this Law states that the police serves the public by ensuring the protection of human rights and freedoms, combating crime, maintaining public safety and order. Art. 2 of this Law states that the tasks of the police are to protect human rights and freedoms, as well as to provide, within the limits determined by law, services to assist persons who, for personal, economic, social reasons or as a result of emergency situations, need such assistance. In accordance with the tasks assigned to it, the police carries out preventive and prophylactic activities aimed at preventing the commission of offences; identifies the causes and conditions that contribute to the commission of criminal and administrative offences, takes measures within its competence to eliminate them; takes measures to detect criminal and administrative offences; stops detected criminal and administrative offences; takes measures aimed at eliminating threats to the life and health of individuals and public safety, which Art. 3 of the Law of Ukraine "On the National Police" states that the police in its activities is guided by the Constitution of Ukraine, international legal acts, the consent to be bound by the Verkhovna Rada of Ukraine, laws of Ukraine, by-laws adopted in accordance with the Constitution and laws of Ukraine, acts of the Cabinet of Ministers of Ukraine, as well as acts of the Ministry of Internal Affairs of Ukraine issued in accordance with them, and therefore, for the proper disclosure of the research topic, it is necessary to analyze other legal acts.

One of the main regulatory sources that governs the activities of state bodies, including the activities of the police, aimed at combating sexual violence against children is the Law of Ukraine "On Protection of Childhood" [6] of 26 April 2001. Article 10 of this Law states that children are guaranteed the right to freedom, personal inviolability and protection of their dignity. In fact, this provision duplicates the provision enshrined in Article 3 of the Constitution of Ukraine, but it concerns only children. Also, Part 2 of Article 10 of the Law of Ukraine "On Protection of Childhood" states that the state protects children from all forms of domestic violence and other manifestations of child abuse, exploitation, including sexual abuse, including by parents or persons in loco parentis. The initial version of this Law did not contain this part of the norm. It appeared in 2017, when our country actively began to bring national legislation on the protection of children from sexual abuse and sexual exploitation in line with European legislation. This article also provides for the possibility for children to personally protect their interests. Thus, Part 3 of Article 10 of the Law of Ukraine "On Protection of Childhood" states that a child has the right to personally apply to the guardianship and custody authority, children's services, centers of social services for families, children and youth, call center for the prevention and combating of domestic violence, gender-based violence and violence against children, other authorized bodies for the protection of their rights, freedoms and legitimate interests.

In continuation of reforms aimed at protecting children from sexual abuse and sexual exploitation, in 2021, the Law of Ukraine "On Child Protection" was supplemented by Article 30-2 "Protection of Children Victims of Sexual Violence or Witnesses of Sexual Violence". This article partially duplicates the provisions of Art. 10 of the Law of Ukraine "On Protection of Childhood", however, unlike Art. 10, Art. 30-2 is much narrower and regulates relations regarding the protection of children from sexual violence. Also, this article establishes the protection not only of the child who is a victim of sexual abuse, but also of the child who is an eyewitness or witness of sexual violence. Along with this, Article 30-2 establishes a number of responsibilities of central executive authorities in the field of protection of children from sexual violence.

In particular, the central executive body that ensures the formation and implementation of the state policy on family and children, the central executive body that ensures the formation and implementation of the state policy in the fields of education and science, the central executive body that ensures the formation and implementation of the state policy in the field of health care, the Ministry of Internal Affairs of Ukraine, other bodies are obliged to: develop and approve the procedure for identifying signs of sexual violence against children; develop and approve the procedure for conducting a preliminary examination of children and witnesses of sexual violence. Also, these bodies are obliged to create specialized premises ("child-friendly crisis room" or "green room" – authors) for interviewing or interrogating a child victim of sexual violence or witness or eyewitness to it, using child-friendly methods, and to train (retrain) employees who will interview or interrogate children who have suffered from sexual violence or witnessed or eyewitnessed it, other police and/or procedural actions in these rooms. The "Child-friendly crisis room" is designed to work with children who have suffered from a criminal offense or witnessed sexual abuse or exploitation, or who are suspected of committing criminal offenses, using special child-friendly methods. The organization of work is based on an individual approach to each child, taking into account his/her age and developmental stage. The system of work in the "Child-friendly Crisis Rooms" takes into account the age and psychological characteristics of both those children who are in conflict (have committed an offence or crime) and those who have been victims or witnesses of a crime or offence [7, p. 5-6].

The next regulatory source aimed at protecting children from sexual violence is the Law of Ukraine "On Preventing and Combating Domestic Violence"[8] of December 07, 2017. The preamble to this Law states that it defines the organizational and legal framework for preventing and combating domestic violence, the main directions of implementation of state policy in the field of preventing and combating domestic violence, aimed at protecting the rights and interests of victims of such violence. This Law also served as a basis for supplementing the Criminal Code of Ukraine with Article 91-1. "Restrictive Measures Applied to Perpetrators of Domestic Violence", Art. 126-1 "Domestic Violence" and Art. 390-1 "Failure to comply with restrictive measures, restraining orders or failure to undergo a program for offenders". In general, the Law is intended to expand in every possible way the preventive impact of the National Police and other state bodies on potential offenders, as well as to facilitate the implementation of administrative and criminal proceedings in cases related to domestic violence and sexual violence in particular.

At the same time, our analysis of Art. 1 of the Law "On Preventing and Combating Domestic Violence" in terms of the analysis of the concept of "sexual violence" and the criminal law provisions in Section IV and Section XII gives grounds to assert that the Law requires regulatory harmonization with the criminal legislation of Ukraine. Thus, according to Article 1 of the Law of Ukraine "On Preventing and Combating Domestic Violence" "Sexual violence" is a form of domestic violence, and includes any acts of a sexual nature committed against an adult without his or her consent or against a child regardless of his or her consent or in the presence of a child, coercion to an act of a sexual nature with a third party, as well as other offenses against sexual freedom or sexual inviolability of a person, including those committed against a child or in his or her presence. All acts referred to in Article 1 of this Law are subject to criminal liability, in particular, Section IV of the Criminal Code of Ukraine establishes liability for "Rape", "Sexual violence", "Coercion to sexual intercourse", "Committing acts of a sexual nature with a person under the age of sixteen", "Corruption of minors", "Solicitation of a child for sexual purposes". At the same time, Section XII of the Criminal Code of Ukraine establishes criminal liability for "Importation, production, sale and distribution of pornographic items", "Obtaining access to child pornography, its acquisition, storage, importation, transportation or other movement, production, sale and distribution", "Holding a sexual entertainment event with the participation of a minor", "Creation or maintenance of brothels and pimping", "Pimping or involvement of a person in prostitution".

These criminal offenses are similar in nature to the criminal offenses listed in Section IV of the Criminal Code of Ukraine. They also affect the sphere of sexual relations, and the victims of such actions are also children. However, unlike Title IV, Title XII of the Criminal Code of Ukraine does not contain criminal offences that encroach on sexual freedom and sexual inviolability of a person. It concentrates criminal law provisions that establish criminal liability for encroachment on public order and morality. The definition proposed in Article 1 of the Law of Ukraine "On Preventing and Combating Domestic Violence" does not specify that sexual violence should be considered "also other offenses against morality". In view of this, we

can conclude that the Law of Ukraine "On Preventing and Combating Domestic Violence" does not include actions related to child pornography and prostitution of minors as sexual violence.

It should also be noted that the concept of "sexual violence" in Art. 1 of the Law of Ukraine "On Preventing and Combating Domestic Violence" and the criminal law provisions contained in Section IV and Section XII of the Criminal Code of Ukraine have different approaches to protecting children from sexual abuse depending on the age of the person. Thus, Article 1 of the Law of Ukraine "On Preventing and Combating Domestic Violence" uses the term "child". According to the Convention on the Rights of the Child, a child is every human being under the age of 18, unless under the law applicable to the person, he or she reaches the age of majority earlier [1].

The same definition of "child" is contained in the Law of Ukraine "On Protection of Childhood". Article 6 of the Family Code of Ukraine states that a person has the legal status of a child until he or she reaches the age of majority. According to Article 34 of the Civil Code of Ukraine, the age of majority in Ukraine is generally 18 years. At the same time, the Criminal Code of Ukraine operates with such age categories as: "minor", "underage person", "minor under the age of 16", "person under the age of sixteen", "person under the age of fourteen". Based on the foregoing, we can conclude that currently there is a conflict between the concept of "sexual violence", which is enshrined in Article 1 of the Law of Ukraine "On Preventing and Combating Domestic Violence" and the legal elements of criminal offenses contained in Section IV and Section XII of the Criminal Code of Ukraine. Such a conflict between the provisions of the Law and the Criminal Code of Ukraine may create conditions that will make it impossible to carry out appropriate organizational and legal measures to protect children from sexual violence, the correct qualification of "sexual violence" committed against children, and as a result will lead to the avoidance of criminal liability by perpetrators.

To overcome such a conflict, we consider it necessary to replace the concept of "sexual violence", which is enshrined in Article 1 of the Law of Ukraine "On Preventing and Combating Domestic Violence" with a new one that will not lose its essence and at the same time will not create a conflict. We propose to build the definition on the principle of "referential" norm of law, and since the responsibility for "sexual violence" is provided exclusively by the Criminal Code, the reference in the norm should be made to the Criminal Code of Ukraine.

Continuing the analysis of the Law of Ukraine "On Preventing and Combating Domestic Violence", it should be noted that Article 10 of the Law enshrines the powers of the units of the National Police of Ukraine in the field of preventing and combating domestic violence. Thus, the powers of the police include: detection of facts of domestic violence and timely response to them; reception and consideration of applications and reports of domestic violence, including consideration of reports received by the call center for the prevention and combating of domestic violence, gender-based violence and violence against children, taking measures to stop it and provide assistance to victims, taking into account the results of risk assessment in the manner prescribed by the central executive body that ensures the form of the police. In our opinion, the powers of the police, which are enshrined in Article 10 of the Law, do not fully reflect the activities of the police in the field of protection against domestic violence and protection of children from sexual violence in particular. If we analyze the construction of Part 1 of Article 10 of the Law of Ukraine "On Preventing and Combating Domestic Violence", we can distinguish a certain algorithm of police activity.

Thus, police officers first detect and respond to offenses, then accept and consider reports of domestic violence, explain to victims their rights, issue urgent restraining orders against offenders and register them for prevention, work directly with offenders, interact with other state bodies if necessary, report to the central executive body that implements state policy in the field of preventing and combating domestic violence on the results of the exercise of powers in the field of domestic violence. This algorithm is well-established and acceptable in case the offender is brought to administrative responsibility. If the offender commits an act that contains signs of a criminal offense, in particular sexual violence against a child, then the police officer is obliged to open criminal proceedings, conduct a pre-trial investigation and send the materials to court. In this regard, we propose to expand the list of powers contained in Part 1 of Art. 10 of the Law of Ukraine "On Preventing and Combating Domestic Violence" by enshrining such powers as "in case of detection of signs of a criminal offense, to act in accordance with the requirements of the CPC of Ukraine".

Another argument in favor of such an expansion of police powers in the field of preventing and combating domestic violence is that one of the grounds for placing the offender on the preventive register, according to the Procedure for registering, conducting preventive work and removing the offender from the preventive register by an authorized unit of the National Police of Ukraine [9], is the opening of criminal proceedings against the offender in connection with the commission of domestic violence or gender-based violence.

As for by-laws, they serve as a kind of supplement to the above laws and regulate to a greater extent the procedural aspects of the activities of state bodies, including the activities of the police in the field of combating sexual abuse of children. In general, the list of by-laws and regulations aimed at protecting minors from sexual abuse and regulating the activities of the police in combating sexual violence against children is not exhaustive and it is impossible to carry out a thorough analysis of them within the framework of this work, as this will lead to a significant substantive expansion of the work.

Conclusions. As a conclusion, it should be noted that a significant number of international normative acts, most of which have been ratified by the Verkhovna Rada of Ukraine, are focused on the prevention of sexual exploitation of children. The main normative document aimed at protecting children from sexual abuse is the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of 2007 – Lanzarote Convention, which was ratified by Ukraine on June 20, 2012. Another fundamental international document aimed at protecting minors from sexual abuse is the Council of Europe Convention on preventing and combating violence against women and domestic violence of 2011 – the Istanbul Convention.

Despite the fact that the Istanbul Convention was ratified only on 20.06.2022, it had a significant impact on the legislation of Ukraine in terms of protecting individuals from sexual abuse and sexual exploitation. We also believe that the ratification of the Istanbul Convention is a new starting point for further reform of national legislation aimed at protecting individuals, including children, from various forms of sexual exploitation and abuse. And given that almost all developed countries are currently improving legislation aimed at protecting children from sexual exploitation and sexual abuse, we can say with certainty that further changes in national legislation in this area are only a matter of time.

As for the national legislation itself, we note that the regulatory and legal support of police activities in the field of combating sexual violence against children is represented by a significant number of regulatory sources. A detailed analysis of these sources allowed us to identify a number of legal conflicts that require immediate elimination, as such conflicts can create conditions under which it will be impossible to protect children from sexual abuse.

Finally, we would like to add that the extensive system of by-laws and regulations also does not contribute to the proper protection of children from sexual abuse. Duplication of powers, lack of clear coordination and control system, branched system of state bodies with the same functions, all this together creates conditions for unfair performance by civil servants, including police officers, of their duties to protect children from sexual abuse and sexual exploitation.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

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ABSTRACT

The article provides a legal analysis of the legislation directly aimed at combating sexual violence against children and the legislation regulating the activities of the police in the field of combating sexual abuse of children. The author notes that the comprehensive protection of the rights and legitimate interests of children, including the protection of children from sexual abuse, is one of the priorities of our state policy, which is implemented through an extensive system of state bodies, including the National Police of Ukraine.

In accordance with the tasks, the police is entrusted with a wide range of responsibilities to ensure and protect human rights and legitimate interests, ensure public safety and public order, prevent, detect and suppress criminal and administrative offenses, prevent and combat domestic violence or gender-based violence, etc. The effectiveness and quality of the implementation of the tasks assigned to the police to combat sexual violence against children primarily depends on the regulatory and legal support of such activities.

Keywords: *National Police, police activity, legal framework of police activity, combating crime, sexual violence.*

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FOREIGN EXPERIENCE OF CRIMINOLOGICAL PROTECTION OF JUSTICE

Юлія Христова. ЗАРУБІЖНИЙ ДОСВІД КРИМІНОЛОГІЧНОГО ЗАХИСТУ ПРАВОСУДДЯ. Висвітлено досвід здійснення уповноваженими суб'єктами заходів захисту правосуддя від потенційних загроз та особливостей їх взаємодії в США, Канаді, Франції, Англії, Уельсі та Італії для вирішення питання щодо підвищення ефективності роботи новоствореного державного органу з правоохоронними функціями – Служби судової охорони України, а також удосконалення порядку його взаємодії з Національною поліцією та іншими органами системи МВС України.

Запропоновано під забезпеченням кримінологічного захисту правосуддя розуміти діяльність щодо формування ефективної системи протидії криміногенним впливам і кримінальним правопорушенням проти правосуддя для забезпечення його незалежності та практичного утвердження принципу верховенства права під час здійснення судочинства, зокрема, щодо надання визначеному для забезпечення безпеки правосуддя суб'єкту повноважень для припинення та запобігання правопорушенням і злочинам; його взаємодії з іншими суб'єктами у системі протидії кримінальним правопорушенням проти правосуддя; завчасного виявлення та протидії можливим загрозам.

Наголошено на необхідності надання Службі судової охорони України права безпосередньо здійснювати оперативно-розшукову діяльність для належного забезпечення здійснення заходів із запобігання загрозам особистій безпеці суддів, членів їх сімей, працівників суду, майна об'єктів охорони, виявлення та нейтралізації таких загроз, а також здійснення спеціальних заходів щодо забезпечення безпеки суддів і працівників апарату суду. Встановлено, що функції кримінологічного захисту правосуддя в зазначених країнах переважно покладається на спеціальні уповноважені суб'єкти (служби судової безпеки/охорони), але регулюється по-різному.

Констатовано, що з огляду на визначення перспектив щодо удосконалення регулювання здійснення цієї кримінологічної функції в Україні становить інтерес і потребує подальших наукових розвідок зарубіжний досвід залучення приватних охоронних компаній до її здійснення, практика делегування відповідних повноважень співробітникам поліції та взаємодії спеціальних уповноважених суб'єктів забезпечення безпеки правосуддя з іншими правоохоронними органами, а особливо – досвід здійснення аналітичної розвідки співробітниками відділу судової безпеки Служби маршалів США шляхом прогнозування можливих загроз для судової системи та запобігання їм.

Ключові слова: *кримінологічний захист, правосуддя, потенційна небезпека, Служба судової охорони.*

Relevance of the study. Despite the fact that Ukraine has made an obligation to take all appropriate measures to implement and guarantee the basic principles of judicial independence approved by the resolutions of the United Nations General Assembly in 1985 [1], to implement the recommendations of the Committee of Ministers of the Council of Europe on ensuring protecting and strengthening the independence of judges (1994) [2], guaranteeing their safety, in particular, the protection of courts and judges who may become or have already become victims of threats or acts of violence (2010) [3], as well as provide protective mechanisms against the exercise of undue influence on decision-making by judges according to paragraph 26 of the Memorandum on Economic and Financial Policy (2020) [4], today there is still no effective mechanism for ensuring criminological protection of justice. Instead, the problem of ensuring the personal safety of judges and their family members, court employees and trial participants has become particularly acute in the conditions of martial law in Ukraine, which is evidenced, in particular, by a rapid increase (by 18.5 times) from January to August 2022 of

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visitor attempts bring into judicial institutions prohibited items, including weapons – 2,429 units compared to 131 units for the same period in 2021, which pose a potential danger to judges and participants in the trial [5–6].

The relevance of the scientific and theoretical development of foreign experience of criminological protection of justice is due to the need to improve the activities of the new state body with law enforcement functions created in 2019 – the Judicial Protection Service of Ukraine, which is a special actor in the mechanism to ensure it, as well as the order of interaction of the newly created actor with the National Police and other bodies of the Ministry of Internal Affairs of Ukraine.

Recent publications review. Such scientists as V. Akhmedov, V. Borisov, S. Didyk, O. Dudorov, M. Dzhafarova, O. Reznik, O. Kalman, N. Karpova, O. Kvasha, S. Knyzhenko, A. Malomuzh, S. Miroshnychenko, V. Navrotskyi, V. Osadchyi, L. Palyukh, O. Tytarenko, V. Tyutyugin, M. Shepitko, O. Shurko and others paid attention in their works to certain problems of criminological protection of justice. At the same time, the urgent issues of ensuring the personal safety of judges and their family members, court employees and trial participants, which have become especially acute under the conditions of martial law in Ukraine, determine the need to study foreign experience in this area.

The research paper's objective is taking into acoount the results of the analysis of the experience of the USA, Canada, England, Wales, Italy and France regarding the implementation of criminological protection of justice in terms of the organization of the activities of special actors in the mechanism to ensure it, to substantiate proposals for increasing the efficiency of the work of the newly created state body with law enforcement functions – the Judicial Security Service of Ukraine, as well as improving the order of its interaction with the National Police and other bodies of the Ministry of Internal Affairs of Ukraine.

Discussion. Security of justice is an important guarantee of ensuring its independence. Despite the determination by the Strategy for the Development of the Justice System and Constitutional Judiciary for 2021–2023 of the main principles and directions for the further sustainable functioning and development of the justice system, taking into account the best international standards and practices [7], a number of problems concerning the ensuring of its criminological protection still remain without proper resolving.

To achieve the formulated purpose, first of all, it is necessary to find out the scope and meaning of such basic concepts as "criminological security" and "criminological protection", a significant contribution to the scientific development of which belongs to such scientists as O. Kostenko, O. Lytvynov, T. Melnychuk, S. Mozol, M. Pakhnin, D. Prokofyeva-Yanchilenko, O. Tytarenko, V. Shablystiy and others.

In particular, the phenomenon of criminological security and the scientific foundations to ensure it became the subject doctoral thesis in Law by S. Mozol [8]. This scholar interprets the concept of "criminological security" as a state and condition of the system's vital activity, which are determined by the quality of the implementation of its self-regulatory functions; as the system's ability to maintain a stable, steady state under adverse external and internal criminal influences and describes its ability to solve problems of the society's vital activities safety [9, p. 223], and "criminological protection" as a set of measures taken with the aim of eliminating conditions that contribute to the emergence of criminal manifestations [10, p. 19].

V. Shablystiy, considering at the monographic level the issue of the essence and content of human security as a comprehensive concept, which is a prerequisite for the realization of his/her rights and freedoms, as well as a guarantee of the fulfillment of duties, has paid special attention to clarifying the content of the concept and the constituent elements of criminological security. This researcher notes that criminological security is fully aimed at creating a system of comprehensive protection of citizens, society, and the nation from various threats adequate to modern criminological processes and phenomena, most of which are specified in the Special Part of the Criminal Law [11, p. 87].

The scientist considers the object of danger, criminal threats and their sources, acrors of security, the state of criminological protection of objects and subjects of criminal influence, measures to prevent criminal offenses, as well as victimological prevention [11, p. 88].

M. Pakhnin, studying the concept and structure of the mechanism for ensuring criminological protection of mass media in Ukraine, states that criminological protection of a certain area includes the following main elements: objects of protection, purpose of protection, criminological threats, system of measures to influence the threat (system of criminological protection measures), organizational and legal foundations of criminological protection [12,

p. 75]. The results of the analysis of the approaches suggested by some researchers (S. Mozol [10], M. Pakhnin [12], O. Tytarenko [13], V. Shablystiy [11]) regarding the definition of the content of the concept and constituent elements of criminological of security provide grounds for the conclusion that the ensuring of criminological protection of justice should be understood as activities aimed at building an effective system of combatting criminogenic influences and criminal offenses against justice in order to ensure its independence and the practical affirmation of the principle of the rule of law during the implementation of judicial proceedings, in particular, concerning the granting of powers to the entity determined to ensure the security of justice to stop and prevent offenses and crimes; his/her interaction with other actors in the system of combating criminal offenses against justice; early detection and combatting possible threats.

The Judicial Security Service is a special authorized actor that, together with the National Police and other bodies of the Ministry of Internal Affairs of Ukraine, ensures the safety of justice in Ukraine. The main tasks of the Judicial Security Service are: 1) to maintain public order in the court; 2) to stop showing contempt of court; 3) to guard court premises, bodies and institutions of the justice system; 4) to perform functions related to state ensuring of personal safety of judges and members of their families, court employees; 5) to ensure the safety of trial participants [14].

Given the similarities with the organization of the activities of the Judicial Protection Service in Ukraine as a state body in the justice system, the Canadian model of security deserves special mention. In particular, in most provinces and territories of Canada, the protection of courts and trial participants is ensured by specialized services of sheriffs who cooperate with the police. For example, under the court protection laws of the provinces of New Brunswick, Manitoba, Newfoundland and Labrador, court protection officers are the sheriffs, deputy sheriffs or sheriff officers appointed under the Sheriffs Act, police officers appointed under the Police Act, and members of the Royal Canadian Mounted Police (agent de sécurité du tribunal), stationed in the specified provinces [15-17].

Despite the fact that the Canadian model is recognized as one of the most influential and progressive judicial security systems (as an example, the Sheriff's Office of British Columbia) [18], among the unresolved problems Canadian experts named access to operational intelligence information for timely prevention of threats. In particular, since there is no separate structure for collecting classified operational information, sheriffs can use information from the mounted police, which has access to a single federal database. In this context, interaction between sheriffs and the police is important, so a joint working group on the development and exchange of operational information of the federal database has been made in the province [19].

Incidentally, we note that our previous publications also emphasized the need to grant the Judicial Security Service of Ukraine the right to directly carry out operational-search activities to properly ensure the implementation of measures to prevent threats to the personal safety of judges, their family members, court employees, property of security objects, detection and neutralization of such threats, as well as the implementation of special measures to ensure the safety of judges and court personnel [5].

In the United States of America, judicial security and protection for federal judges, jurors, other members of the federal judiciary, and Supreme Court justices when they are beyond Washington DC is ensured by Chief Inspectors, Deputy Marshals, Intelligence Analysts and Court Security Officers of the Marshals Service by anticipating and preventing potential threats to the judicial system. So, for example, in 2021, the US Marshals Service assessed 3,168 identified threats to the security of justice and performed 972 protective operations, as a result of which 371 protective proceedings were initiated to investigate existing or potential criminal activity, compared to 4,261 threats in 2020, which on 81% more than in 2016 (2357 threats) and 233% more than in 2008 (1278 threats) [20].

In response to a sharp increase in the number of threats and inappropriate messages against federal judges, jurors, and other members of the federal judiciary, the U.S. Congress has approved funding for the Marshals Service to upgrade home security systems at judges' residences and improve the agency's ability to detect and investigate online threats against judges and court premises. In addition, in order to improve the protection of judges and the independence of the judiciary guaranteed by the Constitution, the US Congress passed the Daniel Anderl Judicial Security and Privacy Act of 2021 (the Act), which is designed to protect the personal information of judges in federal databases and limit data aggregators from its resale [21]. The main purpose of this Act is to improve the security of federal judges, including senior, recalled, or retired federal judges,

as well as their immediate family members, to ensure that federal judges are able to fairly administer justice without fear of personal reprisals from individuals aggrieved by decisions that they adopt during the performance of their state duties [22].

The Criminal Intelligence Division of the US Marshals Service processes threat information using the Warrant Information Network (a central law enforcement information system). The US Marshals Service also administers the Federal Witness Security Program. For their part, the court security officers who ensure security at the entrance to the federal courthouse under contract to the US Marshals Service are employees of private security companies. At the state level, the police may be involved in personal security for the judge. For this purpose, the state legislatures adopt relevant laws. For example, Judge Julie Kocurek's Court and Courtroom Security Act of 2017 (Texas) provided for the involvement of any authorized police officer in ensuring personal security for a judge [23].

It should be noted that in many states the security of both courthouses and courtrooms is the responsibility of the sheriff under whose jurisdiction they are located (§ 53.1-120 (A) Code of Virginia [24], Article 1.2. "County Court Security Contra Costa" (26625.2 - 26625.9) of the Government Code of the State of California [25], § 30.15 of the Statute of Florida [26], etc.). A municipal police chief may also be appointed ex officio marshal for court security (§ 11-28-107 Oklahoma Statutes (2014) [27]; § 12-32 Code of Ordinances of the City of Shawnee, Oklahoma [28]. Also, if necessary, by the state governor's decision, the National Guard units may be involved in providing assistance to local law enforcement agencies in ensuring the trial security [29]. The practice of involving private security guards to protect justice from potential threats is effectively implemented in most countries of Western Europe. For example, in England and Wales, judicial security and law enforcement in the courthouse are provided by court security officers, who can be either civil servants of Her Majesty's Courts and Tribunals Service or employees of private security companies working under a contract concluded with the Lord Chancellor (Article 51 of Chapter 4 "Court security" of the Courts Act 2003 [30].

In addition, regarding a significant increase in the level of threats, the British government systematically takes measures to improve the judges' personal security, as well as the protection of their homes [31]. In particular, according to the results of a survey of judges conducted by the Judicial Institute of University College London (The Judicial Institute of University College London), it has been found that in 2016, most of them (51 %) were concerned about their personal safety related to the performance of their professional duties connections while working in court, compared to 42 % in 2020. As a positive note, it should be noted that during the specified period, the share of judges concerned about their treatment in social networks decreased from 15 % to 9 %, while those concerned about their personal safety outside the court remained unchanged (37 %) [32, p. 16].

According to the current Italian legislation, private security guards are also involved in the surveillance of courts, which is recognized as an additional security service (Part 3 of Article 256-bis of the Consolidated text of laws on public security with amendments regarding security guards, surveillance institutes and private investigations, introduced by the Decree of the President of the Republic of August 4, 2008 No. 153 [33]).

In France, the security of judicial proceedings and the maintenance of law and order are ensured by gendarmes and policemen, who, during the consideration of high-profile cases by the courts, can also take special security measures in case of possible protests near the court buildings or terrorist activities directed against the process. For example, in 2022, roadblocks were set up around the Palace of Justice in Paris to ensure security during the trial of the terrorism case, which lasted almost 10 months, and the number of involved police officers reached 1,000 [34].

Conclusions. Thus, the results of the analysis of the experience of the USA, Canada, England, Wales, Italy, and France show that the carrying out of the function of criminological protection of justice is mainly entrusted to special authorized entities (court security/guard services), but it is regulated differently. In view of the definition of prospects for improving the regulation of the implementation of this criminological function in Ukraine, the foreign experience of involving private security companies in its implementation, the practice of delegating the relevant powers to police officers and the interaction of special authorized actors of ensuring the security of justice with other law enforcement agencies is of interest and requires further scientific research intelligence.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

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ABSTRACT

The article summarizes the experience of the implementation of measures to protect justice from potential threats by authorized subjects and the peculiarities of their interaction in the USA, Canada, France, England, Wales and Italy in order to solve the issue of increasing the efficiency of the work of the newly created state body with law enforcement functions – the Judicial Protection Service of Ukraine, and as well as improving the order of its interaction with the National Police and other bodies of the Ministry of Internal Affairs of Ukraine.

It is suggested, that the provision of criminological protection of justice should be understood as activities related to the formation of an effective system of countering criminogenic influences and criminal offenses against justice to ensure its independence and the practical affirmation of the principle of the rule of law during the implementation of judicial proceedings, in particular, regarding the granting of powers to the subject determined to ensure the security of justice to terminate and prevention of offenses and crimes; his interaction with other subjects in the system of combating criminal offenses against justice; early detection and countermeasures against possible threats.

It was established that for improving the implementation of this criminological function in Ukraine, the foreign experience of involving private security companies in the practice of delegating the relevant powers to police officers, and the interaction of special authorized subjects of ensuring the security of justice are of interest and require further scientific research.

Keywords: *criminological protection, justice, potential danger, Court Security Service.*

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THEORETICAL APPROACHES TO THE RESEARCH OF COMBATING CRIMINAL OFFENSES COMMITTED BY ORGANIZED GROUPS AND CRIMINAL ORGANIZATIONS

Володимир Єфімов, Дмитро Санакоєв. ТЕОРЕТИЧНІ ПІДХОДИ ДОСЛІДЖЕННЯ ПРОТИДІЇ КРИМІНАЛЬНИМ ПРАВОПОРУШЕННЯМ, ЩО ВЧИНЯЮТЬСЯ ОРГАНІЗОВАНИМИ ГРУПАМИ ТА ЗЛОЧИННИМИ ОРГАНІЗАЦІЯМИ. На сьогодні в європейських країнах упроваджується комплексний (інтеграційний) підхід, що поєднує запобіжні і репресивні заходи. Саме вони охоплюються терміном «протидія». Чому саме цей термін, а тому що, це загальне родове поняття, яке охоплює діяльність, спрямовану на мінімізацію протиріч та чинників, які породжують або сприяють злочинності, на скорочення окремих видів злочинів шляхом недопущення їх вчинення на різних стадіях злочинної поведінки (заходи запобігання злочинності), а також адекватні заходи реагування на вже скоєні злочини (репресивний підхід). Однак багато в чому погляди вітчизняних вчених на теоретичному рівні збігаються із позиціями зарубіжних учених. Тим не менш до цього часу проблемою в Україні залишається впровадження наукових розробок і рекомендацій у практику діяльності суб'єктів протидії організованій злочинності, прийняття нормативних актів.

Щодо аналізу злочинності, то він застосовується як ефективний запобіжний засіб, який забезпечує цілий ряд методів і заходів для розуміння глибини сутності складних відносин між підозрілою особою, злочинною діяльністю та обставинами, що сприяли їй. Такий аналіз

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злочинності використовується на практиці для запобігання і стримування як усієї злочинності, так і різних її видів. Застосування оперативного аналізу в ході досудового розслідування і стратегічного аналізу в межах формування напрямків правоохоронної політики відіграє дуже важливу роль. Що стосується, насамперед, тактичного аналізу, то надзвичайно доречно, щоб аналітики злочинності брали участь у складному розслідуванні із самого початку або тоді, коли складність процесу стає очевидною.

Ключові слова: *запобігання, протидія, організована злочинність, термінологічні та стратегічні поняття, порівняльний аналіз, правоохоронці України, європейські країни, запобіжна стратегія аналізу злочинних моделей.*

Relevance of the study. Organized criminal groups and criminal organizations are focused on the provision of illegal goods and services, as well as on penetration into legal activities using a wide variety of methods, including corruption and violence, there is a need to develop new strategies in the field of crime prevention, which, narrowing the capabilities of such organizations, will simultaneously increase the level of vulnerability of economic systems in relation to such penetration. It is these aspects of prevention of organized crime, including those of a transnational nature, that arouse keen interest among researchers [1, p. 182].

Recent publications review. Many leading Ukrainian and foreign scientists paid attention to the issues related to the fight against organized crime, taking into account international experience. Searching for ways to improve the principles of countermeasures organized crime at different times was studied by many scientists, in particular: Yu. Antonyan, M. Babaev, O. Bandurka, O. Busol, V. Vasylevich, M. Verbenskyi, A. Vozniuk, V. Golina, B. Golovkin, A. Hryshchenko, I. Danshin, O. Zhuzhi, A. Dolgovoi, O. Dolzhenkova, A. Doroshenko, V. Dryomin, A. Zelinskyi, V. Yemelyanova, O. Kvashi, Ya. Kondratieva, M. Kornienko, O. Kostenko, O. Kulik, O. Litvak, O. Litvynova, V. Luneeva, T. Melnychuk, F. Reshetnikova, A. Savchenko and others. Applied aspects of preventing manifestations of organized (especially transnational) crime were also investigated by by M. Grebenyuk, H. Zorin, L. Kanevskyi, N. Minyailo, G. Pozhidayev, I. Pshenichnyi, E. Rasiuk, O. Tankevich, D. Khizhnyak, V. Ustinov, V. Uschapovskyi.

Confirmation of the interest of scientists in the study of organized crime is the list of used literature, and this is only a small part of the array of various publications and other sources. However, the question of determining modern features of combating organized crime, taking into account international experience, remains relevant and requires further research.

The article's objective is definition of hypothetical approaches to terminological and strategic concepts regarding the prevention and counteraction of organized crime, as well as providing characteristics of a comparative analysis of approaches to the policy of combating organized crime by law enforcement officers of Ukraine and European countries.

Discussion. As we begin the discussion on preventing and countering organized crime, let's consider hypothetical approaches to terminological and strategic concepts. A number of terms are used in the criminological literature, as well as in various regulatory acts, to describe various aspects of specific activities aimed at influencing crime and reducing its volume.

The term "struggle" was widely used and most often used since Soviet times and almost until the beginning of the new century. We support the opinion that it is not good enough to define, especially in the criminological aspect of society's response to crime. The term "struggle" reflects a confrontation, in the process of which one of the parties to the struggle becomes the winner, the other – the defeated [2].

In recent years, the terms "prevention" and "counteraction" have started to be used more often in scientific works, as well as in regulatory and legal acts. Crime prevention is a set of various types of activities and measures in the state, aimed at improving social relations with the aim of eliminating negative phenomena and processes that generate crime or contribute to it, as well as preventing the commission of crimes at various stages of criminal behavior [3].

The term "prevention" is applied to one of the types of crime prevention, the essence of which is prevention of development, minimization of the negative impact of criminogenic determinants that cause crime and its individual types, the use of various measures that reduce the likelihood of potential crimes in advance or the formation of antisocial motivation.

Regarding the term "counteraction", we support the opinion that this concept belongs to the class of generalized ones, reproduces the general essence, which consists in doing resistance. It can be used to reproduce the general impact on crime, but only one-sidedly ("oppose") reflects the latter and does not contain an unambiguous reflection of the concept of crime prevention, that is, it cannot be used as something that is essentially identical to the

concept of "prevention", even when it is used in broad meaning [2].

The concept of "warning" should be considered as a manifestation of russianism and not a sufficiently accurate translation of the term "preduprezhdenie" from the russian Ukrainian language. The term "control" is also widely used in the legislation of various countries and international documents. Crime control is considered as an activity to stabilize crime rates at a socially acceptable level (or below this level), which pursues the goal of reducing crime and its individual types. Also, crime control is considered as an active activity to stabilize crime rates at a socially acceptable level (or below this level), which aims to reduce the amount of crime. Such activity is considered as an element of the socio-economic policy of the state, which is aimed at eliminating the general social causes of crime and reducing its indicators [4, p. 127].

In this regard, it is necessary to investigate whether there is a difference in the concepts of "crime control" and "crime prevention"? In the field of combating organized crime in European countries, two main approaches can be distinguished: repressive and preventive, or traditional and non-traditional.

The traditional (repressive) approach is primarily related to the proper functioning of the criminal justice system. It covers: 1) properly developed independent criminal legislation, especially regarding money laundering and confiscation of proceeds of crime; 2) procedural legislation, primarily that which concerns cooperation in the field of legal aid (for example, cooperation within the framework of the European Justice); 3) means and resources that allow adequate investigation in this category of cases (specialized central agencies for combating dangerous organized groups) [5].

There is no absolute demarcation between repressive approaches or interventions implemented by the criminal justice system and purely preventive activities. A repressive approach is aimed at individuals or specific groups. This is influence through punishment, as well as confiscation of the proceeds of crime. Tax legislation can also be counted among the mechanisms of this approach. The scientist believes that repressive measures are simultaneously precautionary (preventive) [5]. For example, the fight against illegal migration is a preventive measure to prevent the further distribution of drugs, if the migrant intends to enter the country specifically for such work. Therefore, the return of such a person to the country of residence is the best preventive measure.

Money laundering controls or confiscation of the proceeds of crime help increase the likelihood of detection and conviction of organized criminals, deprive them of the "goods" obtained through crime, and thus prevent future losses from their activities. Therefore, it is necessary to be careful with the term "prevention", since, as was studied in the works of European scientists, this term covers both ordinary law enforcement activities (arrests, confiscation) and a wider range of actions aimed at destroying criminal markets or favorable opportunities for their development. Preventive measures include social and situational prevention – changing the environment to reduce criminal activity. It also involves training, coordination and concerted action between different administrative bodies. In recent years, more and more attention has been paid to special prevention measures.

So, there is a debate among scientists about the use of terms, and most importantly, about the content of this or that concept. More and more foreign criminologists recognize, and the policy of individual states is increasingly based on the pragmatic concept of "harm reduction" instead of the overly broad concept of "general social crime prevention". Continuing the discussion on preventing and combating organized crime, we will try to analyze the approaches of the policy of combating organized crime by law enforcement officers of Ukraine and European countries.

The organization of crimes is the result of the interaction of such favorable opportunities: on the one hand – the criminal, his abilities and skills and the criminal community, on the other – efforts in the field of formal control (control by means of criminal, administrative law or lack of such control). Therefore, it is a dynamic process that involves the ability of the criminal to adapt (or, conversely, the lack of such adaptation) [5] to changes in the surrounding environment, including the opportunities provided by the legal commercial environment, such as the presence of automobile, sea transport, firms with car repair, financial institutions.

There are many examples of criminal organizations adapting to police preemptive tactics. The leadership of such groups, for example, developed their strategies to counter electronic surveillance or simply calculated the benefits and potential losses. If the criminals could not adequately oppose the efforts of the law enforcement officers, they switched to other criminal activities (for example, robberies, robberies). Therefore, organized groups can change

the types of criminal activity. All this should be taken into account when developing preventive measures. From the point of view of positivist criminology, counteraction strategies can be developed for a short-term perspective (in fact, they are aimed at reducing the negative impact of crime conditions, in other words, favorable opportunities) and long-term (significantly reducing the level of crime in the future by improving the structure of society and relationships within it, that is, influencing reasons).

Measures against organized crime should prevent the direct activity of criminal organizations. For this purpose, efforts are aimed at identifying and neutralizing criminals by finding and arresting them, collecting evidence necessary to prosecute and imprison them. No less important are the actions aimed at destroying the criminal organizations themselves, since transnational criminal organizations have ample opportunities to replenish their ranks, even if several authorities of the criminal group are deprived of their liberty, others usually take their place; therefore, if the organization itself is not really threatened, such measures can only lead to the fact that the "change of personnel" in the criminal group will accelerate and opportunities for "promotion" will appear [6].

The next component of activities for neutralizing organized criminal organizations covers the termination of their activities by complicating the opportunities for impunity and the use of various countries as "safe havens", as well as by depriving criminal organizations of property obtained by them as a result of illegal activities, and its seizure and confiscation. This is one of the most important areas that can be applied in the fight against organized crime, as it limits the ability of such organizations to reinvest funds in legitimate business and engage in bribery and corruption.

From our point of view, the strategic goal of combating organized crime is the detection, investigation, and disclosure of specific crimes, as well as the destruction or dispersal of major criminal organizations, the return of funds, property, and other assets obtained by them as a result of criminal activity to the country's budget (compensation of losses from their activities), reduction, elimination of imbalances and contradictions that caused or helped development, the spread of this or that criminal formation, the complication of the involvement of new persons in criminal activity and the prevention of the spread of spheres of influence of oligarchic-criminal organized communities on the political system, spiritual, economic, and social spheres of society.

The problem of combating organized criminal activity has its own specifics, and many generally accepted and widespread general preventive measures cannot be applied in solving this problem. To a large extent, this is explained by the fact that organized crime is not just a separate type of crime, but is a substructure of society with its own orderly system of protection against exposure. In addition, taking into account its available astronomical monetary resources, the possibilities of bribing representatives of criminal justice bodies and institutions reach the widest scope in some post-Soviet countries, including Ukraine. And the direct participation of representatives of the criminal world in the political and economic sphere of state functioning complicates progressive transformations and aspirations, which involve reaching the level of generally recognized European standards of living. Therefore, the primary measures aimed at reducing the pressure of organized crime are those that can be attributed to general social prevention. However, criminologists have the least influence on this activity. Therefore, only the pressure of the civil society and its various segments can lead not only to the declaration of political will, but also to its real transformation into nationwide actions to correct the existing situation in combating organized crime in Ukraine.

Concluding the discussion on preventing and countering organized crime, let's move on to the preventive strategy of analyzing criminal patterns and crime trends. This strategy covers the collection, collation, analysis and dissemination of crime data for use in proactive (preemptive) policing. The BPS has looked at how well crime is treated in countries such as Belgium and the United Kingdom. It was concluded that crime analysis can become a powerful tool for preventing and countering organized crime. It is predicted that crime analysis and its results will be in demand by criminal justice agencies. Crimes committed by organized communities are not random, isolated, and unique events. Crime analysis is based on the assumption that all crimes can be grouped into groups that have both common features and distinctive features. In essence, analysis is a system by which information gathered about crime incidents and the people involved in those incidents is routinely used to prevent and deter crime and to understand the actions of offenders. Information obtained through systematic data analysis can be used to improve management efficiency and operational measures.

Operational (tactical) and strategic analysis is used to study criminal patterns. According to standard definitions, there is a difference between the two. Operational analysis is usually aimed at short-term tasks. Strategic analysis is aimed at information support for decision-making at a high level and determination of long-term policy.

Crime analysis is used as an effective preventive measure, which provides a range of methods and measures to understand the depth of the essence of the complex relationship between the suspect, the criminal activity and the circumstances that contributed to it. This analysis of crime is used in practice to prevent and deter both all crime and its various types. The use of operational analysis during pretrial investigation and strategic analysis within the framework of the formation of law enforcement policy directions plays a very important role.

Primarily for tactical analysis, it is extremely appropriate for crime analysts to be involved in a complex investigation from the outset or when the complexity of the process becomes apparent. For strategic analysis, a matter of primary importance is a clear statement of the goal. In order to prepare a high-quality strategic analysis report, you need to answer some of the main questions: – when? – what was reported? – who? – how is it done? – and why?

It should be remembered that the risk caused by organized crime in a separate region, country, may depend on several factors: 1) on the dangerousness of the group; 2) from the vulnerability of the legal (legitimate) economy; 3) from the volume (degree) of the illegal economy; 4) from the geographical location; 5) from the effectiveness of legislative enforcement, which depends on the impact of programs to combat organized crime.

Analysis of crime (intelligence information) is recognized by criminal prosecution authorities as a useful tool and has been successfully used for more than 25 years, primarily by Interpol, Europol, and private agencies. The main task of this analysis is to help law enforcement officers, politicians and people who make decisions about countering crime in overcoming uncertainty, as well as ensuring timely aversion of threats and analytical support of operational activities.

Conclusions. Thus, it can be concluded that a comprehensive (integration) approach combining preventive and repressive measures is being implemented in European countries today. They are covered by the term "antidote". Why exactly this term, and because it is a general generic concept that covers activities aimed at minimizing contradictions and factors that generate or contribute to crime, at reducing certain types of crimes by preventing their commission at various stages of criminal behavior (crime prevention measures), as well as adequate response measures to already committed crimes (repressive approach). However, in many respects, the views of Ukrainian scientists at the theoretical level coincide with the positions of foreign scientists. Nevertheless, until now, the implementation of scientific developments and recommendations in the practice of the subjects of combating organized crime and the adoption of normative acts remains a problem in Ukraine.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

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ABSTRACT

Today, a comprehensive (integration) approach combining preventive and repressive measures is implemented in European countries. They are covered by the term "antidote". Why exactly this term, and because it is a general generic concept that covers activities aimed at minimizing contradictions and factors that generate or contribute to crime, at reducing certain types of crimes by preventing their commission at various stages of criminal behavior (crime prevention measures), as well as adequate response measures to already committed crimes (repressive approach).

However, in many respects, the views of domestic scientists at the theoretical level coincide with the positions of foreign scientists. Nevertheless, until now, the implementation of scientific developments and recommendations in the practice of the subjects of combating organized crime and the adoption of normative acts remains a problem in Ukraine. As for the analysis of crime, it is used as an effective preventive measure, which provides a number of methods and measures for understanding the depth of the essence of the complex relationship between the suspect, the criminal activity and the circumstances that contributed to it. This analysis of crime is used in practice to prevent and deter both all crime and its various types. The use of operational analysis during pretrial investigation and strategic analysis within the framework of the formation of law enforcement policy directions plays a very important role. Primarily for tactical analysis, it is extremely appropriate for crime analysts to be involved in a complex investigation from the outset or when the complexity of the process becomes apparent.

Keywords: *prevention, counteraction, organized crime, terminological and strategic concepts, comparative analysis, law enforcement officers of Ukraine, European countries, preventive strategy of analysis of criminal patterns.*

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OBSERVANCE OF THE PRINCIPLE OF THE PRESUMPTION OF INNOCENCE DURING THE APPLICATION OF THE CRIMINAL LEGAL PROHIBITION DEDICATED TO ILLICIT ENRICHMENT

Андрій Граб. ДОТРИМАННЯ ПРИНЦИПУ ПРЕЗУМПЦІЇ НЕВИНУВАТОСТІ ПІД ЧАС ЗАСТОСУВАННЯ КРИМІНАЛЬНО-ПРАВОВОЇ ЗАБОРОНИ, ПРИСВЯЧЕНОЇ НЕЗАКОННОМУ ЗБАГАЧЕННЮ. Однією з важливих гарантій дотримання прав підозрюваного та обвинуваченого у кримінальному процесі та обов'язковою складовою справедливого, повного та неупередженого судового розгляду є презумпція невинуватості. Будучи широко закріпленим як на міжнародному рівні так і в національному законодавстві України, вказаний принцип, за найменших підстав вважати його порушеним в тій чи іншій статті Кримінального кодексу

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України, закономірно є причиною визнання такої статті неконституційною, тобто такою, що не відповідає нормам Основного Закону України.

Показовим в цьому контексті є визнання Конституційним Судом України статті 368-2 Кримінального Кодексу України «Незаконне збагачення» неконституційною Рішенням від 26.02.2019 № 1-р/2019, в тому числі, через порушення принципу презумпції невинуватості. Акцентовано увагу на тому, що вказане Рішення не позбавлене недоліків щодо аргументованості та обґрунтування наявних у ньому положень. Обґрунтовано, що стаття 368-5 «Незаконне збагачення» Кримінального кодексу України, що замінила собою минулу неконституційну редакцію, узгоджується з принципом презумпції невинуватості. Своєрідне обмеження вказаного принципу, шляхом пропорційного перекладання тягаря доказування на обвинувачену особу не порушує його суть та обсяг, і є цілком виправданим його обмеженням, що пов'язане з легітимною метою, суспільною необхідністю, високим рівнем корупції та є пропорційним з огляду на мету, яка досягається завдяки цьому.

Зроблено висновок про те, що незначне перекладення тягаря доказування на особу довести свою невинуватість, лише після того як сторона обвинувачення наведе достатні докази щодо наявності незаконно набутих активів у неї, під час застосування кримінальної відповідальності за незаконне збагачення, не є її обов'язком і у разі неподання відповідних доказів, аж ніяк не може вважатись підставою визнати її винною у вчиненні корупційного правопорушення.

Ключові слова: *незаконне збагачення, принцип презумпції невинуватості, кримінальна відповідальність, принцип пропорційності, тягар доведення.*

Relevance of the study. Criminal liability for illicit enrichment has undergone several changes and additions since its introduction into the criminal legislation of Ukraine in 2011. Among other problematic issues, the inconsistency between the principle of the presumption of innocence and the criminal law prohibition of illicit enrichment has almost always been the cause of such changes and related issues of debate. After all, by the Decision of the Constitutional Court of Ukraine dated February 26, 2019 No. 1-r/2019 (hereinafter – Decision dated February 26, 2019) Art. 368-2 of the Criminal Code of Ukraine (hereinafter – CC of Ukraine) was recognized as not in accordance with the Constitution of Ukraine (is unconstitutional). Among the key arguments in favor of adopting such a Decision, the Court included: 1) non-compliance with the requirement of legal certainty as a component of the constitutional principle of the rule of law; 2) inconsistency with the constitutional principle of presumption of innocence; 3) inconsistency with the constitutional prescription regarding the inadmissibility of bringing a person to justice for refusing to testify or explain about himself, family members or close relatives. Soon the CC of Ukraine was supplemented by Art. 368-5 "Illicit Enrichment" by Law of Ukraine No. 263-IX dated October 31, 2019. This addition was supposed to be the result of eliminating the crucial shortcomings of the previous edition of the norm of illicit enrichment. Despite this, in the scientific community, the updated article is also subject to unfounded criticism for violating constitutional principles, in particular, the principle of the presumption of innocence.

Recent publications review. In particular, such legal scholars as K. Zadoya, D. Mykhaylenko, S. Pogrebnyak, M. Rubashchenko, and others were engaged in research on the outlined topic. Despite the significant scientific achievements of scientists, the problematic aspects of the implementation of the principle of presumption of innocence during the application of criminal liability for illicit enrichment still do not lose their relevance.

The article's objective is to study the domestic criminal law ban on illicit enrichment in the context of clarifying its compliance with the principle of presumption of innocence.

Discussion. Adherence to the principle of presumption of innocence is an important basis for the successful construction of a state that follows European values and ensures the protection of fundamental rights and freedoms of participants and parties to criminal proceedings. The principle is enshrined in the modern legislation of almost all democratic countries of the world and acquires the characteristics of a complex legal phenomenon, which contains several key points, each of which requires a detailed analysis.

The international consolidation of this principle is provided for in clause 1 of Art. 11 of the General Declaration of the Rights of Man and Citizen, clause 2 of Art. 6 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, clause 2 of Art. 14 of the International Covenant on Civil and Political Rights and other international documents. In the national legislation, it is provided for in Art. 62 of the Constitution of Ukraine, Art. 2 of the CC of Ukraine, Art. 17 of the Criminal Procedure Code of Ukraine (hereinafter – CPC of Ukraine) and other acts of legislation. According to Art. 62 of the Basic Law of Ukraine, "A person is considered innocent of committing a crime and cannot be subjected to criminal punishment until his guilt is proven in a legal manner and established by a court verdict. No

one is obliged to prove his innocence in committing a crime. The accusation cannot be based on evidence obtained illegally, as well as on assumptions. All doubts regarding the proven guilt of a person are interpreted in his favor".

The principle of presumption of innocence is traditionally defined as one of the basic democratic principles of criminal justice, which has an international character, is independent and plays the role of a "protective mechanism" against illegal actions by the prosecution during a criminal trial, as well as against illegal conviction [1, p. 163]. Consolidation of the obligation to prove a person's guilt on the state is related to the fact that the prosecution in cases of public and private-public prosecution, due to its material, organizational and procedural (in particular, pre-trial investigation) capabilities, is significantly stronger in forming the evidence base compared to its opponent is the defense party. Thanks to this, the circumstances that it has to prove are objectively more accessible for it [2, p. 14]. At the same time, the use of this kind of opportunities and powers by the state in the person of the prosecutor, the head of the pre-trial investigation body, the investigator, implies the obligation to comprehensively, fully and impartially investigate and discover both those circumstances of the criminal proceedings that expose, and those that acquit the suspect, the accused, as well as the circumstances mitigating or aggravating his punishment (part 2, Article 9 of the CPC of Ukraine).

It is false to say that the accused's refusal to provide evidence is nothing more than confirmation of his guilt. The accused, thanks to the constitutional principle of presumption of innocence, as well as part 2 of Art. 17 of the CPC of Ukraine is not obliged to provide evidence of his innocence in the commission of a criminal offense at the request of the prosecution. Rather, it is his right, which he should use at his own discretion. Another issue is that a person who is innocent, has an appropriate evidentiary basis for this and is interested in closing the criminal proceedings against him as soon as possible – in most cases will submit such evidence to ensure a quick, full and impartial investigation and trial.

In order to identify all the problematic issues related to the criminal law prohibition of illicit enrichment and the principle of presumption of innocence, it is necessary to first analyze the previous version of the norm that provided for the specified act. The last time the composition of illicit enrichment in part 1 of Art. 368-2 of the CC of Ukraine, before its recognition as unconstitutional, was set forth in the following version by Law of Ukraine No. 198-VIII dated 12.02.2015: "Acquisition by a person authorized to perform the functions of the state or local self-government into ownership of assets in a significant amount, the legality of the grounds for the acquisition of which not supported by evidence, as well as her transfer of such assets to any other person".

It should be noted that the addition of the rule on illicit enrichment to the CC of Ukraine was the result of the implementation of the provisions of the United Nations Convention against corruption from 2003, in Art. 20 of which it is determined that "subject to compliance with its constitution and the fundamental principles of its legal system, each participating State shall consider the possibility of taking such legislative and other measures as may be necessary to recognize as a crime intentional illicit enrichment, that is, a significant increase in the assets of a public official, which exceeds her legal income and which she cannot rationally justify." During the development of the Convention, there were constant disputes regarding the conflict of its provisions with the presumption of innocence. One side emphasized that the burden of proof will be placed on the accused, the other – that the article on illicit enrichment does not lead to such a shift. In the end, the parties agreed that the inclusion of this article is essential for the effective prosecution of corruption crimes, and more than 45 countries that have criminalized illicit enrichment are proof of that. Despite this, many countries still have not done so, fearing that such a rule would conflict with their constitution in terms of the presumption of innocence.

Such countries as Spain, Italy, the Netherlands, Norway, Sweden, and Finland, although they ratified the United Nations Convention against corruption from 2003, implemented its provisions sensu stricto. Arguing this by the fact that in the case of implementation sensu lato there is a threat of violation of the principle of innocence and their legislation already has sufficient and effective mechanisms to ensure the prosecution of persons for illicit enrichment. In this regard, O. Dudorov notes that the contextual form that the criminal law rule on illicit enrichment should have in the manner recommended by the United Nations Convention against corruption (when a person, in order to avoid criminal liability, is entrusted with the duty to explain the origin of the proper her property, and this obligation is included in the composition of the crime), would contradict the constitutional prescriptions provided for in Art. Art. 62 and

63 of the Constitution of Ukraine [3, p. 426].

A kind of pioneer in the criminalization of illicit enrichment is Argentina, which did it very successfully back in 1964. Thus, analyzing recent years, according to Transparency International, Argentina ranked 107th in the Corruption Perceptions Index (CPI) in 2014, and 96th in 2021 [4]. It remains an open question whether such success is related to the fact that the provision on illicit enrichment in Art. 268/2 of the CC of Argentina directly provides for the limitation of the principle of the presumption of innocence: "The person who, in response to a legal demand, did not provide justification for the origin of his substantial property enrichment or the enrichment that was used by him for the purpose of covering up a false person, carried out during his stay in the public office and in the period of up to two years after leaving the specified office" [5].

With each new edition of Art. 368-2 of the CC of Ukraine, the legislator tried as best as possible to protect the disposition of the article from a direct indication in it of the obligation of a person to rationally substantiate the origin of assets that are greater than the legal income that he declared. But in practice, whatever the wording of Art. 368-2 of the CC of Ukraine, the transfer of the burden of proof to the subject of the corruption offense has always taken place to one degree or another, gradually changing the degree of its explicit nature from edition to edition. The Constitutional Court of Ukraine in para. 3 p. 7 of the motivational part of the Decision dated February 26, 2019, came to the conclusion that Art. 368-2 of the CC of Ukraine contradicts part 1-3 of Art. 62 of the Constitution of Ukraine, i.e. the principle of presumption of innocence. If the Constitutional Court of Ukraine did not provide specific arguments for its position regarding the violation of Part 1, then with respect to part 2 in para. 5, paragraph 5 of the motivational part of the Decision, the Court states that "the legislative definition of illicit enrichment as a crime, provided that the prosecution does not fulfill its duty to collect evidence of the legality of the reasons for the acquisition of assets by a person in a significant amount, makes it possible to transfer this duty from the side of the prosecution (the state) on the side of the defense (the suspect or the accused)" [6].

In a separate opinion, the judge of the Constitutional Court of Ukraine S. Holovaty expressed his opposite view in this regard, "the wording of Art. 368-2 of the CC of Ukraine in no way gives grounds for assuming that the suspect/accused (the defense) bears the burden of proving his innocence or refuting the accusation's arguments" [7]. As K. Zadoya notes, the Constitutional Court of Ukraine interpreted Art. 368-2 of the CC of Ukraine, significantly deviating from the text of the criminal law and not motivating such a deviation in any way. The author claims that in part 2 of Art. 62 of the Constitution of Ukraine refers to the inadmissibility of imposing on a person the obligation to prove innocence in the commission of a crime, but not the inadmissibility of imposing on a person the existence of certain circumstances (facts) [8, p. 73]. Inconsistency of Art. 368-2 of the CC of Ukraine to part 3, Art. 62 of the Constitution of Ukraine, which is also referred to in the Decision dated February 26, 2019, was that the provisions of Art. 368-2 of the CC of Ukraine are formulated in such a way that doubts regarding the legality of the reasons for a person's acquisition of assets in a significant amount may not be interpreted in favor of this person and may be considered as confirmation of his illicit enrichment (paragraph 11, item 5) [6].

The Constitutional Court of Ukraine, without any objective reasons, interpreted the relevant provision in exactly this sense (formal, not substantive) without providing any convincing argument. Since the actual content of the criminal law norm on illicit enrichment consists in its application already after it is impossible to take preventive measures against the person committing illegal acts related to the acquisition of property. Such property is already acquired. As K. Zadoya rightly observes regarding the constitutionality of Art. 368-2 of the CC of Ukraine, "...such a legislative provision is a challenge to the constitutional provisions on fundamental human rights, but it cannot be considered unequivocally incompatible with part 3 of Art. 62 of the Constitution of Ukraine in view of the reasoning given in Decision No. 1-r/2019" [8, p. 73].

According to Judge V. Kolisnyk of the Constitutional Court of Ukraine, "... the third part of Article 62 of the Constitution of Ukraine contains an unambiguous imperative requirement, according to which the accusation cannot be based on assumptions. That is, the statement regarding the possibility of a "prosecution based on assumptions" in itself is an assumption only in view of the potential possibility of individual representatives of the prosecution showing insufficient professional level and theoretical training during the evaluation of evidence" [9].

In Part 6 point 7 of the decision of February 26, 2019, the Constitutional Court of Ukraine made a caveat, which cannot be allowed, in the following legislative formulation of

the composition of such a crime as illicit enrichment: to prove one's innocence; grant the prosecution the right to require the person to confirm with evidence the legality of the grounds for his acquisition of assets; to make it possible to bring a person to criminal liability only on the basis of the lack of confirmation by evidence of the legality of the grounds for his acquisition of assets" [6]. It is necessary to analyze whether the addition of Article 368-5 of the CC of Ukraine "Illicit Enrichment" by the Law of Ukraine No. 263-IX dated 31.10.2019 really plays the role of an effective criminal-legal instrument for combating corruption in Ukraine, and whether this happened not in opposition to, but in accordance with the above reservations.

The composition of a criminal offense under part 1 of Art. 368-5 of the CC of Ukraine is "Acquisition by a person authorized to perform the functions of the state or local self-government, assets, the value of which exceeds his legal income by more than six thousand five hundred non-taxable minimum incomes of citizens". According to p. 2 of the notes to Art. 368-5 of the CC of Ukraine "The acquisition of assets should be understood as their acquisition by a person authorized to perform the functions of the state or local self-government, as well as the acquisition of assets by another natural or legal entity, if it is proven that such acquisition was carried out on behalf of a person, authorized to perform the functions of the state or local self-government, or that the person authorized to perform the functions of the state or local self-government can directly or indirectly perform actions with respect to such assets that are identical in content to the exercise of the right to dispose of them" [10].

In the updated edition of the norm on illicit enrichment, the legislator applied the construction "if proven", again, without directly specifying by whom and in relation to what. It is obvious that the prosecution meant persons authorized to perform the functions of the state or local self-government. However, not everything is as clear as we would like, and the scientific community has once again divided opinions on the existence of a violation or limitation of the principle of the presumption of innocence.

To begin with, it is necessary to find out whether any limitation of the mentioned principle is allowed at all, because it rightfully belongs to the fundamental rights and freedoms of a person and is quite often assessed as an absolute right, that is, it does not provide for any deviation or limitation. Well, judicial practice demonstrates another position, from which a person in the process of realizing his fundamental rights and freedoms (often they are also the principles of law) can observe a situation when these same rights come into conflict with the rights or legitimate interests of other persons, whether even society or the state. Traditionally, the presumption of innocence is considered in a narrow and broad sense. The narrow meaning covers the well-known principle according to which, when a person is accused of committing a crime, the burden of proof is on the prosecution, and the proof must be beyond a reasonable doubt. And the broad meaning includes the fact that not only the treatment of a person whose guilt in the establishment of a criminal offense has not been established by a guilty verdict of the court should correspond to the treatment of an innocent person, but also the preliminary investigation should be conducted, as far as possible, as if the accused is innocent [11, p. 64].

The practice of the European Court of Human Rights (hereinafter – ECHR) is indicative, which contains several key decisions regarding the possibility of limiting the principle of the presumption of innocence. Back in 2006, the European Commission summarized the ECHR practice related to the presumption of innocence and singled out three cases in which the prosecution does not always have the full burden of proof. We are talking about: "strict liability offenses" (crimes for which strict liability is established) – the prosecution must submit evidence to prove that the accused committed the act ("actus reus"), but is not required to prove that his intention was aimed at such a result ("mens rea"); "offenses where the burden of proof is reversed" (crimes where the burden of proof under certain conditions is partially transferred to the accused) – the prosecution must prove that the accused acted in a certain way, and in this case the latter must prove that his actions were carried out absence of guilt; "when a confiscation order is made" (when confiscation of property is made) are cases in which the case involves the recovery of assets at the expense of the accused or a third party, where the burden of proof may be shifted due to the assumption that the relevant assets are the proceeds of crime , in fact, which the asset owner must refute. The above-described cases of shifting the burden of proof for their implementation should be provided for by national legislation [12].

D. Mykhaylenko, analyzing the above three cases, agrees with the thesis that when establishing responsibility for illicit enrichment, it is impossible to completely eliminate the transfer of the burden of proof to the accused, and a compromise must be sought. In the

opinion of the author, the introduction of the limitation of the principle of presumption of innocence in relation to representatives of state and municipal authorities in order to combat corruption and ensure national security in this area cannot be considered as a step towards unfreedom, unfree criminal law in the security agreement [13, p. 572-573].

In particular, the ECHR in the case "Beldjoudi v. France" came to the conclusion that such goals as the protection of public order and the prevention of crimes, despite their limitation of human rights in accordance with the Convention on the Protection of Human Rights and Fundamental Freedoms, are fully compatible with the same Convention (§ 70). And if the state's decision may violate the right enshrined in the Convention, it must be necessary in a democratic society, that is, it must be supported by an urgent public need and, at the same time, be proportional to the pursued goal (§ 74) [14].

One of the demonstrative examples of shifting the burden of proof when the individual circumstances of the situation and the general public interest require it (in this case, the inevitability of punishment for violating traffic rules) is the case "Joost Falk against the Netherlands", which was considered by the ECHR. According to the case materials, liability will be applied to the car owner if it is impossible to establish the person who drove the car and committed the offense and at the same time the accused does not provide strong evidence that another person was driving his car against his will [15].

The depth of limitation of the principle of presumption of innocence should not cause concern, provided that such transfer of the burden was accompanied by the presence of the accused in an opportunity to effectively defend himself, to provide evidence of his innocence or to refute the facts incriminated against him. After all, we are not talking about restricting the accused in his procedural rights during the criminal process or reducing the scope of the fundamental rights and freedoms granted to him and the person. There is an interference within the limits of the realization of this or that right, supported by exceptional social significance and guaranteed by a number of other constitutional guarantees, which in their totality do not deprive the accused of the legal opportunities granted to him.

Drawing parallels with the principle of presumption of innocence and the burden of proof transferred to the accused, such burden should not be excessive and individual in relation to the person. It is necessary to find a "fair balance" between the requirements of the general interests of society and the requirements for the protection of fundamental human rights, as noted by the ECHR in the case "Gogitidze and Others v. Georgia" (§ 97) [16].

Otherwise, such a balance will not be achieved and the measures applied to the accused person will not be appropriate to achieve a legitimate goal, namely to reduce the level of corruption in the country, bring the guilty parties to justice and identify illegally acquired property assets. The need to combat corruption is especially acute in countries with a high level of its spread and latency, to which Ukraine belongs. Therefore, the specified balance will be formed differently in each country. Depending on the general interest and the validity of the legitimate goal, on the one hand, which are quite widely differentiated from country to country (for example, the index of perception of corruption, society's values), and on the other hand, the relatively constant level of extraordinary importance of constitutional human rights, including those that related to the principle of presumption of innocence.

In the recent case "Xhoxhaj v. Albania", which was considered by the ECHR, clearly demonstrates a differential approach to understanding this very balance, which will be special in its own way in each country. The essence of the case was that the judge of the Constitutional Court of Albania tried to prove that the use of extraordinary measures during the judicial reform was a violation of human rights. Also, the case assessed the process of checking the assets of civil servants (judges and prosecutors) for unclear origins and the verification measures that can be applied to such persons by specially authorized bodies to fight corruption in Albania. The ECHR denied protection under Art. Art. 6, 8 of the Convention on the Protection of Human Rights and Fundamental Freedoms to those who seek to abuse human rights in order to protect the status quo of corruption. Thus, the Court notes that any interference with the right to respect for private life will be considered "necessary in a democratic society" to achieve a legitimate aim if it corresponds to a "pressing public need" and, in particular, if it is proportionate to the legitimate aim and if the reasons given by the national authorities for his justification are "relevant and sufficient" (§ 402). Under the circumstances prevailing in Albania, the reform of the justice system, which provided for an extraordinary review of acting judges and prosecutors, corresponded to an "urgent public need" (§ 404) [17].

Thus, the ECHR changed the constitutional balance in favor of measures to ensure

integrity, thereby consolidating its position even in earlier cases, according to which the restriction of fundamental human rights and freedoms can be allowed, provided that such depth of restriction is proportionate to all necessary conditions (urgent public need, proportionality legitimate purpose, fair balance, etc.).

On the basis of "preliminary conclusions" about assets of unclear origin, the burden of proof may be transferred to the official "in order to prove the opposite" (§ 347). If the official does not prove the contrary, this will be enough to prohibit such a person from holding a position in the public service for life. However, the transfer of the burden of proof is possible only for the dismissal of the official, and not "within any criminal proceedings" (§ 243) [17].

Regarding Albania, the European Commission for Democracy through Law (Venice Commission) in 2016, in its conclusion regarding the draft constitutional amendments on the judiciary in the country, noted the following. Emergency measures to check judges and prosecutors are not only justified, but necessary for Albania to protect the country from the scourge of corruption, which, if not addressed, could completely destroy its judicial system (§ 52) [18]. A similar conclusion was reached regarding granting the council of international experts the right to promise the selection of judges in Ukraine. The Commission believes that the situation in Ukraine justifies and requires exceptional measures. Therefore, certain deviations from the general rules regarding courts and judges appear acceptable (§ 34) [19]. We are talking about an exceptional situation, when corruption is one of the main problems of society in the country, and the judicial system has been considered weak, politicized and corrupt for many years.

Speaking about the need to find a kind of compromise between the observance of the principle of the presumption of innocence and the effective implementation of the criminal law prohibition of illicit enrichment, the proportionality test is widely used in scientific circles when solving questions of the constitutionality of certain provisions of the CC of Ukraine, as well as to find out whether they were applied by the authorities restrictions on a person are proportionate to the legitimate purpose of such application. The main components considered in this test are the legitimacy of the goal, the necessity and appropriateness of the restrictive measures.

Conducting a study of the proportionality test in the context of a violation of the principle of the presumption of innocence under the application of criminal liability for illicit enrichment, D. Mykhaylenko in his research summarizes that according to the results of the test and taking into account the practice of the ECHR, the limitation of the principle of the presumption of innocence by shifting the burden of proof by the norm of illicit enrichment for the purpose of combating corruption does not contradict Article 2. 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms and is consistent with the provisions of Art. 62 of the Constitution of Ukraine and Art. 17 of the CPC of Ukraine, but is proportionate in view of the goal achieved by the action of this measure. To the conditions of such compliance, the author includes preliminary proof by the state of a significant increase in the assets of the subject of the corruption crime and the inconsistency of such an increase with his declared legal income when criminal liability for illicit enrichment is established [13, p. 591; 20, p. 383−384].

According to the scientist, putting the burden of proof on the defense side in a situation with illicit enrichment, as it is understood by the United Nations Convention against Corruption of 2003, is not only appropriate, but also fair. Especially given that the events related to the increase of property assets are completely or to a large extent under the control of the accused, or at least with his participation, and he has an objective opportunity to confirm the legality of the origin of such assets in a fairly simple way. That is, reasonable confirmation of the circumstances regarding the legality of the origin of assets for the accused persons is objectively and clearly more accessible to them than to the prosecution. Therefore, in a criminal trial, a much stronger party for proving the specified circumstance is the defense party, which retains the opportunity to effectively defend itself by refuting the presumed fact – the illegality of the origin of assets in case of their inconsistency with established sources of income [13, p. 586].

S. Pogrebnyak, analyzing the principle of proportionality as a general principle of law, point out that the unwavering provision of human rights and the establishment of the rule of law depends on the establishment of a fair balance, which consists in the consistent and conscientious application of the principle of proportionality, judicial review of acts for their appropriateness and necessity [21, p. 44].

At the same time, the application of the proportionality test to limit the principle of presumption of innocence in different countries will have different results, depending on the level of corruption of the country, the depth of the applied restriction measures and the urgent

public need. It is obvious that in Ukraine, where corruption is a long-standing social need, the depth of restriction of this principle will be completely different than in countries such as Germany or Finland, which invariably belong to the leaders according to the Corruption Perception Index, which cannot be said about Ukraine, which in 2021 took 122-nd place out of 180 countries in the world [4].

Returning to the analyzed Decision of February 26, 2019, the Constitutional Court of Ukraine clearly demonstrated in it the impossibility of redistributing the burden of proof under any circumstances. Actual article 368-5 of the CC of Ukraine is constructed in such a way that from the content of its disposition, it does not directly follow the obligation of a person to substantiate the discrepancy between his legal and actual income, the construction "if proven" is used. Nevertheless, during the evidence, the defense must put forward a substantiated version of the receipt of one or another type of assets, as opposed to the version of the prosecution. If the accused is not able to do this, the version of the prosecutor about the illegal acquisition of assets will appear even more convincing in order for the court to pass a verdict against the accused person as a result of a full and impartial trial. The described situation can be considered a deviation from the current rule regarding the burden of proof in criminal proceedings. Despite this, such limitation of the principle of presumption of innocence does not encroach on the very essence of the said right, is proportional to the purpose of applying such a limitation and corresponds to a fair balance between anti-corruption and the depth of limitation of the right not to prove one's innocence.

Also, it is quite difficult for the prosecution to fully establish the entire range of legal income of a public official, while it is much easier for the latter to confirm the legality of the origin of significant property assets that do not correspond to her legal income. Therefore, despite a significant advantage in organizational and procedural capabilities of the state, in cases of investigation of illicit enrichment, this advantage does not seem to be so significant. Taking into account the recent decisions of the ECHR, the high level of latency of corruption offenses, the important social importance of the fight against corruption in Ukraine and the observance of a fair balance in the process of proof, it is permissible to partially place the burden of proof of facts of criminal legal significance on the side of the defense. Not to mention that sometimes the accused finds himself in a particularly advantageous position for him, hiding behind the presumption of innocence and taking advantage of the significant difficulty in proving legal facts by the prosecution, and sometimes even the fact that the presumption of innocence is not rebuttable. Any interference with the specified principle must be accompanied by established limits, which must take into account the limits of procedural equality between the parties and in no case limit the right to effective defense of the accused and refutation of the existence of the facts incriminating him.

Thus, the form in which the provision on illicit enrichment is currently established in Art. 368-5 of the CC of Ukraine, does not violate the principle of presumption of innocence. A slight transfer of the burden of proof to the person to prove his innocence, only after the prosecution has provided sufficient evidence regarding the presence of illegally acquired assets in his possession, is not his duty, and in case of failure to provide the relevant evidence, is not a reason to find him guilty of committing a corruption offense. After all, first the investigator or prosecutor must prove the presence of unsubstantiated property assets of a person that do not correspond to his declared income. And only then, within the framework of procedural equality, the accused, using his opportunities, provides evidence of innocence. Therefore, the goal set for the probable restriction of the principle of presumption of innocence by applying criminal liability for illicit enrichment is legitimate, and the measures used in this case contribute to the solution of one of the most painful problems of Ukrainian society – the fight against corruption.

Conclusions. Summarizing the above, it can be concluded that the current criminal law ban on illicit enrichment is consistent with the principle of presumption of innocence. Shifting the burden of proof to the accused person does not violate or contradict its observance, but is a fully justified limitation of it, which is connected with public necessity, a high level of corruption and is proportionate in view of the goal achieved by it. We are talking about the protection of social relations, without which a democratic and legal state is impossible, the effective implementation of the mechanism of applying responsibility to persons who commit corruption offenses and effective countermeasures against their manifestations. Numerous decisions of the ECHR show that the mentioned approach is gradually becoming more and more established, especially in those countries where internal circumstances related to the fight against corruption require it.

Undoubtedly, the study of Article 368-5 of the CC "Illicit Enrichment" in terms of its alignment with the principle of presumption of innocence and other fundamental principles of law has a great perspective for further scientific research in this matter. Especially, taking into account the significant scope of these rights and their exceptional importance for observing the rights and freedoms of the suspect or the accused.

Conflict of Interest and other Ethics Statements
The author declares no conflict of interest.

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ABSTRACT

The presumption of innocence is one of the most important guarantees of respect for the rights of the suspect and the accused in the criminal process. The article examines the domestic criminal law ban on illicit enrichment, as well as the previous version of the norm, in the context of clarifying its compliance with the principle of the presumption of innocence. It is substantiated that Article 368-5 "Illicit Enrichment" of the Criminal Code of Ukraine, which replaced the previous unconstitutional edition, is consistent with the principle of presumption of innocence.

A peculiar limitation of the specified principle, by proportionally shifting the burden of proof to the accused person, does not violate its essence and scope, and is a fully justified limitation of it, which is connected with a legitimate goal, social necessity, a high level of corruption and is proportional in view of the goal, which is achieved through this.

Keywords: *illicit enrichment, principle of presumption of innocence, criminal liability, principle of proportionality, burden of proof.*

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FUNCTIONS OF THE STATE MIGRATION SERVICE IN COMBATING THE OFFENSES OF FOREIGNERS IN UKRAINE

Світлана Рижкова. ФУНКЦІЇ ДЕРЖАВНОЇ МІГРАЦІЙНОЇ СЛУЖБИ У БОРОТЬБІ З ПРАВОПОРУШЕННЯМИ ІНОЗЕМЦІВ В УКРАЇНІ. У статті проаналізовані функції Державної міграційної служби України як суб'єкта протидії вчиненню адміністративних правопорушень іноземцями. Наголошено, що функціям управління властивий дуалізм – поряд з їх статичним характером, їм властива динаміка, що в процесі здійснення публічного регулювання сферою міграції, завдання, мета діяльності та компетенція суб'єктів владних повноважень у цій

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сфері можуть трансформуватись, що обумовить певні зміни у переліку його функцій. Відповідна зміна функцій відображає їх динаміку, тобто зміна напрямків діяльності суб'єкта владних повноважень у сфері міграції викликає зміну основних функцій його управлінської діяльності. Підкреслено, що функції ДМС України, зокрема ті, що спрямовані на протидію адміністративним правопорушенням іноземців в Україні знаходяться у фазі трансформації, що обумовлюється як внутрішніми (короткий термін від створення ДМС України як виду державної служби) так і зовнішніми факторами (розвиток і оновлення доктрини адміністративного права), в тому числі діяльність ДМС як суб'єкта протидії вчиненню адміністративних правопорушень іноземцями в умовах введення правового режиму воєнного стану.

Акцентовано увагу, що функції ДМС України можна вважати різновидом управлінських функцій органів виконавчої влади, напрямками (видами) її внутрішньої та зовнішньо організаційної адміністративної діяльності, спрямованими на сприяння формуванню та реалізацію державної політики в сферах міграції (імміграції та еміграції), у тому числі протидії нелегальній (незаконній) міграції, громадянства, реєстрації фізичних осіб, біженців та інших визначених законодавством категорій мігрантів.

Визначено, що функції ДМС України відповідно до аналізу Положення про Державну міграційну службу України, зокрема, можна класифікувати на цільові та організаційні. Запропоновано, виходячи із завдань покладених на ДМС України, виділити такі спеціальні функції щодо протидії:1) запобіжна, що стосується профілактики і припинення адміністративних міграційних правопорушень та відвернення їх негативних наслідків; 2) захисна, спрямована на затримання і перебування у спеціальних установах іноземців (осіб без громадянства), які вчинили адміністративні міграційні правопорушення; 3) забезпечувальна, націлена на реалізацію виконання рішень щодо іноземців (осіб без громадянства), які вчинили адміністративні міграційні правопорушення.

Ключові слова: *функції, Державна міграційна служба, іноземці, адміністративні правопорушення, нелегальна міграція, міграційне законодавство, протидія.*

Relevance of the study. The State Migration Service of Ukraine is the leading subject of the implementation of state policy in the areas of migration (immigration and emigration), including combating illegal (illegal) migration, authorized to perform a significant number of tasks, and the implementation of functions, the proper performance of which is associated with the use of effective and efficient means of influencing both foreigners and citizens of Ukraine who invite or receive them, and directly to employees of the migration service. In turn, the functions of the State Migration Service require their own definition, classification and detailed description of their content.

Recent publications review. The works of many leading domestic scientists V. Averyanov, M. Anufriev, O. Bandurka, and D. Bachrach are devoted to the theoretical and practical problematic aspects of the activity of the State Migration Service in Ukraine, including the improvement of legal regulation in the field of migration, Yu. Bytyaka, I. Golosnichenko, D. Holoborodko, E. Dodina, R. Kalyuzhny, L. Koval, V. Kolpakova, A. Komzyuk, E. Kubko, V. Malinovsky, T. Minky, V. Petkova, V. Opryshko, O. Ostapenko, O. Ryabchenko, O. Skakun, O. Yarmysha and others., however, in view of the above, the topic remains understudied legal analysis of the functions of the State Migration Service as a subject of combating the commission of administrative offenses by foreigners.

The article's objective is to analyze the functions of the State Migration Service of Ukraine as a subject of combating the commission of administrative offenses by foreigners

Discussion. According to the large explanatory dictionary of the modern Ukrainian language, "function" is understood in several meanings: 1) a phenomenon that depends on another phenomenon, is a form of its detection and changes according to its changes; 2) the work of someone, something, duty, sphere of activity of someone, something [1, p. 1335].

In management theory and administrative law, management functions are perceived as the most elaborated management factors, static categories that are reflected in normative legal acts. Although there is also an opinion about the mobility (dynamism) of this category.

We believe that management functions are characterized by dualism – along with their static character, they are characterized by dynamics. Our conviction is reinforced by the fact that in the process of public regulation of the migration sphere, the tasks, purpose of activity and competence of subjects of power in this sphere may transform, which will cause certain changes in the list of its functions. The corresponding change in functions reflects their dynamics, i.e., a change in the direction of the subject of authority in the field of migration causes a change in the main functions of his management activity.

In administrative and legal science, there is a widespread opinion that the functions of management (administration) play a key role in the formation of organizational structures of

the management system, since the organizational structure of management acts as a social system. In turn, the functions reflect the administrative manifestation of the activity of the subject of power. The corresponding functions have a diverse orientation, but serve to achieve a common goal, a managerial effect (result).

In this aspect, S. Honcharuk defines management functions as the main directions of management activity that express its content, its specialized types [2, p. 25]. In turn, by such functions, O. Ryabchenko understands the leading areas of activity of state authorities and the legal means (responsibilities and powers) used by them to achieve the goal of functioning. At the same time, each function as a certain type of activity of state authorities is characterized by independence, uniformity, and repeatability [3, p. 42].

V. Averyanov rightly emphasized that the functions of executive bodies are relatively independent and qualitatively homogeneous components of the activities of these bodies, which are characterized by target orientation [4, p. 262]. So, one can agree with the unifying opinion that management functions reflect certain components of activity, its conditional directions.

As for the classification of management functions, it should be noted that the demarcation of functions according to one or another criterion largely depends on their understanding. Below we will dwell on the positions of individual scientists. V. Averyanov and V. Malinovsky suggests distinguishing between the following types of management functions: a) general or basic functions; b) special or specialized functions that reflect the specifics of a specific management entity or managed object; c) auxiliary or service functions that support the performance of general and special functions [5, p. 148]. At the same time, relying on the criterion of compliance with the assignment of the management function, O. Bandurka proposes to distinguish among them target and organizational ones [6, p. 20].

On the basis of the above, it should be stated that there are different approaches to the classification of managerial functions. At the same time, in the theory of administrative law, the division of relevant functions into: a) general functions should be recognized as the most widespread and simple; b) special functions (reflecting the specifics of a specific management entity or managed object) [7, p. 263].

It is safe to say that the functions of the State Migration Service of Ukraine, in particular those aimed at combating administrative offenses by foreigners in Ukraine, are in a phase of transformation, which is determined by both internal (the short period of existence of the Security Service of Ukraine as a type of public service) and external factors (development and renewal of the doctrine of administrative law).

The adoption of a number of normative sources and the availability of draft laws aimed at the further development of the State Migration Service of Ukraine as a modern state institution of the European model should contribute to the transformation of the functions of this service.

In general, the functions of the State Migration Service of Ukraine can be considered a variety of management functions of executive authorities, directions (types) of its internal and external organizational administrative activity. Such functions are aimed at promoting the formation and implementation of state policy in the areas of migration (immigration and emigration), including combating illegal (illegal) migration, citizenship, registration of natural persons, refugees and other legally defined categories of migrants.

Based on the tasks of the State Migration Service of Ukraine, which are enshrined in the Regulations on the State Migration Service of Ukraine, in particular, it is possible to talk about the division of their functions into target (chapter 4) and organizational (Cchapter 5) [8].

Among others, in our opinion, it is important to single out the function of the Ministry of Internal Affairs of Ukraine regarding the implementation of measures to prevent and counter illegal (illegal) migration, other violations of migration legislation (chapter 4, paragraph 31), as well as the implementation of state control over compliance with legislation in the areas of migration (immigration and emigration), including combating illegal (illegal) migration, citizenship, refugees and other legally defined categories of migrants in cases provided for by law, bringing violators to administrative responsibility (Chapter 4, item 33) [8].

With regard to the special functions of the State Migration Service of Ukraine in combating administrative offenses by foreigners, we consider it expedient to clarify their list. Based on the tasks assigned to the Internal State Migration Service of Ukraine, we propose to highlight the following special countermeasure functions:

1) Preventive, which refers to the prevention and termination of administrative

migration offenses and averting their negative consequences;

2) Protective, aimed at the detention and stay in special institutions of foreigners (stateless persons) who have committed administrative migration offenses;

3) Enforcement, aimed at the implementation of decisions regarding foreigners (stateless persons) who have committed administrative migration offenses.

In view of the authority of the State Migration Service of Ukraine as a subject of combating administrative offenses, the above-mentioned functions can be characterized as follows: preventive function – in their administrative activities to ensure the protection of public order and public safety, employees of the Security Service of Ukraine have the right to demand from citizens and officials who violate the established management procedure in the field of migration, termination of offenses and actions that prevent the exercise of the powers of the State Security Service of Ukraine, and in case of non-fulfillment of the specified requirements, take coercive measures; check foreigners' identity documents, as well as other documents necessary to clarify the issue of compliance with the rules of stay in Ukraine, draw up protocols on administrative offenses, carry out personal inspection, inspection of things, seizure of things and documents, use other provisions provided by law measures to ensure proceedings in cases of administrative offenses; in the cases stipulated by the Code of Ukraine on Administrative Offenses, to impose administrative fines; to conduct filming and photography, sound recording as auxiliary means of preventing illegal actions and uncovering offenses; carry out photography, sound recording, film and video recording, fingerprinting of persons detained for violating the rules of stay in Ukraine; protective function – the State Security Service of Ukraine ensures the temporary detention of foreigners (stateless persons) in special institutions until the completion of preparation for their administrative deportation; enforcement function – within its competence, the State Security Service of Ukraine carries out administrative fines, as well as court decisions (on forced deportation from Ukraine) made in accordance with the procedure established by law.

Therefore, the State Migration Service of Ukraine, as a subject of authority, opposes administrative offenses by foreigners. The functions assigned to the service are relevant taking into account the geographical location of Ukraine, which often acts as a transit state for illegal migrants to the states of the European Union. Certain regions also deserve increased attention, especially in the border areas, where the influx of foreigners, and therefore the statistics of their committing administrative offenses, is significantly higher than in other regions of Ukraine, which are not so attractive for their stay.

We agree with the opinion of S. Tishchenkova that the growing scale of international, especially illegal, migration has objectively led to the actualization of the issue of strengthening the role of the state in regulating its processes. Each country has the right to independently determine the directions and goals of migration policy. But the state apparatus, whose task is to settle this issue, quite often turns out to be insufficiently mobile [9, p. 104]. Based on the above, it is important to conduct a timely legal analysis of the problems of the activity of the State Migration Service, as a subject of counteraction to the commission of administrative offenses by foreigners, which inhibit the implementation of functions in the specified area, and the proper operational regulatory and legal regulation by the authorized subjects of the legislative initiative of certain changes for the effective operation of the State Migration Service in the specified field.

Note that while performing administrative functions, the State Police of Ukraine must stop administrative offenses regarding the rules of stay in Ukraine and transit passage through the territory of Ukraine of foreigners and stateless persons and carry out proceedings against them; to ensure, within the limits of their competence, measures to prevent and counteract illegal (illegal) migration, other violations of migration legislation, control compliance by citizens and officials with the rules of the passport system, entry, exit, stay in Ukraine and transit through its territory by foreign citizens established by law and stateless persons.

According to the indicators of the activity of the State Migration Service for 9 months of 2022, it was brought to administrative responsibility under Part 1 of Art. 203 Code of Ukraine on Administrative Offenses – 8516 people. Violators of the migration legislation were fined according to the protocols of the State Migration Service – UAH 2,386,7630. 4,138 illegal migrants were identified, of which 3,237 were men and 901 were women. A decision was made on the detained illegal migrants: on the forced return of 3,895 people; about the forced deportation of 172 people; about banning entry to Ukraine – 379 people. A decision was made regarding the detained illegal migrants by the territorial body of the State Migration

Service to place 170 people at the point of temporary stay of foreigners and stateless persons illegally staying in Ukraine – 170 people.

It is worth noting that in connection with the full-scale military invasion of the Russian Federation on the territory of Ukraine, it is difficult to collect statistical information on the results of the activities of the territorial bodies of the State Migration Service in certain regions of Ukraine in the temporarily occupied parts of the territories of Donetsk, Zaporizhzhia, Luhansk, and Kherson regions [10].

Violations by foreigners and stateless persons of the rules of stay in Ukraine and transit through the territory of Ukraine, as well as violations by citizens and officials of enterprises, institutions and organizations that invite or receive foreigners and stateless persons, are quite widespread, and countering these negative phenomena requires from the bodies and territorial divisions of the State Migration Service of Ukraine, the application of various measures.

Conclusions. Summing up, let's emphasize that the State Migration Service is an important subject of the authorities' powers to combat administrative offenses by foreigners in Ukraine. The activity of this body is aimed at preventing and countering illegal (illegal) migration and other violations of migration legislation. Officials of the State Migration Service of Ukraine are empowered to apply administrative coercion to foreigners who violate domestic administrative migration legislation. The functions of combating administrative offenses of foreigners and stateless persons in Ukraine are not sufficiently covered in the legislation and do not take into account the specifics of the activity of the i State Migration Service of Ukraine n the conditions of the introduction of the legal regime of martial law. A clear definition of the understanding and implementation of functions is the key to the effective activity of the State Migration Service of Ukraine as a subject of combating the commission of administrative offenses by foreigners.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

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ABSTRACT

The article analyzes the functions of the State Migration Service of Ukraine as a subject of countermeasures against the commission of administrative offenses by foreigners. It is emphasized that management functions are characterized by dualism – along with their static nature, they are characterized by dynamics, that in the process of public regulation in the field of migration, the tasks, the purpose of activity and the competence of subjects of authority in this field may transform, which will cause certain changes in the list its functions. The corresponding change in functions reflects their dynamics, i.e., a change in the direction of the subject of authority in the field of migration causes a change in the main functions of his management activity. It is emphasized that the functions of the State Migration Service of Ukraine, in particular those aimed at combating administrative offenses of foreigners in Ukraine, are in a phase of transformation, which is determined by both internal (a short period of time since the creation of the State Migration Service of Ukraine as a type of public service) and external factors (the development and renewal of the doctrine of administrative rights), including the activity of the State Migration Service as a subject of counteraction to the commission of administrative offenses by foreigners in the conditions of the introduction of the legal regime of martial law.

Keywords: *functions, State Migration Service, foreigners, administrative offenses, illegal migration, migration legislation, countermeasures.*

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CURRENT EXPERIENCE IN THE FIELD OF PROTECTION AGAINST FAMILY VIOLENCE AND PECULIARITIES OF PREVENTION

Дмитро Цуркаленко. СУЧАСНИЙ ДОСВІД У СФЕРІ ЗАПОБІГАННЯ ДОМАШНЬОМУ НАСИЛЬСТВУ ТА ОСОБЛИВОСТІ ПРОФІЛАКТИКИ. У статті шляхом аналізу наукових публікацій та чинного законодавства надано авторське визначення терміна «профілактика домашнього насильства». Це дії державних та громадських інституцій, спрямовані на недопущення вчинення домашнього насильства та на підвищення рівня обізнаності суспільства щодо форм, причин і наслідків домашнього насильства, формування нетерпимого ставлення до насильницької моделі поведінки у приватних стосунках, небайдужого ставлення до постраждалих осіб, насамперед до постраждалих дітей, викорінення дискримінаційних уявлень про соціальні ролі та обов'язки жінок і чоловіків, а також будь-яких звичаїв і традицій, що на них ґрунтуються.

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Досліджено питання нормативного врегулювання профілактики домашнього насильства в Україні. Наголошено на тому, що на сьогодні законодавець ретельно прописав усі необхідні інструменти протидії домашнього насильства. При цьому на перший план виходить питання профілактичної діяльності в досліджуваній проблематиці. Розглянуто суб'єктів у сфері протидії домашньому насильству. Це уповноважені державою суб'єкти профілактики адміністративних правопорушень, які реалізовують профілактичну діяльність у зазначеній сфері за допомогою таких методів, як примус, заохочення та переконання.

Наголошено на актуальності проблематики профілактики домашнього насильства. Адже маючи усі можливі інструменти щодо запобігання та протидії цьому вкрай негативному явищу, ще й досі серед населення побутує думка стосовно того, що домашнє насильство є нормою, а звертатися потерпілим від домашнього насильства по допомогоу, як правило, соромно та ніяково.

Зроблено висновок, що наступним кроком держави у напрямку протидії та запобіганню домашньому насильству має бути створення нормативно закріпленого комплексу профілактичних заходів у зазначеній сфері, за допомогою якого, послідовно, силами державних та громадських інституцій проблема домашнього насильства в Україні стане не такою поширеною.

Ключові слова: *профілактика правопорушень, домашнє насильство, профілактична діяльність, превентивна діяльність, попередження домашнього насильства*.

Relevance of the study. Prevention of domestic violence is a system of measures carried out by executive authorities, local self-government bodies, enterprises, institutions, and organizations, as well as citizens of Ukraine, foreigners, and stateless persons who are in Ukraine on legal grounds and aimed at raising the level of public awareness regarding the forms, causes and consequences of domestic violence, the formation of an intolerant attitude towards a violent pattern of behavior in private relationships, a caring attitude towards the affected persons, first of all towards the affected children, the eradication of discriminatory ideas about the social roles and responsibilities of women and men, as well as any customs and traditions based on them. Combating domestic violence is a system of measures carried out by executive authorities, local self-government bodies, enterprises, institutions, and organizations, as well as citizens of Ukraine, foreigners, and stateless persons who are in Ukraine on legal grounds, and aimed at stopping domestic violence, providing assistance and protection to the victim, compensation for the damage caused to him, as well as proper investigation of cases of domestic violence, prosecution of offenders and change of their behavior [2-4].

Moreover, the state has now created all the necessary mechanisms to counter this negative phenomenon, and a comprehensive approach to the problem of countering domestic violence has been regulated at the regulatory level. Namely, in 2018, the Law of Ukraine "On the prevention and counteraction of domestic violence" came into force, which defined the organizational and legal principles of prevention and counteraction of domestic violence (2018), the main directions of implementation of state policy in the field of prevention and counteraction of domestic violence, aimed at protecting the rights and interests of the victims of such violence. In the same year, on August 22, the Cabinet of Ministers of Ukraine adopted Resolution No. 658 "On the approval of the Procedure for the interaction of entities implementing measures in the field of prevention and counteraction of domestic violence and violence based on the article" (2018). On August 1, 2018, the Ministry of Internal Affairs issued Order No. 654 "On approval of the procedure for issuing an urgent restraining order against the offender by authorized units of the National Police of Ukraine" (2018), and on March 13, 2019, Order "On approval of the Procedure for assessing the risks of domestic violence" (2019). In turn, on April 21, 2021, by order of the Cabinet of Ministers of Ukraine, a plan of urgent measures to prevent and counter domestic violence, and gender-based violence, and protect the rights of victims of such violence was approved (2021) [1-5].

We should note that separate relevance and the criminological activities of various subjects, primarily the National Police, play a role within the framework of state policy in the field of fighting crime.

The main goal of the reform of the Ministry of Internal Affairs system was declared to be the transformation of the police as a single service center for close cooperation and interaction with the population, territorial communities, and public associations based on partnership and aimed at meeting their needs. Its activities are guided by the principle of the rule of law, according to which a person, his rights and freedoms are recognized as the highest values and determine the content and direction most often turn to for help and for protection, therefore, the ability to respond correctly to the appeal of the functioning of the state. It should be noted that citizens often turn to the police directly for help and the purpose of protection, so the ability to correctly respond to appeals, skillfully and correctly communicate with various

segments of the population, in particular children, avoid conflict situations, etc. are important skills of a modern police officer. Special attention is needed for families that are the least protected, depend on the welfare of one of the spouses, often cannot independently seek the necessary help, and lack the knowledge and skills to protect their rights. Also, in the conditions of the crisis, the social and economic problems of the society become more acute, which leads to an increase in cases in the field of countermeasures and prevention of domestic violence.

In today's conditions, it is possible to say that the state is doing everything possible to help those who need it and turn to the relevant authorities. However, it is advisable to pay attention to the fact that even today, usually only a small part of the victims apply for help. And the reasons usually lie in a certain cult of silence – victims do not talk about violence due to fear of revenge from the offender and stigmatization in society. In addition, many people simply do not know what to do in cases of domestic violence, or where to go, in other words, they have a low level of awareness about possible help.

Recent publications review. We also need to note that according to O. Yunin state policy in the field of fighting crime is one of the most important areas of state activity in general. After all, it is axiomatic to say that the well-being of the population and the level of trust in state authorities depend on the level and state of crime in the state. In addition, a person, his life and health, honor and dignity, inviolability, and security are recognized as the highest social value in Ukraine. Human rights and freedoms and their guarantees determine the content and orientation of the state. The state is responsible to the people for its activities.

At the same time, despite all the steps taken by the state to overcome the problem of domestic violence, it remains widespread, and in today's realities, the issue of preventing domestic violence is gaining relevance, because it is an undeniable fact that any social problem is better and more effective to prevent than deal with its consequences. Moreover, the prevention of administrative offenses and the elimination of the causes and conditions that contribute to their commission is one of the primary tasks of any democratic state [14].

The research paper's objective. Taking into account everything stated, the purpose of the submitted article is a detailed study and definition of the concept and content of preventive activities carried out by state and public institutions in the field of combating domestic violence.

Discussion. Taking into account the logic of the scientific research, we consider it expedient to start with an analysis of the terminology, namely to determine what is meant by the term "domestic violence" and "preventive activity".

Domestic violence, on the other hand, is an act of deliberate intimidation, physical assault, beating, sexual assault, or any other inappropriate behavior by one partner toward another. Undoubtedly, the problem of domestic violence is extremely important for society and the state, primarily because the family is the foundation of society and should be under the special protection of the state. Violence and cruelty in the family not only destroy harmony and harmony in it but also act as one of the prerequisites for crime in society in general. That is why it is quite logical and quite appropriate that the lawmaker has defined in detail all the terms of this category in the law of Ukraine "On Prevention and Combating Domestic Violence" [1-5]. Thus, the term "domestic violence" is interpreted as acts (actions or inactions) of physical, sexual, psychological, and economic violence committed in the family or within the limits of the place of residence or between former or current spouses, or between other persons who jointly live (have lived) in the same family, but are not (have not been) in a family relationship or married to each other, regardless of whether the person who committed domestic violence lives (has lived) in the same place as the victim, as well as threats, to commit these acts. It distinguishes four types of domestic violence [11, 13, 14]:

1) Psychological – a home form of violence, which includes verbal insults, threats, including against third parties, humiliation, harassment, intimidation, other actions aimed at limiting the will of a person, control in the reproductive sphere, if such actions or inaction caused the victim to fear for his safety or the safety of third parties, caused emotional insecurity, inability to protect oneself or harm a person's mental health;

2) Economic – a form of domestic violence, which includes slapping, kicking, pushing, pinching, whipping, and biting, as well as illegal deprivation of liberty, beating, biting, inflicting physical injuries of varying degrees of severity, leaving in danger, not providing assistance to a person who is in in a life-threatening condition, causing death, committing other crimes of a violent nature;

3) Physical – a form of domestic violence, which includes intentional deprivation of

housing, food, clothing, other property, funds or documents or the ability to use them, leaving without care or concern, preventing the receipt of necessary treatment or rehabilitation services, prohibition to work, forced to work, prohibition to study and other offenses of an economic nature;

4) Sexual – a form of domestic violence, which includes any acts of a sexual nature committed against an adult without their consent or against a child regardless of their consent, or in the presence of a child, coercion into an act of a sexual nature with a third person, as well as other offenses against sexual freedom or sexual integrity of a person, including those committed in relation to a child or in his presence.

Moreover, the legislator provides a definition and term for the prevention of domestic violence, under which he understands the system of measures carried out by executive authorities, local self-government bodies, enterprises, institutions, and organizations, as well as citizens of Ukraine, foreigners and stateless persons who are in Ukraine on legal grounds, and are aimed at increasing the level of public awareness of the forms, causes and consequences of domestic violence, the formation of an intolerant attitude towards a violent model of behavior in private relationships, an indifferent attitude towards the affected persons, first of all towards the affected children, the eradication of discriminatory ideas about social roles and obligations ties of women and men, as well as any customs and traditions based on them.

Taking into account all of the above, it is possible to conclude that the prevention of domestic violence is the actions of state and public institutions aimed at preventing the commission of domestic violence and increasing the level of public awareness of the forms, causes, and consequences of domestic violence, the formation of an intolerant attitude towards violent behavior in private relationships, caring for affected persons, first of all for affected children, eradication of discriminatory ideas about the social roles and responsibilities of women and men, as well as any customs and traditions based on them.

The method of coercion consists in applying to subjects who have committed offenses the measures of punishment, re-education, and encouragement provided by the law, aimed at not committing offenses, and eliminating the damage caused by such behavior. That is, for committing domestic violence, a person will be held administratively liable, put on the record, and may be subject to material and educational sanctions. Yes, there are special programs for offenders that can be ordered by court order.

Preventive activities in the field of combating domestic violence are carried out, so to speak, on two levels, and as a result, are general and individual.

General prevention – any measures aimed at identifying the causes and conditions that contribute to the perpetration of domestic violence in the entire territory of Ukraine or a separate region. Examples of the general prevention of domestic violence are any mass measures, actions aimed at drawing attention to the problem of domestic violence, destroying stereotypes that have formed in this area, and spreading information about all existing instruments in the state in the field of combating domestic violence, both legal and psychological.

Individual prevention is a system of special measures for specific persons who have not yet committed the crime of domestic violence but are in unfavorable conditions and under their influence may commit such actions, characterized by the formation of an intention and motive to commit domestic violence, or persons who have already committed domestic violence and may allow it to be repeated. These measures can include individual conversations with the alleged offender, the issuing of an urgent restraining order by the police, placing the offender on the record, conducting correctional programs for offenders, etc.

That is, it is possible to conclude that today the state has created all the necessary tools for prevention and countermeasures against domestic violence and normatively enshrined all necessary provisions for this. However, still most of the appeals to the police, as a rule, come from the same persons in whose families' domestic violence has been committed for many years. However, regardless of the tools offered by the state to combat this phenomenon, the victims choose to do nothing and do not seek help from anyone except the police, and only in moments of acute conflict, not wanting to bring their abuser to justice.

Conclusions. The study of the problems of domestic violence prevention is timely because despite having all possible tools to prevent and counteract this extremely negative phenomenon, there is still an opinion among the population that domestic violence is the norm, and asking for help for victims of domestic violence is usually shameful and awkwardly In this regard, in our opinion, the next step of the state in the direction of countering and preventing

domestic violence should be the creation of a normatively established set of preventive measures in the specified area. With the help of which, consistently, by the forces of state and public institutions, the problem of domestic violence in Ukraine will become less global and more widespread.

Conflict of Interest and other Ethics Statements
The author declares no conflict of interest.

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ABSTRACT

The article provides an author's definition of the term "domestic violence prevention" by analyzing scientific publications and current legislation. Namely, the actions of state and public institutions aimed at preventing domestic violence and at increasing the level of public awareness of the forms, causes, and consequences of domestic violence, the formation of an intolerant attitude towards violent behavior in private relationships, an indifferent attitude towards the victims, first of all towards the victim's children, eradicating discriminatory ideas about the social roles and responsibilities of women and men, as well as any customs and traditions based on them.

In this article, the authors investigate the normative regulation of domestic violence prevention in Ukraine. Attention is drawn to the fact that today the legislator has carefully prescribed all the necessary tools for combating domestic violence in the law and by-laws. At the same time, today, according to the authors, the issue of preventive activities in the researched problems comes to the fore.

Research subjects in the field of combating domestic violence, it is emphasized that the designated state-authorized subjects of prevention of administrative offenses implement preventive activities in the specified field using such methods as coercion, encouragement, and persuasion.

It was emphasized that the issue of prevention of domestic violence is timely, because despite having all possible tools for preventing and countering this extremely negative phenomenon, there is still an opinion among the population that domestic violence is the norm, and victims of domestic violence usually seek help ashamed and embarrassed.

It was concluded that the next step of the state in the direction of combating and preventing domestic violence should be the creation of a normatively established complex of preventive measures in the specified area. With the help of which, consistently, by the forces of state and public institutions, the problem of domestic violence in Ukraine will become less global and more widespread.

Keywords: *crime prevention, domestic violence, prophylaxis, preventive activity, prevention of domestic violence.*

COMBATING OFFENCES: CRIMINAL-PROCEDURAL, FORENSIC, ORGANIZATION AND TACTIC ASPECTS

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COORDINATION OF THE ACTIVITIES OF BODIES AND UNITS OF THE NATIONAL POLICE OF UKRAINE DURING DISCLOSURE AND INVESTIGATION OF CRIMINAL OFFENSES

Костянтин Чаплинський. КООРДИНАЦІЯ ДІЯЛЬНОСТІ ОРГАНІВ І ПІДРОЗДІЛІВ НАЦІОНАЛЬНОЇ ПОЛІЦІЇ УКРАЇНИ ПІД ЧАС РОЗКРИТТЯ ТА РОЗСЛІДУВАННЯ КРИМІНАЛЬНИХ ПРАВОПОРУШЕНЬ. Наукову статтю присвячено висвітленню проблемних питань взаємодії органів і підрозділів Національної поліції під час розкриття і розслідування кримінальних правопорушень. Приділено увагу створенню сучасної дієвої системи криміналістичного забезпечення взаємодії між підрозділами поліції. Така система потребує обов'язкового узагальнення матеріалів правоохоронної практики та аналізу наукових розробок для формулювання найбільш ефективних способів і методів його застосування. Зосереджено увагу на визначенні поняття та сутності взаємодії. Вчасна і якісна взаємодія органів та підрозділів Національної поліції забезпечує своєчасне розкриття та швидке розслідування кримінальних правопорушень. Системна й узгоджена діяльність працівників різних підрозділів дозволяє проводити окремі слідчі (розшукові) дії швидко та раціонально, отримувати необхідний обсяг доказової інформації.

Діяльність з розкриття і розслідування кримінальних правопорушень вимагає від працівників правоохоронних органів досить чіткого планування своїх дій, особливо на початковому етапі їх розслідування. Зважаючи на це, розробка практичних рекомендацій щодо взаємодії органів і підрозділів Національної поліції є одним із важливих напрямів досягнення мети кримінального провадження.

Розкрито основні форми взаємодії у кримінальному провадженні. Визначено основні організаційні та процесуальні форми взаємодії слідчого з працівниками оперативних підрозділів при розслідуванні кримінальних правопорушень. До процесуальних форм взаємодії віднесено: а) виконання оперативним підрозділом доручень слідчого щодо перевірки оперативно-розшуковим шляхом відомостей, що мають значення для встановлення наявності чи відсутності підстав для внесення відомостей до ЄРДР за оперативними матеріалами; б) виконання доручень слідчого про проведення слідчих (розшукових) дій та негласних слідчих (розшукових) дій. Серед організаційних форм взаємодії при розслідуванні кримінальних правопорушень виокремлено наступні: а) спільна діяльність у складі слідчо-оперативних груп; б) взаємний обмін оперативною інформацією між слідчим і працівниками оперативних підрозділів; в) сумісне планування початкового етапу розслідування та першочергових процесуальних дій; г) використання криміналістичних і оперативно-технічних засобів тощо.

Ключові слова: *взаємодія, кримінальні правопорушення, тяжкі злочини, організація, планування, слідчі (розшукові) дії, тактика, тактичний прийом.*

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Relevance of the study. During all the years of independence, Ukraine strives to become a European and democratic state. As a result of the military aggression by russia in 2014 and the full-scale invasion of the territory of Ukraine in February 2022, the state leadership is making considerable efforts to accelerate Ukraine's accession to the European Community and integration into NATO. Based on this, there is a need to continue the previously initiated reforms of the socio-economic and political foundations of society, taking into account the current conditions.

A special place in this activity is given to combating corruption and organized crime. However, the socio-economic and political changes that have taken place in recent years in the countries of Europe and the CIS, including in Ukraine, have directly affected the international nature of organized crime. There is a steady tendency to the deterioration of the criminogenic situation in the state, which is due to the emergence of qualitatively and quantitatively new types of activities of criminal groups. Serious miscalculations in the implementation of reforms in the socio-economic, law enforcement and other spheres of state activity contributed to the change in the structure and nature of organized crime, the general level of which tends to increase. Combating organized crime is an important area of state activity. At the current stage, a number of complex organizational and tactical tasks arise in the activities of law enforcement agencies for the detection and investigation of criminal offenses, which are caused, on the one hand, by the requirements to intensify the fight against criminal acts, and on the other hand, by the complication of this fight, in particular, in connection with the integration of organized crime with economic structures and the strengthening of corrupt ties; strengthening of illegal opposition to the administration of justice by criminals; their use of the latest methods of preparation, implementation and concealment of criminal offenses. A significant increase in the number of crimes, primarily serious and especially serious, demonstrates the inability of law enforcement agencies to resist these negative phenomena.

Currently, the main priorities of law enforcement agencies include the documentation of war crimes. In recent months, the number of de-occupied territories of Kherson, Zaporizhzhya, Luhansk and Donetsk regions has been increasing. The Armed Forces of Ukraine continue to actively liberate the territories captured by russian military personnel. As a result, there is a need to carry out stabilization measures in these regions and take comprehensive measures to document war crimes. The effectiveness of this work is not possible without a clear and systematic coordination of the activities of the bodies and units of the National Police of Ukraine during the disclosure and investigation of criminal offenses.

The rapid disclosure and investigation of criminal offenses directly depends on the proper interaction of operational and investigative units of the National Police of Ukraine in criminal proceedings. This makes it possible to qualitatively plan the implementation of priority investigative (search) and procedural actions and operative-search measures. Considering this, the development of practical recommendations for the interaction of investigators and employees of operational units of the National Police is, of course, one of the priority directions for achieving the goal of criminal proceedings, especially in the conditions of martial law.

Recent publications review. The main directions and problematic issues of coordination of the activities of the bodies and units of the National Police of Ukraine during the disclosure and investigation of criminal offenses are quite thoroughly outlined in the scientific works of a number of scientists, in particular: K. Antonov, L. Arkusha, V. Bahin, A. Volobuyeva, M. Yefimov, V. Konovalova, V. Kuzmichov, E. Lukyanchikov, V. Lukashevich, S. Obshalov, I. Pyrog, M. Pohoretskyi, V. Pletens, M. Saltevskyi, R. Stepaniuk, Yu. Chornous, V. Shepitko and others. However, taking into account the strengthening of opposition both at the stage of the pre-trial investigation and the trial of criminal proceedings, as well as the increased pressure on the employees of the investigative units of the National Police from the leaders of criminal groups with the aim of prolonging the pre-trial investigation or closing criminal proceedings, which is observed in a number of high-profile cases, there is a need to create a modern system of forensic support for the coordination of the activities of the National Police bodies and units during the disclosure and investigation of criminal offenses.

The article's objective is to outline the current problematic issues of the organization of the interaction of the bodies and units of the National Police during the disclosure and investigation of criminal offenses, as well as the coordination of their activities in the conditions of armed aggression by russia.

Discussion. In the policy implemented by the state, aimed at strengthening law and order and improving the quality of the fight against crime, increasing the effectiveness of law enforcement agencies, in particular those that carry out pre-trial investigations, is of particular importance. In the optimization of this process, an important role is played by the full application of modern achievements of science and technology. The expediency of such an approach to investigative activity is due primarily to the fact that the use of modern scientific and technical means and methods contributes to the expansion of the spectrum of sources of evidentiary information in criminal proceedings.

Also, no less important factors, according to O. Volobueva, are the increase in the "professional" level of criminals and the technical support of criminal activity, the emergence of new types of criminal activity, etc. [1, p. 3]. Considering this, the quality of combating criminal manifestations directly depends on the state of improvement of methods and methods of law enforcement activity, ensuring their adequacy to the needs of practice through the use of modern special knowledge and skills.

The development of an effective system of forensic support for the investigation of criminal offenses is impossible without a thorough generalization of the materials of operational and judicial investigative practice, the study of archival criminal cases and materials of criminal proceedings. This will make it possible to develop the most effective ways and methods of planning and organizing a pre-trial investigation, which are integral components of any criminal proceeding.

The effectiveness of any activity depends on the quality of the implementation of the relevant measures. The investigation of criminal offenses is not an exception, because during this process both employees of law enforcement agencies of Ukraine and employees of state, private and public enterprises, institutions and organizations may be involved. The timely and coordinated interaction of the above structures enables the employees of the investigative units of the National Police to conduct criminal proceedings as quickly and efficiently as possible.

Interaction is one of the main forms of organizing the disclosure and investigation of criminal offenses. Cooperation is based on the Law, the cooperation of the investigator with the employees of the operational divisions of the National Police, which is carried out at a single time and place, with agreed goals, with the aim of full and rapid disclosure of criminal offenses, full and comprehensive investigation of the circumstances of criminal proceedings and establishing the identity of offenders who have disappeared from places of events or are hidden from the investigation and the court, the discovery of stolen valuables and other objects that are important for criminal proceedings.

The essence of the interaction of the bodies and units of the National Police is manifested, first of all, in the consolidation of the forces and means of the interacting subjects, in the reasonable combination of coherence and independence of the actions of the investigator and specialists in the process of their joint activity, under the priority leadership role of the investigator, not excluding the initiative of specialists. Despite the fact that the criminal procedural law does not contain a definition of the concept of interaction, it covers all aspects of activities related to pre-trial investigation and is the basis of the legal regulation of the considered interaction [1, p. 17].

The definition, study and analysis of forms, tasks and elements of interaction has not only theoretical, but also important practical significance, since knowledge of the typology of interaction allows you to find the most effective version of its organization in specific conditions of activity, for specific subjects, solving specific tasks at different stages investigation of criminal offences. One of the reasons for the insufficient level of interaction between the bodies and units of the National Police in criminal proceedings is the ignorance of certain subjects of the classification of types, forms and tasks of interaction.

During the investigation of criminal offenses, the interaction between the bodies and units of the National Police is implemented in various forms, through the implementation of joint actions. The main condition for the effectiveness of such joint actions is optimal coordination, coordination and specialization of interacting subjects. A clear demarcation of the competence of interacting subjects is one of the necessary conditions for compliance with the law during the disclosure and investigation of a criminal offense [1, p. 19].

Yes, the interaction has criminal procedural and organizational features, and if in some cases joint concerted actions can be carried out with the participation of employees of operational units in conducting priority investigative (search) actions, and this will be a joint activity of an investigator and an operational worker, then the participation of the investigator

in conducting operational measures are excluded. V. Kolesnyk and M. Yefimov also caught this opinion.

The main reasons for the interaction of operational and investigative units include the following:

– the same legal force of the procedural acts of the investigator and the employees of the operative divisions of the National Police;

– the common goal and tasks of operatives and the investigator, because by joining efforts, pre-trial investigation bodies and operative units will be able to effectively fulfill their tasks;

– the need to use the capabilities of the operational unit and the investigator (in particular, the investigator, in accordance with Article 40 of the Criminal Procedure Code of Ukraine, can conduct investigative (search) and covert investigative (search) actions, and the operational unit, in accordance with Article 41 of the Criminal Code of Ukraine, can carry out covert investigative (research) actions in criminal proceedings only on the written instructions of the investigator, prosecutor.

Forms of interaction should be understood as organizational techniques and methods, methods and the order of connections between them, based on the criminal procedural law and departmental legal acts of law enforcement agencies, as well as the best experience of operative-investigative and judicial practice, aimed at ensuring their coordinated activities and the correct combination of methods and means of activity peculiar to each of these bodies [2, p. 267].

In addition, it is necessary to emphasize the main principles of interaction of the bodies and units of the National Police in criminal proceedings, which include the following:

1) independence of interaction participants in choosing the means and methods of their activities;

2) distribution of competence and job duties of interaction participants;

3) complex use of available forces, means and methods;

4) single leadership of the investigator; optimal use of forces and means at the disposal of the subjects of interaction.

Based on the generalization of law enforcement practice, it is possible to single out the following main forms of interaction between the bodies and divisions of the National Police in criminal proceedings: organizational and procedural. In general, the given forms of interaction are methods of cooperation that ensure the coordinated nature of the activities of its participants, specific methods of communication between interacting subjects. Among the procedural forms of interaction of investigative and operative units, in accordance with the Code of Criminal Procedure of Ukraine, the following can be distinguished:

a) instructions and instructions of the investigator regarding the conduct of secret investigative (search) actions (articles 40, 246 of the Criminal Procedure Code of Ukraine);

b) providing assistance to the investigator during secret investigative (search) actions (Article 40 of the Criminal Procedure Code of Ukraine);

c) recording and providing the investigator (prosecutor) with the results of secret investigative (search) actions (Article 252 of the Criminal Procedure Code of Ukraine).

In general, procedural forms of interaction are the type of criminal-procedural legal relations that are regulated by current legislation, that is, established in legal norms.

On the basis of summarizing the materials of criminal proceedings and survey data of employees of operational and investigative units of the National Police of Ukraine, the following procedural forms of interaction can be distinguished:

– execution by the operational unit of the investigator's instructions regarding the verification by operational-investigative means of information that is important for establishing the presence or absence of grounds for entering information into the EDPR based on operational materials;

– execution of instructions of the investigator regarding the conduct of separate investigative (search) actions and covert investigative (search) actions;

– execution of the instructions of the investigator regarding the conduct of certain investigative actions;

– conducting investigative (search) actions by the investigator simultaneously with the implementation of the agreed operative and search measures by the inquiry body

– providing the investigator with materials collected in the course of operational investigative activities to resolve the issue of entering information into the EDPR;

– carrying out, together with urgent investigative (search) actions, the necessary operational and search measures;

– carrying out operative and investigative measures on the authority of the investigator to establish the whereabouts of a person who is evading the investigation and the court and bringing him to criminal responsibility;

– assistance to investigator in carrying out separate investigative (search) actions, etc.

In this context, the specifics of interaction between operational units should be emphasized. Thus, the generalization of the scientific developments of scientists allows us to classify the interaction between operational units as follows:

– according to the nature of connections between units, where interaction can be direct and indirect (direct interaction involves the establishment of direct connections between operational units, indirect – communication between operational units through a higher authority representing this unit);

– in terms of time, the interaction can be carried out permanently and temporarily (permanent interaction is carried out during the entire time of operational and search activities, temporary - aimed at solving a specific task);

– by functions (criminal-procedural, operational-investigative, etc.).

Therefore, during the interaction of an investigator with an operational worker in a procedural form during the investigation of criminal offenses, it is important to have contact between these workers, which allows for a thorough study of the available operational materials and to jointly develop a plan for their implementation. This form of interaction makes it possible to timely prevent tactical mistakes and miscalculations in criminal proceedings, to single out the most promising areas of further investigation. The application of organizational forms of interaction of the bodies and units of the National Police has an important place in the disclosure and investigation of criminal offenses. Thus, considering the organizational forms of interaction in criminal proceedings, we can say that in the legal literature, scientists distinguish various types of such interaction. One can fully agree with the opinion of V. Pcholkin, who singles out the following among the main organizational forms of interaction of bodies and units of the National Police in the investigation of criminal offenses:

– formation of an investigative and operative group for specific criminal proceedings and coordinated activities within these groups;

– joint activity of investigative and investigative units at the initial and subsequent stages of the pre-trial investigation;

– joint planning of separate investigative (search) actions and tactical operations aimed at identifying evidentiary (orienting) information;

– coordinating the work of investigators and operatives when planning the solution of individual tasks in criminal proceedings;

– familiarization of the investigator with operational materials within the limits stipulated by departmental regulations;

– joint trips of the investigator and operatives to conduct investigative (search) actions and separate procedural actions;

– mutual exchange of oral and written information of operatives and investigators on issues related to their activities;

– joint discussion and assessment of data obtained as a result of operational and investigative measures regarding their sufficiency for entering information into the EDPR [3, p. 117-118].

V. Konovalova adds the following organizational forms of cooperation in criminal proceedings:

– joint planning of investigative (search) actions, NSRD and operational search measures;

– determination and distribution of employees of operational and investigative units, in accordance with the tasks, the plan for the performance of individual functions;

– joint planning of the investigation of criminal offenses in general and the initial stage of the investigation in particular;

– formation of investigative and operative groups for the implementation of the approved plan;

– determination of the participants of investigative and operational groups for the investigation of individual episodes of criminal activity and the performance of other tasks [4, p. 136].

Timely planning (development of a single plan) is important in the organization of the investigation. Drawing up a plan is an important element of organizational interaction in criminal proceedings. All participants of the interaction should be familiarized with this plan in advance.

For the most part, such plans define:

– a list of investigative (search) actions, NSRD and other investigative measures, which are necessary to establish all the circumstances of a criminal offense;

– a clear sequence of investigative (search) actions, NSRD and operational search measures;

– circumstances to be established in criminal proceedings;

– circumstances that can be established only by means of operative and investigative measures;

– the sequence of verification of the put forward investigative versions to be worked out;

– deadlines for implementation of planned activities;

– responsible persons for each point of the developed plan.

In law enforcement practice, there are cases when the investigation of individual illegal acts requires the use of in-depth specific knowledge from the subjects of the investigation. Thus, taking into account the informatization of society, the number of illegal actions carried out in cyberspace is increasing. In view of this, in the opinion of a number of scientists (A. Fomenko, A. Melnychenko, N. Pavlova, etc.), the investigation of illegal actions with financial resources in cyberspace requires the use of special knowledge from the subjects of the investigation, which, unfortunately, they cannot be achieved for various reasons (outdated scientific and practical training and technology). This significantly complicates the process of preventing and countering illegal actions and allows them to exist for a long period of time [5, p. 142-143].

Bearing this in mind, it is precisely in these criminal proceedings that the interaction between various bodies and units of the National Police is of great importance, which allows for the effective use of forensic means, techniques and methods of countering criminal manifestations, as well as to choose the correct organization and tactics of carrying out a complex of investigative (search) actions, NSRD, operative search measures and other organizational measures.

Conclusions. In general, the interaction of the bodies and units of the National Police of Ukraine under the conditions of the leading role of the investigator consists of joint efforts in the matters of disclosure and investigation of criminal offenses and establishment of all circumstances subject to proof in criminal proceedings, as well as establishment of the whereabouts of suspects who are wanted by pre-trial investigation bodies.

Meanwhile, unfortunately, the legislator in the domestic criminal procedural legislation, for some reason, did not pay due attention to the issue of interaction between authorized subjects during criminal proceedings. Such a conclusion can be reached by analyzing the provisions of the current Code of Criminal Procedure, according to which there is no legal regulation of interaction, both during pre-trial investigation and court proceedings. Such regulation can be guessed only by separate procedural norms. However, the interaction of the relevant bodies and units of the National Police in the investigation of criminal offenses (especially in the documentation of war crimes) is important for increasing their efficiency and effectiveness.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

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ABSTRACT

Coordination of the activities of bodies and units of the National Police of Ukraine during disclosure and investigation of criminal offenses.

The scientific article is devoted to the coverage of problematic issues of interaction between bodies and units of the National Police during the disclosure and investigation of criminal offenses. Attention is paid to the creation of a modern effective system of forensic support of interaction between police units. Such a system requires mandatory summarization of law enforcement practice materials and analysis of scientific developments to formulate the most effective ways and methods of its application. Attention is focused on defining the concept and essence of interaction. Timely and high-quality interaction of the bodies and units of the National Police ensures timely disclosure and quick investigation of criminal offenses. Systematic and coordinated activity of employees of various departments allows to carry out individual investigative (search) actions quickly and rationally, to obtain the necessary amount of evidentiary information.

The activity of uncovering and investigating criminal offenses requires law enforcement officers to plan their actions quite clearly, especially at the initial stage of their investigation. Considering this, the development of practical recommendations for the interaction of the bodies and units of the National Police is one of the important directions for achieving the goal of criminal proceedings.

The main forms of interaction in criminal proceedings are disclosed. The main organizational and procedural forms of interaction between the investigator and operative units during the investigation of criminal offenses are defined. Procedural forms of interaction include:

a) execution by the operational unit of the investigator's instructions regarding the verification by operational-investigative means of information that is important for establishing the presence or absence of grounds for entering information into the ERDR based on operational materials;

b) execution of the instructions of the investigator on conducting investigative (search) actions and covert investigative (search) actions.

Among the organizational forms of cooperation in the investigation of criminal offenses, the following are distinguished:

a) joint activity as part of investigative and operational groups;

b) mutual exchange of operational information between the investigator and employees of operational units;

c) joint planning of the initial stage of the investigation and priority procedural actions;

d) use of forensic and operational-technical means, etc.

Keywords: *interrogation, criminal offenses, serious crimes, organization, planning, investigative (search) actions, tactics, tactical reception.*

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WORK WITH FORENSIC VERSIONS AS A METHOD OF LEGAL KNOWLEDGE

Каріна Калюга. РОБОТА З КРИМІНАЛІСТИЧНИМИ ВЕРСІЯМИ ЯК МЕТОД ЮРИДИЧНОГО ПІЗНАННЯ. Дослідження аспектів криміналістичної версії як методу юридичного пізнання є актуальним питанням удосконалення типової методики роботи з криміналістичними версіями щодо особи злочинця, обставин вчинення злочину та планування слідчих дій. Також більш глибокого аналізу потребує методологічна функція та прикладна роль версії у висвітленні й обґрунтуванні необхідності логіко-методологічного підходу до дослідження особи злочинця та обставин вчинення злочину.

Одним із перспективних напрямів удосконалення та оптимізації процесу розкриття, розслідування та попередження окремих видів злочинів є дослідження і подальше розроблення концепції типових версій. Завдяки їх формуванню та застосуванню в кримінальному процесуальному пізнанні активізується вирішення завдань щодо пошуку доказів у типових слідчих ситуаціях, виникає можливість у побудові логічних програм дій для осіб, які здійснюють процес розслідування. Саме завдяки побудови різних слідчих версій та їхньої подальшої перевірки, відбувається встановлення фактичних даних.

Досліджено витоки поняття версії, сучасне значення цього терміну, види та класифікації версій, функції версій, значення її для встановлення обставин провадження тощо. У висновках підкреслено, що методологічний стрижень дослідження криміналістичної версії має проходити через аналіз у єдності її гносеологічного, логічного й психологічного аспектів. Вказано, що подальшу розробку теоретичних основ криміналістичної версії доцільно побудувати на послідовному опрацюванні двох взаємозалежних проблем, дискусію з яких ще не можна вважати завершеною. До першої з них відносяться питання гносеологічного статусу (пізнавальної природи) версії та її співвідношення з гіпотезою. Друга проблема пов'язана з визначенням місця вчення про версії в структурі науки криміналістики та її функціональної ролі в розслідуванні злочинів.

Сучасний стан і тенденції розвитку науки криміналістики вимагає відособленого вивчення версії як самостійного елементу її загальної теорії. Зрозуміло, що версія тісним чином пов'язана із плануванням розслідування, передує йому та слугує його основою. Але це зовсім не означає, що версія є елементом планування. Відверто слабкою ланкою в практиці висунення й перевірки версій називається застосування імовірнісно-математичних методів, які дозволили б дістати якісно нові можливості для швидшого й ефективнішого вирішення складних розумових завдань, що виникають під час розкриття і розслідування злочинів. На думку автора, подальше дослідження вчення про криміналістичну версію повинне носити комплексний міждисциплінарний характер і будуватися на стиках і з урахуванням даних різних наук – природничих, технічних і суспільних – та, перш за все, філософії, логіки, психології, інформатики і криміналістами.

Ключові слова: *гіпотеза, версія, доведення версії, криміналістична версія, наукове пізнання, слідча версія, слідча ситуація, юридичне пізнання.*

Relevance of the study. The theoretical foundations of the formation of the general provisions of the doctrine of the forensic (investigative) version received a certain development in the theory of forensics [1, p. 54; 2, p. 25-27]. However, being one of the complex subjects of research in science, today it has not yet exhausted the possibilities of its further improvement. Some of its provisions have not been fully resolved – they remain debatable and continue to be discussed in the legal scientific community.

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In particular, in the forensic literature, the scientific foundations of this doctrine are not sufficiently deeply researched, which, in turn, negatively affects the adequate perception of its essence, the definition of individual categories, concepts and classifications, as well as the practical application of certain types of forensic versions (investigative, judicial, expert, operational-investigative, protective) and the grounds for their nomination.

The question of the place of teaching in the system of forensics and its connections with theories remains controversial: probability, information, modeling, forecasting and some others.

The methodological function and applied role of the version in elucidating and justifying the need for a logical-methodological approach to the investigation of the identity of the criminal and the circumstances of the crime requires a deeper analysis. Let's dwell on the last thesis in more detail.

Recent publications review. Today, a solid methodological and theoretical foundation has been created for modern and future scientific development of the problems of using the obtained information about the identity of the criminal when putting forward forensic versions and planning the initial stage of crime investigation.

Undoubtedly, S. Golunsky, V. Dontsov, I. Luzgin, V. Obraztsov, B. Shaver, A. Sheremet, M. Yablokov and others provided significant assistance to the investigators practice, brought a lot of new things to the theory and practice of recording and processing forensically significant information, the doctrine of the forensic (investigative) version, etc. G. Aleksandrov, V. Antipov, G. Artsyshevskyi, I. Bykhovskyi, L. Drapkin, O. Kolesnichenko, V. Konovalova directly investigated the problems of forensic versions in their works. O. Laryn, V. Levkov, V. Lukashevich, O. Nikrents, O. Rehovskii, M. Saibarakov, M. Selivanov, O. Synchuk, L. Soya-Serko, S. Yalyshev and others.

At the same time, the new conditions of fighting crime, its prevention, research of science and technology in solving crimes and the development of the criminal justice system require further research in the fight against crime. Undoubtedly, S. Golunsky, V. Dontsov, I. Luzgin, V. Obraztsov, B. Shaver, A. Sheremet, M. Yablokov and others provided significant assistance to the investigators practice, brought a lot of new things to the theory and practice of recording and processing forensically significant information, the doctrine of the forensic (investigative) version, etc. G. Aleksandrov, V. Antipov, G. Artsyshevskyi, I. Bykhovskyi, L. Drapkin, O. Kolesnichenko, V. Konovalova directly investigated the problems of forensic versions in their works. O. Laryn, V. Levkov, V. Lukashevich, O. Nikrents, O. Rehovskii, M. Saibarakov, M. Selivanov, O. Synchuk, L. Soya-Serko, S. Yalyshev and others. At the same time, the new conditions of fighting crime, its prevention, research of science and technology in solving crimes and the development of the criminal justice system require further research in the fight against crime.

The article's objective. In the presence of initial information about the crime (the person of the criminal), the quick and effective establishment of factual data in criminal proceedings depends on the timely implementation of measures for the organization and planning of investigative (search) actions at the initial stage of the investigation and the success of the disclosure and investigation of the crime as a whole. In this regard, the goal of our article is the further development of a typical method of working with forensic versions as a key method of legal knowledge of the crime event as a whole.

Discussion. At the initial stage, the person conducting the investigation (conditionally the investigator) must act very quickly, have time to identify, collect, save and analyze (including digital) the maximum amount of evidentiary material that may otherwise disappear or be destroyed, direct efforts to uncovering crimes on "hot tracks", establishing, finding, suspecting or detaining guilty persons, ensuring the possibility of compensation for damages caused by the crime [3, p. 689].

In general, the actions of the investigator at the initial stage of the investigation of crimes (any crime under the Criminal Code of Ukraine) are not limited to researching existing information about the crime, deciding whether to open criminal proceedings, and searching for traces. Important are the proposed versions, on the basis of which, firstly, future activities to expose the subject are planned, secondly, the interaction of law enforcement officers is organized, thirdly, the help of the public is involved, and fourthly, measures are organized to overcome resistance investigation by interested parties and some other methods and means aimed at preventing crimes [4, 5].

One of the promising areas of improvement and optimization of the process of

disclosure, investigation and prevention of certain types of crimes is research and further development of the concept of standard versions. Thanks to their formation and application in criminal procedural knowledge, the solution of tasks related to the search for evidence in typical investigative situations becomes more active, the possibility arises in the construction of logical action programs for persons who carry out the investigation process.

Establishing factual data occurs by constructing various investigative versions and their subsequent verification. In order to put forward a forensic version, the investigator must have a certain amount of them (that is, the data of the investigative situation). On the basis of these data, the version should contain not only an attempt to explain the information that is available at a specific stage of the investigation, but also to identify relationships and interdependencies between them [6, p. thirteen].

The scientific work, which was the first study of the philosophical sources of the version as a type of hypothesis that performs a cognitive role in the judicial process, which considered the role of the version in criminal procedural cognition, the relationship between the concept of "version" and the concept of "hypothesis", was the candidate's thesis of 1954 by O. Nikrents "Court version as a type of hypothesis" [7]. In general, the following definitions of the version are found in legal sources: it is called the method of cognition [8, p. 141; 9, p. 166], a tactical technique [10, p. 59; 11, p. 45; 12, p. 53], an integral idea [13, p. 29], an ideal mental model [14, p. 92-108], an ideal information-logical model [15, p. 128-133], a type of hypothesis [16, p. 106-107; 17, p. 117-124], "investigative compass" [18, p. 22], even a guiding thread in the process of collecting, researching and evaluating evidence [19, p. 115] or a means of achieving the goal [20], etc. A version is a model, a logical technique, a hypothesis, and the reason for the appearance of facts [21, p. 16].

It can be argued that the majority of criminologists define a version as a reasonable assumption, a probable explanation by the subjects of the cognitive process of the essence of the crime event as a whole or of the individual circumstances of its commission, which are to be established in criminal proceedings. If we analyze the definitions of individual scientists, then the version is "a reasonable assumption of the investigator about the presence and circumstances of the event under investigation, about the actions (inaction) of certain persons and about the presence (absence) of the composition of a certain crime in these actions" [22, p. 8]. Also, a version is a complex mental process, when, based on collected factual data, an assumption is made about a crime or some of its circumstances, and then from this assumption, consequences are derived that are subject to further verification [7, p. 5]. Or, a version is a fact-based assumption of the investigator about the essence and reasons of the events investigated in the investigation process [23, p. 13]. A version is one of the possible assumptions that explain the origin or properties of certain circumstances of a crime, or the event of a crime as a whole [24, p. 15; 25, p. 17], or the investigator's assumption about the nature and circumstances of the crime [26, p. 152]. According to G. Artsyshevskyi, for example, a version is an assumption aimed at solving a crime regarding the not yet established essence of the investigated event or not yet established features of the composition of the crime, which represent one of the possible conclusions arising from the analysis of the entire set of factual data obtained on moment of this assumption [2, p. 7; 27, p. 20]. According to O. Eisman, a version is a plausible description of a specific event, the actions of a certain person [28], according to O. Vasiliev, it is an inductive inference of the investigator in the form of an assumption, based on factual data about the crime event and its individual circumstances, which is subject to checks according to the logical rules of deduction [12, p. 55] etc.

Scientists classify versions by: the subject of the nomination: investigative, operational-investigative, expert, judicial, (these versions, as a rule, are interdependent and can arise from one another. So, an investigative version can arise from an expert version, an operational-investigative one – from an investigative version and vice versa.); by scope of establishing the circumstances of the event under investigation: general, designed to explain the essence of the event as a whole, its nature, the causal relationship between the facts; individual – a probable judgment about the place, time, instrument of the crime, the origin of individual traces, etc.; by the degree of specificity: typical – explanation of the event as a whole based on the data of generalized experience of judicial, expert, operational and investigative practice, specific – working versions, on which the investigator is working at one moment or another [29].

Versions, as ideal mental models in the process of learning a specific crime, have several functions: analytical, cognitive, prognostic, organizational, etc. Which fulfill their goals, which are achieved by implementing the mental activity of the investigator, working

with evidentiary material. Initially, these can only be separate hypotheses or assumptions that are formed into reasonable assumptions (versions), versions that form the basis of establishing factual data that are important for the correct disclosure and investigation of crimes.

Timely, correct presentation and operative verification of versions allow to establish the circumstances of the proceedings in the most complete and objective manner and in the shortest possible time. Meanwhile, separate versions (not the main ones) also often have a certain meaning and play the role of methods for detecting certain signs of a crime. R. Belkin also emphasized the significant role of individual versions: "the totality of the initial data has no absolute value, regardless of which hypothesis they are used as a starting point for building. The boundaries of the population are determined by the level of the assumption built on these initial data. If the totality of all data known up to the time of putting forward the version is called the general population, then within the framework of the latter it is possible to put forward totalities that combine a smaller number of data. The versions built on their basis will belong to the version that encompasses the general population, as parts of the whole", he noted [30, p. 358].

As for the prognostic function of versions (the essence of which consists in predicting not only a complex of investigative actions that can contribute to the discovery of evidence, but also their possible evidentiary value [31, p. 28]), then we are talking about those signs that correspond to the nature of the crime committed or should or may be appropriate. In general, this function helps to determine the possible existence of certain traces, objects, documents related to the crime event. Such a forecast, based on a preliminary analysis of evidentiary information (in essence, a subjective assessment by the investigator of the available original trace material when putting forward both separate and general versions), allows to determine the possible whereabouts of persons, certain objects, documents, and traces and to use them for the detection and investigation of crimes.

Investigative versions perform the organizational function of determining the direction of the investigation and planning further activities related to the investigation. The formation of versions is based on the results of the analytical activity of the investigator while working with the source trace material. So, for example, L. Dubrovytska notes that the organizational function of planning consists in setting a task, determining the ways and means of solving it, the sequence of the necessary actions, the deployment of available forces and means. This mental activity is aimed at building a model of the entire act of investigation, the material expression of which is its written or graphic plan [32, p. 8].

Recognizing the investigation of crimes as a specific cognitive activity that has a creative beginning, it is also necessary to recognize that an important condition for successfully solving the tasks that arise during its implementation is a certain unity of knowledge of the psychological and intellectual properties of the individual. Materialistic epistemology distinguishes two main levels of knowledge: spontaneous-empirical (everyday-life) and scientific. The spontaneous process of cognition is characteristic of all people in their everyday practical activities. Unfortunately, he got some distribution in the field of forensic and investigative knowledge.

Scientific knowledge takes place where it is carried out by specially trained people – professionals. It has a strictly defined object, a research task, methods of knowledge that are consciously used. Hence, one of the tasks of the theory of the forensic version is to provide methodical assistance to the investigator in mastering the techniques of scientific knowledge, mastering the ways of practical application of logic in forensic thinking, in its most significant link – the version. It is known that the development of human knowledge in general and judicial and investigative knowledge, in particular, overcomes a number of stages.

The initial stage is the formulation (in criminal proceedings – the emergence) of a problem (a certain investigative situation), which is a perceived contradiction that requires its solution. Next, in order to solve it, a version is put forward, which, in the first approximation, is considered as a reasonable assumption containing the sought solution to the problem. This version acquires a reliable character only if the version is verified by investigative practice (with a positive result), that is, when it can be proven by means of evidence.

The methodological basis of the described activity is the system of dialectical logic, the laws and categories of which characterize the process of cognition from the content side. But the logical, which takes place at different levels of knowledge, is not limited only to the requirements of dialectical logic. The logical method of obtaining new knowledge also assumes a formal-logical aspect [33, p. 52]. Logic has always occupied a special place in the

training of lawyers. The experience of the mental activity of mankind, worked out by science with logic and recorded in its principles, basic principles, and rules, allows obtaining new knowledge.

For a long time, the main attention in forensic and investigative cognition was paid to formal logic – this is observed even now. At the same time, considering the logical aspect of the version, it is necessary to note the exceptionally important importance for legal thinking of the laws of dialectical logic [34, p. 8]. Therefore, the further development and enrichment of the theoretical foundations of the forensic version should be connected with the strengthening of its dialectical and logical base. It is the laws and categories of formal logic and dialectics that constitute the only logical method, a necessary link in the movement towards new results in the detection and investigation of crimes [35, p. 3].

The methodological function of this approach is that the system of logical categories, laws, and forms the main link in cognition, without which no science can do. Cognition that is devoid of logic is unable to reveal the essence, and where there is no knowledge of the essence, there is no knowledge of the truth.

Knowledge is a reflection of reality not only in its content (essence), but also in its form. Therefore, in the final analysis, the structure and methods of mental activity are conditioned by the structure of the known object itself. The logical method makes it possible to form new knowledge from thoughts that are true in content and correct in form, connected in turn by logical connections, corresponding in content to the objects and phenomena under study [36, p. 7-27].

Knowledge of logic techniques for obtaining new knowledge from individual facts discovered during the investigation of a crime, for the transition from direct perception to indirect knowledge of the circumstances of the investigated event, is considered in the science of criminology primarily within the framework of the doctrine of the forensic version. Unfortunately, the authors of most works on this issue are traditionally limited to only a superficial (cursory) description (and more often a simple indication) of the logical side of the version. It is clear that the mental activity of the investigator can be imagined as a system of logically developed considerations, in which the course of thought originates from known premises (collected facts) to the sought, which is already planned in advance, formed hypothetically. But here we must not forget that the proposal and development of the version, the collection of factual data and the verification of the assumption take place on the basis of a broader and meaningful process than the one presented in the hypothetico-deductive method and reflected in logical thinking.

In the thinking process of the investigator, in addition to professional knowledge (experience), he uses established attitudes, the "trial and error" method, intuition, insight (enlightenment, guesswork), etc. In this way, analyzing the initial theoretical positions of forensic versions, it is necessary to rely on a certain unity of thinking (logical and psychological aspects). Here, logic is inextricably linked with psychology. The latter studies thinking, primarily as a process, as a real flow of thought – from ignorance to knowledge. There is an accepted idea, with which it is difficult to disagree, that psychology is the only science that, based on an epistemological and logical basis, studies the process of thinking of an individual [37, p. 156]. Here, the semantic analysis of the version cannot but become a psychological analysis. On the other hand, E. Shorokhova's remark is apt here that any problem that society solves, one of its aspects, facets, dependencies, is a permanent and psychological problem, since in the system of all social relations, man acts as the "central constituent" [38, p. 5].

Conclusions. Thus, the methodological core of the research of the forensic version should be through the analysis in unity of its epistemological, logical and psychological aspects. In this regard, it is advisable, in our opinion, to build the further development of the theoretical foundations of the forensic version on the sequential treatment of two interdependent problems, the discussion of which cannot be considered completed yet. The first of them includes issues of the epistemological status (cognitive nature) of the version and its relationship with the hypothesis. The second problem is related to determining the place of the doctrine of versions in the structure of the science of criminology and its functional role in the investigation of crimes. In addition, from the very beginning, in order to avoid further confusion related to the substitution of concepts, it should be borne in mind that the term "version" is used in two meanings: to indicate the result of mental activity – a possible judgment (assumption) and the process itself proposal and research of the method of cognition.

Traditionally, version theory has been explored and developed in forensics in conjunction with planning theory. In our opinion, the current state and trends in the development of the science of criminology requires a separate study of the version as an independent element of its general theory. It is clear that the version is closely related to the planning of the investigation, precedes it and serves as its basis. But this does not mean that the version is an element of planning. A frankly weak link in the practice of proposing and checking versions is the use of probabilistic and mathematical methods, which would allow obtaining qualitatively new opportunities for faster and more effective solving of complex mental tasks that arise during the detection and investigation of crimes.

Based on the above, further study of the doctrine of the forensic version, in our opinion, should have a complex interdisciplinary nature and be built on the junctions and taking into account the data of various sciences – natural, technical and social – and, above all, philosophy, logic, psychology, computer science and criminologists.

Conflict of Interest and other Ethics Statements
The author declares no conflict of interest.

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ABSTRACT

Researching the aspects of the forensic version as a method of legal knowledge is an urgent issue of improving the typical method of working with forensic versions regarding the identity of the criminal, the circumstances of the crime and the planning of investigative actions. Also, the methodological function and applied role of the version in highlighting and justifying the need for a logical-methodological approach to the investigation of the identity of the criminal and the circumstances of the crime need a deeper analysis.

One of the promising areas of improvement and optimization of the process of disclosure, investigation and prevention of certain types of crimes is research and further development of the concept of standard versions. Thanks to their formation and application in criminal procedural knowledge, the solution of tasks related to the search for evidence in typical investigative situations becomes more active, the possibility arises in the construction of logical action programs for persons who carry out the investigation process. It is thanks to the construction of various investigative versions and their subsequent verification that factual data is established.

The origins of the concept of version, the modern meaning of this term, types and classifications of versions, functions of versions, its importance for establishing the circumstances of the proceedings, etc. have been studied. The conclusions emphasize that the methodological core of the research of the forensic version should be through the analysis of its epistemological, logical and psychological aspects in unity. It is indicated that the further development of the theoretical foundations of the forensic version should be based on the sequential treatment of two interdependent problems, the discussion of which cannot be considered completed yet. The first of them includes issues of the epistemological status (cognitive nature) of the version and its relationship with the hypothesis. The second problem is related to determining the place of the doctrine of versions in the structure of the science of criminology and its functional role in the investigation of crimes.

The current state and trends in the development of the science of criminology requires a separate study of the version as an independent element of its general theory. It is clear that the version is closely related to the planning of the investigation, precedes it and serves as its basis. But this does not mean that the version is an element of planning. A frankly weak link in the practice of proposing and verifying versions is the use of probabilistic mathematical methods, which would allow us to get qualitatively new opportunities for faster and more effective solving of complex mental tasks that arise during the detection and investigation of crimes. In the opinion of the author, the further study of the doctrine of the forensic version should have a complex interdisciplinary nature and be built on the interfaces and taking into account the data of various sciences – natural, technical and social – and, above all, philosophy, logic, psychology, informatics and criminologists.

Keywords: *hypothesis, version, version proof, forensic version, scientific knowledge, investigative version, investigative situation, legal knowledge.*

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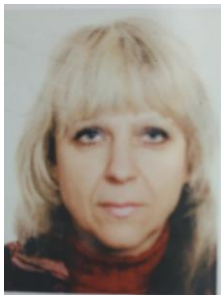

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ALGORITHM FORMATION FOR ASSESSING VALUE OF CONSUMER GOODS BY FORENSIC MERCHANDISING EXPERT IN CASES OF CONSUMER PROTECTION

Ірина Петрова, Ольга Донцова, Тетяна Кіпушева. ФОРМУВАННЯ АЛГОРИТМУ ОЦІНЮВАННЯ ВАРТОСТІ СПОЖИВЧИХ ТОВАРІВ ЕКСПЕРТОМ-ТОВАРОЗНАВЦЕМ У СПРАВАХ ПРО ЗАХИСТ ПРАВ СПОЖИВАЧІВ. Останнім часом у зв'язку зі значним збільшенням кількості фальсифікованих або підроблених товарів, а також у зв'язку зі збільшенням кількості випадків надання неякісних послуг, на українському ринку виникла гостра потреба у проведенні експертизи споживчих товарів у випадках захисту прав споживачів, коли одним із основних питань, що постають при проведенні судової експертизи, є визначення вартості товару, наданого на дослідження.

Метою статті є розгляд загальних принципів та розробка алгоритму оцінки вартості споживчих товарів судово-товарознавчим експертом у справах захисту прав споживачів з урахуванням таких товарів. Охарактеризовано принципи, якими слід керуватися при оцінці вартості споживчих товарів, а саме: корисність, попит і пропозиція, заміщення, очікування, граничний внесок у продуктивність, найбільш ефективне використання. Зазначається, що для реалізації споживчих товарів законом визначається ринкова вартість та неринкові види вартості. Наголошується, що судовий експерт з товарознавства використовує ті методологічні підходи, які найбільш повно відповідають меті оцінки та виду вартості товару (за наявності достовірних джерел інформації для її проведення). Проаналізовано методологічні підходи, використовувані експертом для оцінки вартості товару: витратний, прибутковий, порівняльний.

Запропонований алгоритм визначення вартості товарів широкого вжитку судовим експертом-товарознавцем у справах про захист прав споживачів; містить такі етапи: 1) отримання завдання, постановка мети та розробка програми дослідження; 2) встановлення товарознавчої характеристики, товарного стану та інших показників якості продукції; 3) визначення початкової ціни; 4) дослідження рівня якості (виявлення наявних дефектів або пошкоджень); 5) уточнення споживчих характеристик товару; узагальнення інформації та розрахунок ринкової вартості на дату оцінки; 6) складання висновку судово-медичної експертизи.

Ключові слова: *судова експертиза, споживчі товари, визначення вартості товару, експерт-товарознавець, принципи оцінювання, захист прав споживачів, алгоритм оцінювання.*

Relevance of the study. A significant increase in falsified or counterfeit products, as well as an increase in the number of cases of providing low-quality services on the market of

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Ukraine, required the adopting of a number of regulatories aimed at protecting consumer rights, and conducting numerous examinations of consumer goods in cases on the protection of consumer rights, with one of the main questions to commodity experts – determination of the value of products provided for research. A commodity expert determines the value of a specific product after examining its quality, establishing damages, identifying defects, etc. The variety and quality of modern consumer goods and services lead to the asking of the same type of questions to forensic experts-commodity experts, but regarding different groups of consumer goods. Therefore, we consider it expedient to propose an algorithm for determining the value of consumer goods, taking into account their quality, during expert research in cases on the protection of consumer rights.

Recent publications review. Theoreticians and practitioners of forensic expertise examined consumer goods from various scientific positions. Thus, experts-practitioners have developed methodical materials for establishing indicators of loss of quality and market value of non-food products and determining the amount of material damages incurred as a result of wear and tear defects [12]. The study guide "Protection of Consumer Rights" by N. Salukhina, O. Yazvinska and O. Bashkatova examines, in particular, the issue of consumer rights protection by state bodies and public organizations, and also characterizes the peculiarities of the inspection of business entities in the field protection of consumer rights, although no attention was paid to determining the quality and value of the investigated objects [16].

I. Litvinchuk rightly believes that it is impossible to solve the task of the investigation without the use of special knowledge (in particular, the knowledge of a commodity expert). Emphasizing the mandatory conduct of forensic examinations during the investigation of crimes, the researcher names the commodity examination among the special examinations related to the features of products that can be recognized as dangerous. In addition, she notes: in case of assigning a comprehensive examination, the investigator must provide the necessary amount of products for research, which is sometimes difficult to do (for example, due to rapid spoilage of food products) [8]. Unfortunately, this researcher did not pay attention to the issue of determining the value of products that can harm the consumer.

The authors of the monograph "Theory and practice of conducting forensic examinations in the direction of engineering, economic, commodity science types of research and evaluation activities" focused on defining the theoretical and legal basis for the appointment and conduct of forensic examinations and considered scientific and methodological approaches to conducting examinations (in particular, commodity studies). The researchers devoted a separate section to algorithms for establishing the fact of falsification and conducting identification examination of food products [7], previously thoroughly outlined in the work of T. Kundilovska and O. Kobzar [6]. However, these authors did not consider the issue of determining the value of goods taking into account their quality, which proves the relevance of the chosen topic and the need for its development.

According to the rules of the Ukrainian language, the noun "evaluation" should be used only to denote the result of the process, the quality of knowledge and behavior of students or opinions, reasoning about the quality, character of someone (something), and the adjective "evaluation" is a tracing from russian. In the Ukrainian language, the verb "to evaluate" and the adjective "evaluative" should be used, respectively. However, the current legal acts regulating expert activity operate precisely with erroneous word forms.

The research paper's objective is to review general principles of evaluating the value of consumer goods by a commodity expert in cases of consumer rights protection and the development of an algorithm for evaluating their value taking into account quality.

Discussion. As we know, the value of consumer goods should be evaluated in accordance with a number of the following principles: usefulness, supply and demand, substitution, expectation, marginal productivity contribution, the most effective use [1, p. 46-53; 2, p. 6-7; 3, p. 13-16]. Let us briefly characterize these principles.

The principle of usefulness is based on the fact that a product has value only under the conditions of its usefulness for a potential owner or user. Utility is understood as the product's ability to satisfy the needs of the owner or user for a certain period of time. The principle of supply and demand reflects the ratio of supply and demand for a similar product. According to this principle, market price fluctuations for a similar product and other factors that may lead to changes in the ratio of demand and supply for similar products are taken into account during the evaluation. The principle of substitution involves taking into account the behavior of buyers on the market, namely: for the purchase of a product, they do not pay more than the minimum

price of a product of the same utility as offered by other products on the market. The principle of expectation is based on the dependence of the value of the object of evaluation on the amount of economic benefits expected from the ownership, use and disposal of this object. The principle of contribution (marginal productivity) is determined by the influence on the value of the object of assessment of such factors as: labor, management, capital and land, which is proportional to their contribution to the total income.

The influence of a separate factor is measured as a share of the value of the object of assessment or as a share of the value by which the total value of the object of assessment will decrease in the event of its absence. The principle of the most efficient use consists in taking into account the dependence of the market value of the object of evaluation on its most efficient use. The most effective use is understood as the use of the product, as a result of which the value of the object of evaluation is the maximum. At the same time, only those options for using the product that are technically possible, permitted and economically expedient are considered.

During forensic examinations in consumer protection cases, the commodity expert shall comply with the general requirements for conducting an independent evaluation of consumer goods [11]. The commodity expert independently searches for information sources (with the exception of documents, the provision of which must be provided by the initiator of the forensic examination), and must independently analyze: all found information sources related to a specific consumer product; trends in the market of similar goods; information about transactions with similar goods used for the application of the comparative approach, etc. In the case of incompleteness of the specified information or its absence at all, the expert's opinion notes the negative impact of this fact on the evaluation results.

Depending on the selected methodical approaches and assessment methods, the commodity expert in the course of the research:

– collects and analyzes all essential information about the consumer product, in particular: initial data about its legal status; information about the composition, technical and other characteristics; information about the state of the market for this product and similar products; information about the economic characteristics of the product (forecasted and actual income and expenses from its use, in particular from its most effective use and actual use);

– analyzes the current state of use of a specific product and determines the conditions for its most effective use;

– collects the necessary information to substantiate the capitalization rate and/or the discount rate;

– defines legal restrictions on a specific product, taking into account their impact on the value of this product;

– justifies the application of methodological approaches, methods and assessment procedures, and if necessary, the use of special assessment methods and assessment procedures (combination of several methodological approaches or methods).

The raw data and other information collected by the commodity expert should be reflected in the opinion of the expert in consumer protection cases with a reference to the source of their receipt and in its appendices. In addition, it is necessary to ensure the regime of confidentiality in accordance with the requirements of legislative and regulatory documents before conducting a forensic examination [5; 11; 14; 18].

The evaluation of consumer goods in consumer protection cases is carried out by an expert using a base corresponding to market value or non-market types of value. The evaluation base is chosen at the first stages of the expert evaluation of the product: it depends on the purpose of the forensic product examination, the features of the product, and the regulatory requirements for it. If the normative legal acts on the expert evaluation of the goods or the initiator of the forensic examination do not specify the type of value to be determined as a result of the expert study, then the market value is determined.

When determining the market value of consumer goods, the most efficient use of the object of evaluation should be taken into account. The methods of conducting expert evaluation, used when determining the market value of consumer goods in the case of using a comparative approach, should be based on the results of the analysis of sales (offer) prices for similar goods. Costs for reproduction (replacement) are determined on the valuation date taking into account market prices. Forecasting cash flow and the corresponding rate of income, experts necessarily take into account the influence of market conditions on the functioning (use) of a consumer product, based on the principle of its most effective use [9, p. 23-25]. In

the absence or insufficiency of information in the expert's opinion, it is noted to what extent this affected the reliability of the opinion about the market value of a specific product.

In the absence of reliable information on the sale prices of a similar product, the market value of the evaluated product can be determined on the basis of information on the offer prices of a similar product, taking into account the relevant amendments, which take into account the trends of changes in the sale price of a similar product compared to their offer price. If external factors (socio-economic, political, environmental, etc.) have a significant influence on the market of a similar product, which makes it difficult to provide a reasoned and reliable conclusion about the market value, the expert's opinion provides additional clarifications and caveats. At the same time, a commodity expert has the right to provide a conclusion about the market value of a specific product, which is based, in particular, on information about the previous price level on the market of a similar product or on the assumption of the restoration of a stable situation on the market. In the opinion of the expert in the information about the value of the consumer goods in cases on the protection of consumer rights, the expert-commodity expert reflects the fact that the amount of value added tax is included or not included in the market value.

When conducting forensic commodity examinations of consumer goods, the expert can also use non-market types of value, which he must justify. Non-market types include: replacement value, reproduction cost, residual replacement value (reproduction), value in use, consumer value, liquidation value, investment value, special value, liquidation value, net realizable value, appraised value, etc., the order of determination of which is determined by individual national standards. Non-market types of value as a basis for evaluation are determined using methods and evaluation procedures based on the results of analyzing the usefulness or purpose of this product, as well as on studying the impact of the conditions of its use or the method of disposal. To determine non-market types of value, information about a similar product is used as a basis for evaluation in the part in which it meets the requirements set forth for a certain non-market type of value [9, p. 31-33].

The market value and non-market types of value, determined by law for the purposes of selling consumer goods, after deducting the costs accompanying the sale (in particular, those related to the payment of value added tax), are recognized as the net sales value [11].

A commodity expert assesses the value of consumer goods in consumer protection cases using methodical approaches and valuation methods that are components of methodical approaches or a combination of several methodical approaches and valuation procedures. Most often, the expert-commodity researcher uses several methodological approaches that most fully correspond to the determined purpose of the evaluation and the type of value (if there are reliable sources of information for its implementation).

To substantiate the final conclusion about the value of the consumer product, the specialist compares the results of research obtained using different methodological approaches, by analyzing the influence of the evaluation principles that are decisive for the purpose of the examination, as well as information sources that affect the reliability of the research results. The impossibility or impracticality of using a certain methodical approach, associated with the complete absence or unreliability of the initial data on the consumer product and other information necessary for this, is separately substantiated in the expert's opinion. Other cases of restrictions on the use of certain methodological approaches to determine the market value and non-market types of value of the objects of assessment are determined by the national standards, as the expert notes in the conclusion. The following basic methodical approaches are used for expert product evaluation [11]: expendable; profitable; comparative.

The expendable approach is based on taking into account the principles of utility and replacement and provides for the determination of the current cost of the costs of reproduction or replacement of the product under study with their subsequent adjustment for the amount of wear and tear (depreciation), and its main methods are the methods of direct reproduction and replacement, when the residual cost of replacement (reproduction).

The profitable approach is based on taking into account the principles of the most efficient use and expectation, according to which the value of a consumer product is determined as the current value of the expected income from its most effective use, including income from its possible resale. The main methods of the income approach are direct capitalization of income and indirect capitalization of income (cash flow discounting), the choice of which depends on the availability of information on the expected (forecasted) income from the use of a specific product, the stability of their receipt, the purpose of evaluation, as

well as the type of value to be determined. An expert commodity researcher forecasts and substantiates the amount of income and expenses from the current use of the product under study, provided that it is more efficient, or from the possible most efficient use, provided that it is different from the actual use.

The comparative approach involves taking into account the principles of substitution and supply and demand and analyzing the selling and offering prices of a similar product with the appropriate adjustment of the differences between the objects of comparison and the specific product, as well as compliance with the stipulated criteria. The main elements of the comparison are the characteristics of a similar product based on its location; physical and functional characteristics; terms of sale, etc. The value of a similar product is adjusted by adding or subtracting a sum of money using a coefficient (percentage) to the selling price (offer) of a specific product or by combining them.

During the examination in cases of consumer rights protection the commodity expert relies on the fact that all consumer goods offered on the market of Ukraine have a price and a value: price is a monetary expression of the value of the product (necessary, expected or paid for a certain product or service in money sum); value is an estimated amount of the value of specific goods and services at a specific time in accordance with the chosen interpretation of value, which reflects the market's view of the benefits received by those who own these goods or use these services on the date of validity of the value.

The main factors of price formation are the size and dynamics of demand and supply of products, which make up a complex of economic interests that have a decisive influence on the prices formation. At the same time, during the commodity examinations in cases of consumer rights protection for a specific type of product, the commodity expert needs to know the direct factors under the influence of which prices were formed, namely:

– demand factors that determine the price of the product offered by the buyer (payable demand - the funds that the buyer can allocate for the purchase of this product; the volume of purchases; the level of savings and accumulations; consumer characteristics of the product that characterize its usefulness and quality);

– factors of consumer choice – comparing the market of this product with goods supplemented by accompanying goods, determine the competitiveness of this product compared to products that replace it with goods of better quality; needs and opportunities of buyers of this product and competitive product;

– supply factors – determine the price of the product offered by the seller (the quantity of the product offered for sale in general and the quantity of the product offered by the seller).

For pricing, the level of prices determined by a direct comparison of the prices of this period with the prices of the base period for the same or similar products with the application of the appropriate adjustment coefficients is important - the price of analogues-sale [11]. To analyze the level of prices in the forensic examination, the primary market value of a consumer product is calculated based on data on the primary prices of a similar product presented on the Ukrainian market. After that, the results are summarized and the maximum, average, or minimum market price is calculated for the types of products, or the method of expert evaluation based on professional experience is used, where descriptive, qualitative evaluations of processes and phenomena that affected the state of the object of research cannot be directly measured and calculate by mathematical or numerical method or with the help of regulatory documents.

In order to set up the value of consumer goods in the course of conducting forensic-commodity examinations in consumer protection cases, the following stages of calculating the price of the examined goods should be forseen:

1) determining pricing goals – the price of goods plays an extremely important role, which consists in obtaining income from the sale of goods; the more clearly the goal is formulated, the more precisely the price will be set;

2) demand assessment – the price can increase when the demand is significant and decrease when the demand is insignificant, so the commodity expert must estimate the price elasticity of demand, determine the probable quantity of goods that can be sold during a certain time at prices of different levels;

3) analysis of costs and determination of the relationship between price, sales volume and profit – such a price should be set up that compensates for all costs during the sale of the product and ensures a fair profit;

4) study of the market, analysis of the prices and quality of goods similar to those under investigation, only after studying the prices and quality of similar goods, the expert can

objectively determine the value of the goods;

5) choosing a pricing method – allows to correctly determine the price of a specific product;

6) determining the primary cost based on the selected method – setting the price of the product taking into account: discounts, markups, location of buyers, wholesale prices of the manufacturer, as well as the amount of VAT, customs duties, costs and profits of trading enterprises (trade mark-up);

7) study of the product quality level. Determination of the residual price taking into account the loss of quality (if available);

8) generalization of the product data obtained at the previous stages;

9) issuance of an expert's opinion.

On the basis of these stages, it is possible to propose an algorithm for assessing the value of consumer goods, which is appropriate for implementation in expert practice of conducting forensic commodity examinations of consumer goods in cases of consumer protection.

1. The first stage. Receiving the task; setting the purpose of the research; development of the research program (the expert-commodity expert thoroughly familiarizes himself with the document on the basis of which he will conduct the research, as well as studies all other materials related to the object of the research. After studying these documents, the expert determines the purpose of the research and develops a program for its implementation).

2. The second stage. Determination of product characteristics, product condition, and other indicators of products (the expert-commodity expert must select the parameters that need to be clarified, as they will influence the expert's conclusion; conducts research using organoleptic methods, starting with an inspection of the provided objects, their packaging (if available), as well as the premises where the objects are located, studies their storage conditions; examining the packaging, singles out the parameters that make it possible to resolve the issue of the actual condition of the goods subject to expert examination and their compliance with regulatory requirements (type, means of packaging, materials used, availability of necessary elements), labeling marks and their content, the actual condition of the packaging (damages, their location, size and degree of expressiveness), in case of detection of packaging damage, studies the locations of defects on the products and their coincidence with traces of packaging damage – such research is important for clarifying the causes of occurrence defects; during the direct examination of the product, first of all, it is detected by signs of those characteristics (their quantitative and qualitative determination) that make it possible to classify the product (name, material of manufacture, design features, etc.); studying the marking and appearance, solves the question of the commercial property of the object according to the appropriate classifiers [4, 10, 15, 17].

3. The third stage. Determination of the initial price (the main approach to determining the market (initial) value is a comparative approach, which is based on the analysis of the sale prices (offers) of goods identical or similar to the evaluated goods, on the primary or secondary sales markets, with the appropriate adjustment that takes into account the differences between objects of comparison and a specific product, for which the averaged price data that worked and are working in Ukraine are used, under conditions that correspond to the content of the concept of "market value" (that is, it is based on open market data and is presented in reference books that meet the requirements for scientific objectivity and volume of information).

At the current stage of the development of the market economy, free (market), selling and contractual prices operate. The variety of prices requires that when evaluating goods, the criterion of availability of information about the price of the goods is taken as a basis, therefore the methods of evaluating goods can be to be combined into the following groups: 1) by actual prices (based on the use of reliable information about the price of a specific product on the domestic consumer market); 2) analog (applied in the absence of a specific product and information about its price on the domestic market, in this case such a product is compared with a similar product available on the domestic market); 3) subjective – expert evaluation (used when evaluating products of outdated design, withdrawn from production, which do not correspond to modern fashion at all (taking into account the time of manufacture, residual consumer characteristics, demand), and new goods that have qualitatively new consumer characteristics , the analogues of which are absent on the domestic market, in this case, you can use price catalogs of foreign countries, information on market conditions and consumer demand).

The initial price (using a specific method) is determined after establishing the product

characteristics of the object of research, the manufacturer, marking and other indicators, using price data, taking into account the market situation and consumer demand for a specific period of time necessary for research, for which it is expedient for the expert to use information about the assortment, price, market conditions of Ukraine, etc. Such data can be obtained at specialized exhibitions, in branded stores, from manufacturing companies or sales companies, from dealers, from specialized periodicals and catalogs, from Internet sites).

4. The fourth stage. Research of the quality level (establish the presence (absence) of defects, the degree of their detection, size, location and nature. At the same time, they solve tasks related to determining the actual state of the object and the reasons for changes in its characteristics. found in signs-traces of negative influences that caused a change or loss of consumer characteristics. Then these characteristics are compared with the basic data. It is important not only to establish deviations from the norm, but also to determine the level of product quality, taking into account the percentage of loss of quality, the degree of suitability for intended use etc. Determining the level of product quality consists in evaluating the set of indicators (deviations) established during expert research from the standpoint of their impact on product quality).

5. The fifth stage. In the case of finding out the inappropriate level of quality of research objects or other negative circumstances, the correlation coefficient is used to establish the real value. In the conclusion, the expert-commodity expert describes the defects or shortcomings of the products, determines the cause of their occurrence (if necessary) and the percentage of loss of quality. It is possible to detect: manufacturing or non-manufacturing defects; mechanical damage; defects caused by negative factors or natural wear and tear, etc. [13, p. 31-32]. If there are several defects in the product, the percentage of quality loss is set according to the largest defect. There are several methods of calculating wear and tear as a total loss of value of the object under the influence of various factors, the main ones of which are: the method of breakdown (physical, functional and external (economic) wear and tear) and the method of the remaining period of economic life (based on the assumption that it is possible to fairly reliably set the remaining service life).

6. The sixth stage. Summarization of data on the product under study obtained at the previous stages. Calculation of the actual cost, taking into account the loss of quality (if any). At this stage, the specialist summarizes all the data on the studied products, as received earlier. For different groups of consumer goods, different sizes of correction coefficients are used, which are recommended for use depending on the condition of the examined products [9, p. 45; 13, p. 33].

7. The seventh stage. The final stage is "Generalization of examination results. Drawing up an "expert's opinion" is a summary of all conducted research, a written expert's opinion based on the results of a forensic examination in accordance with the requirements of current legal acts.

Conclusions. It has been emphasized that the commodity expert uses several methodological approaches that most fully correspond to the determined purpose of the evaluation and the type of value (if there are reliable sources of information for its implementation). Approaches and methods for spreading their use in expert practice during forensic product examinations are given and characterized (if necessary, to establish the value of consumer goods in consumer protection cases).

The algorithm for determining the value of consumer goods was developed on the basis of the generalization of the experience of conducting forensic commodity examinations on consumer, confiscated and other goods. The application of the proposed algorithm is considered expedient when conducting forensic expert examinations in consumer protection cases, as well as useful for preventing deficiencies that reduce the probative value of experts' opinions.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

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ABSTRACT

Recently, in connection with a significant increase in the number of falsified or counterfeit goods, as well as in connection with an increase in the number of cases of providing low-quality services, an urgent need arose on the Ukrainian market to carry out an examination of consumer goods in cases of consumer rights protection, when one of the main one of the questions that arise during the forensic examination is the determination of the value of the goods submitted for examination.

The purpose of the article is to consider the general principles and develop an algorithm for evaluating the value of consumer goods by a forensic expert in consumer protection cases, taking into account such goods. The principles that should be followed when evaluating the value of consumer goods are characterized, namely: utility, supply and demand, substitution, expectation, marginal contribution to productivity, the most efficient use. It is noted that the market value and non-market types of value are determined by law for the sale of consumer goods. It is emphasized that the forensic expert in commodity studies uses those methodological approaches that most fully correspond to the purpose of the assessment and the type of value of the goods (if there are reliable sources of information for its implementation).

The methodological approaches used by the expert to estimate the value of the product were analyzed: cost, profit, comparative. The proposed algorithm for determining the value of widely used goods by a forensic expert-commodity expert in consumer protection cases; includes the following stages: 1) obtaining a task, setting a goal and developing a research program; 2) establishment of commodity characteristics, commodity condition and other indicators of product quality; 3) determination of the initial price; 4) quality level research (detection of existing defects or damage); 5) clarification of consumer characteristics of the product; summarization of information and calculation of the market value as of the valuation date; 6) drawing up the conclusion of the forensic medical examination.

Keywords: *forensic examination, consumer goods, determination of the value of goods, commodity expert, principles of evaluation, protection of consumer rights, evaluation algorithm.*

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CHARACTERISTIC OF THE FURTHER STAGE OF THE INVESTIGATION OF THEFTS FROM PRIVATE HOUSES

Ігор Пиріг. ХАРАКТЕРИСТИКА ПОДАЛЬШОГО ЕТАПУ РОЗСЛІДУВАННЯ КРАДІЖОК З ПРИВАТНИХ БУДИНКІВ. У статті автором визначено поняття подальшого етапу розслідування, окреслено та конкретизовано завдання подальшого етапу розслідування крадіжок з приватних будинків. Визначено типові слідчі ситуації цього етапу розслідування, які можуть бути сформовані таким чином: 1) підозрюваний повністю визнає свою вину у вчиненні злочину та співпрацює зі слідством; 2) підозрюваний частково визнає свою вину у вчиненні злочину, замовчує окремі епізоди злочинної діяльності; 3) підозрюваний не визнає своєї вини у вчиненні злочину, відмовляється від співпраці зі слідством.

Залежно від слідчої ситуації для забезпечення доказової інформації проводяться різні слідчі (розшукові) дії, які в загальному вигляді полягають у такому: допит підозрюваних, зіставлення їхніх показань для з'ясування ролі кожного з них у механізмі вчинення конкретної крадіжки; опитування родичів та близьких підозрюваних як свідків для отримання інформації про їхню обізнаність щодо злочинної діяльності; обшук за місцем проживання підозрюваного та можливих схованок (місце роботи, сараї, гаражі, дачі тощо); пред'явлення підозрюваного та викрадених речей для впізнання; слідчий експеримент з відтворення дій злочинців на місці події; призначення ідентифікаційних експертиз, відбір зразків для порівняльного дослідження: слідів рук, біологічного походження (кров, слина, сеча), залежно від виявлених на місці події слідів.

Також наведено перелік можливих організаційних заходів та негласних слідчих (розшукових) дій, які необхідно здійснити при розслідуванні крадіжок з приватних будинків.

Ключові слова: *кримінальне правопорушення, подальший етап розслідування, типові слідчі ситуації, слідчий, слідчі (розшукові) дії.*

Relevance of the study. One of the principles of building a forensic methodology as a system of scientific provisions and practical recommendations (algorithms, programs) that ensure optimal organization of the investigation of criminal offenses is the sequence of activities of authorized persons in the course of collecting evidence [1, p. 411]. Other principles of the construction of the forensic methodology are the situational nature and stages of the investigator's (inquirer's) activity, since depending on the situation that arises at each stage, the investigator, after assessing the degree of its difficulty, determines the task, outlines ways to solve it, using for this forensic tactics means, and receives a result, which, in turn, affects the formation of the next investigative situation. The investigation process in forensics is divided into three stages: initial, next (subsequent) and final.

In the conditions of martial law in the territory controlled by Ukraine, the problem of investigating personal property thefts from private houses remains relevant. The number of committed thefts remains consistently high, and the results of their investigation are quite low. According to the Office of the General Prosecutor of Ukraine, 723 thefts were committed from summer cottages and garden houses in January-October 2022, not including private houses with permanent residence, of which a notice of suspicion was served in 410 cases [2].

Undoubtedly, there are a number of objective reasons related to the insufficient staffing of investigative units, the significant workload of investigators with the work of documenting

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and investigating the category of war crimes. In addition, a significant number of thefts are latent, since, especially in the front-line area, such crimes are simply not registered due to the lack of private houses owners and insufficient staff of investigative units. The development of forensic recommendations for their use in the practice of investigating criminal offenses at all stages of the investigation is relevant for all types of crimes, including theft from private homes.

Recent publications review. The problems of investigating criminal offenses against property were considered by many scholars in criminology and criminal procedure, in particular, such as: Yu. Alenin, L. Arkusha, V. Bakhin, A. Volobuyev, V. Zhuravel, A. Ishchenko, I. Kogutych, O. Kolesnichenko, H. Matusovskyi, M. Pohoretskyi, O. Pchelina, M. Saltevskyi, R. Stepanyuk, V. Stratonov, V. Tyshchenko, S. Chernyavskyi, Yu. Chornous, V. Shepitko, B. Shchur and others. Despite the sufficient number of publications, in these scientists' works not enough attention is paid to the algorithm of actions of the investigator (inquirer) at the next stage of the investigation of private houses thefts.

The article's objective is the development of the algorithm of investigator's (inquirer's) actions of the at the next stage of the investigation of thefts from private houses.

Discussion. Researches define the investigation stage as a separate period of time within which, under the specific conditions of the investigation, a system of actions aimed at solving joint tactical, strategic, and intermediate tasks is carried out and is determined by the procedural decisions made [3, p. 247; 4, p. 185]. The further investigation stage is marked by solving problematic situations regarding the formation of the evidence base, establishing the event and method of committing the criminal offense, proving the guilt of the person suspected of committing the crime. The information at the investigator's disposal the at this stage is characterized by a greater volume, logical orderliness and specificity, a variety of procedural sources of evidence and a targeted focus on evidence [5, p. 165].

After carrying out a set of investigative (search) actions aimed at identification and detention of the offender, i.e. after solving the tasks of the initial investigation stage, the next one begins, the main task of which is the building of the evidence base. The actions of the investigator (inquirer) should be aimed not only at collecting information, but also at its thorough evaluation and systematization. At the same time, it is necessary to take into account such complete and reliable information as was obtained at the initial stage, the possibility of obtaining new information depending on the position of the suspect and his/her actions, which may contribute to the investigation or oppose it.

V. Tishchenko considers the following to be distinctive features of the next investigation stage:

1) constant analysis and synthesis of incoming information, verification of evidence and counter-evidence (for example, reference to an alibi, transfer of guilt to another crime participant, etc.);

2) the need to increase the quantity and quality of incoming forensically significant information, as well as its filtering, discarding unnecessary unconfirmed evidence and supplementing it with necessary and evidential information;

3) the involvement of a large number of new participants in investigative and forensic activities – witnesses, specialists, experts, investigative and operational workers (especially when creating an investigative and operational group or investigative teams);

4) detection and investigation of new episodes of criminal activity of suspects and accused persons;

5) development of a detailed investigation plan, which involves checking all versions, solving all assigned tasks;

6) making tactical decisions related to the emergence of various conflict situations, which are created both with the accused and with other persons;

7) adopting procedural decisions that require detailed justifications (issuance of resolutions on involvement as an accused, on the selection of a preventive measure, assigning forensic examinations, etc.);

8) conducting investigative actions that require significant organizational efforts;

9) solving forensic tasks by conducting tactical operations;

10) making a number of final decisions on the criminal case regarding the criminal activity under investigation, in general and its separate episodes, participants in the crimes, discovered property, physical evidence [6, p. 196-197].

Concerning tasks of the next stage the A. Volobuyev's opinion is considered to be

correct. This scholar considers them to be: formation of an evidence system regarding the suspect; identification of all accomplices and collection of evidence of their guilt; finding reasons and conditions that contributed to the crime commitment and taking measures to eliminate them; ensuring compensation for material losses caused by a criminal offence; collection of information about the suspect's identity, necessary for passing a fair and reasonable sentence [7].

In our opinion, the planning of the investigation of criminal offenses at a later stage should ensure the following tasks: the formation of a system of evidence containing factual data about the circumstances of each criminal episode under investigation and the persons involved in their commitment; establishing the nature and degree of the suspect's participation in other offenses and other circumstances to be proven; optimal and consistent use of all available means of proof: sets of overt and covert investigative (search) actions, tactical combinations and operations, possibilities of using forensic technical means and special knowledge; finding reasons and conditions that contributed to the commitment of a criminal offense and taking measures to eliminate them; ensuring compensation for material losses caused by the crimes commitment, possible confiscation of property (if this task was not resolved at the initial investigation stage).

The tasks of the next investigation stage in general are consistent, detailed, complete and methodical proof. If the offender is detained and enough evidence is collected to bring him to justice, then at the next stage of the investigation, the reasons for the detention are checked, all participants and episodes of criminal activity are identified, the connections between the elements of the crime are worked out and analyzed, and the causes and, if possible, conditions that contributed to committing a crime are established.

Building of investigative situations of the next investigation stage is largely related to the position occupied by the suspect (suspects). Summarizing the materials of criminal proceedings and the results of the interrogation of investigators (inquirers) made it possible to identify three main typical investigative situations of the next investigation stage of thefts private houses.

The first situation, when all suspects fully admit their guilt and cooperate with the investigation, is the most favorable for the investigation. However, their position should not completely exclude the version of the possible giving of false testimony by these persons in order to facilitate the evasion of criminal liability of certain co-conspirators, or in order to avoid criminal liability of some of them in relation to other, more serious episodes of criminal activity.

The second investigative situation is less favorable, because the suspects of committing a criminal offense may admit their guilt partially and keep silent about certain criminal activity episodes. Incomplete admission of guilt may be a consequence of the suspect's assessment of his/her actions differently than the investigator assesses and describes in the suspicion notification. Such a choice of the suspect's position at the pre-trial investigation may be due to taking into account the presence of evidence about certain circumstances of the criminal offense event: in the presence of direct evidence, it does not make sense to deny one's guilt, and in relation to other circumstances where there are only derivatives, such a position seems appropriate for them. Partial denial of one's guilt can also be caused by slander of a person on the part of his accomplices, the failure to identify which caused the investigator (inquirer) to make an investigative mistake when determining the suspect's guilt.

The third investigative situation is determined by the suspect's categorical denial of his guilt and refusal to cooperate with the investigation, which is accompanied by false testimony or refusal to testify. The suspect's denial of guilt, as a rule, is unfounded.

Considering the investigative situations of the next investigation stage of thefts committed on the territory of horticultural societies and dacha cooperatives, V. Samsonova identifies five possible typical investigative situations: 1) the person who was notified of the suspicion fully admits his/her guilt in crime commitment, all the participants of the criminal group are arrested and they cooperate with pre-trial investigation bodies; 2) all members of the group were detained, all of them partially admit their guilt in crime commitment, there are discrepancies in the detainees' testimonies; 3) the person who was notified of the suspicion fully admits his guilt, but keeps silent about the crime accomplices, although there are factual data on the crime commitment as part of a group; 4) certain participants in the theft have been detained, there are factual data indicating that they committed a crime, but they do not admit their guilt and refuse to cooperate with the investigation; 5) the person who was notified of the

suspicion does not admit guilt, although there are factual data indicating that he/she has committed the crime; the suspect refuses to testify about his/her and other persons' involvement in the crime commitment [8, p. 15].

In general, we agree with the author's opinion, but we believe that in fact the second and fourth situations are a variant of the third and it is possible to combine them. In addition, the list of investigative (search) actions for solving them proposed by this author in her thesis is almost the same.

For all categories of thefts, including from private houses, the main directions of work can be identified, which are as follows:

– studying the identity and lifestyle of suspects or persons who have any relation to the perpetrator, which allows to establish the identity of the aimer or the organizer of the committed offense and other accomplices;

– search for places of storage of stolen goods, identification of persons or organizations (for example, pawnshops) engaged in the sale of stolen goods;

– organization of prevention of committing a new similar crime: training of patrol police officers, preventive talks with the public (sellers of shops, kiosks, employees of transport organizations, residents living at the place of probable commission of the offense, etc.), mobilization of public organizations, etc.;

– search and verification of involvement in theft of persons who do not have a permanent source of income, unemployed persons who do not have a permanent place of residence;

– verification by operational-search means of involvement in theft of persons who lead an antisocial lifestyle, are registered by the police, and have income of dubious origin.

To secure evidentiary information depending on the investigative situation, they carry out various investigative (search) actions, which are generally as follows:

– interrogation of suspects, comparison of their statements to clarify the role of each of them in the mechanism of a specific theft or the entire criminal activity, if several episodes are revealed;

– questioning of suspects' relatives and friends as witnesses to obtain information about their knowledge of criminal activity;

– re-interrogation of witnesses, eyewitnesses to clarify their testimonies, taking into account newly discovered facts;

– search at the suspect's place of residence and possible hiding places (place of work, sheds, garages, cottages, etc.) with the aim of identifying and seizing items related to the criminal offense, including crime tools or stolen property;

– presentation of the suspect and stolen items for identification;

– investigative experiment to reproduce the actions of criminals at the scene, as well as to conduct the necessary experiments or tests in order to establish the mechanism of penetration into a residential building;

– assignment of identification examinations, selection of samples for comparative research: handprints, biological origin (blood, saliva, urine) depending on the traces recovered at the scene.

Of course, depending on the investigative situation, the list and sequence of the said investigative (search) actions may be different.

In addition to the specified investigative (search) actions, it is also possible to conduct the following actions of a search and organizational nature and covert investigative (search) actions with strict compliance with the requirements of the Criminal Procedure Code of Ukraine (CPC of Ukraine) [9]: audio and video monitoring of a person (Art. 260 of the CPC of Ukraine) can be carried out, including, during the stay of the suspect in places of preliminary detention; arrest of correspondence (Art. 261 of the CPC of Ukraine); inspection and seizure of correspondence (Art. 262 of the CPC of Ukraine); removal of information from transport telecommunication networks (Art. 263 of the CPC of Ukraine); removal of information from electronic information systems (Art. 264 of the CPC of Ukraine); inspection of publicly inaccessible places, housing or other possessions of a person (Art. 267 of the CPC of Ukraine); determining the location of a radio-electronic device (Art. 268 of the CPC of Ukraine) is a very effective means of identifying suspected persons, including not yet arrested accomplices of the event; surveillance of a person, thing or place (Art. 269 of the CPC of Ukraine) can be carried out in public places, at the place of residence of relatives and acquaintances for the purpose of finding person's contacts.

At the same time, special equipment provided by police bodies can be used, including photo and video equipment; the use of confidential cooperation (Art. 275 of the CPC of Ukraine) is an effective means of obtaining information about both the identity of the suspect and the accomplices of the offense and can be obtained from acquaintances, neighbors in the precinct, etc.; analysis of the materials of criminal proceedings, the actors of which were participants in the investigated criminal offense; interviews, and possibly interrogations of persons who were accomplices in offenses previously committed by suspects; check for involvement in the commitment of other criminal offenses according to the forensic records of the Expert Service of the Ministry of Internal Affairs of Ukraine: fingerprints, burglary tools, shoes, vehicles, etc.; checking the records of the Department of Information and Analytical Support of the National Police of Ukraine: according to the method of committing the crime, stolen items, numbered items, antiques, etc.

The final procedural action, which determines the end of the further stage of the investigation, is the indictment of the person. During the investigation of criminal offenses, the investigator may not always simultaneously make a procedural decision substantiated by the collected evidence to charge a specific person as an accused for committing all the crimes in which he/she is involved, or to charge all co-conspirators as accused. The filing of an indictment has not only important procedural but also tactical significance.

Conclusions. The correct choice of the moment and procedure for carrying out this procedural action (indictment for episodes of criminal activity for which the person does not expect it; indictment for committing several crimes at once; successive indictment of accomplices, starting with persons who give truthful testimony about the circumstances of their crime commitments, ending with those who categorically do not admit their guilt) can affect the formation of the accused's position regarding his/her cooperation with the pre-trial investigation bodies.

Regarding the above, we can note that we have determined the task of the next investigation stage of thefts from private houses, and have defined the typical investigative situations of this stage, and outlined the algorithm of the investigator's (inquirer's) approach to solving them. The given forensic recommendations have a clear practical orientation and will be useful during the investigation of private houses thefts.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

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ABSTRACT

In the article, the author defined the concept of the next stage of the investigation, outlined and specified the tasks of the next stage of the investigation of thefts from private houses. Typical investigative situations of this stage of the investigation have been defined, which can be formed as follows: 1) the suspect fully admits his guilt in committing the crime and cooperates with the investigation; 2) the suspect partially admits his guilt in committing the crime, keeps silent about certain episodes of criminal activity; 3) the suspect does not admit his guilt in committing the crime, refuses to cooperate with the investigation.

Depending on the investigative situation, in order to provide evidentiary information, various investigative (search) actions are carried out, which generally consist of the following: interrogation of suspects, comparison of their statements to clarify the role of each of them in the mechanism of committing a specific theft; interviewing relatives and relatives of suspects as witnesses to obtain information about their awareness of criminal activity; search of the suspect's place of residence and possible hiding places (place of work, sheds, garages, cottages, etc.); presentation of the suspect and stolen items for identification; an investigative experiment on reproducing the actions of criminals at the scene; appointment of identification examinations, selection of samples for comparative research: handprints, biological origin (blood, saliva, urine), depending on the traces found at the scene.

Also given is a list of possible organizational measures and covert investigative (research) actions that must be carried out when investigating thefts from private houses.

Keywords: *criminal offense, subsequent stage of the investigation, typical investigative situations, investigator, investigative (search) actions.*

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ELECTRONIC CRIMINAL PROCEEDINGS: INTERNATIONAL EXPERIENCE OF USING INFORMATION SYSTEMS FOR ALGORITHMIZATION OF CRIMINAL JUSTICE

Олена Антонюк. ЕЛЕКТРОННЕ КРИМІНАЛЬНЕ ПРОВАДЖЕННЯ: МІЖНАРОДНИЙ ДОСВІД ВИКОРИСТАННЯ ІНФОРМАЦІЙНИХ СИСТЕМ АЛГОРИТМІЗАЦІЇ КРИМІНАЛЬНОЇ ЮСТИЦІЇ. Стаття присвячена дослідженню та порівняльному аналізу міжнародного досвіду використання програм та інноваційних технологій в сфері кримінальної юстиції в деяких країнах світу та визначенню основних причин дисбалансу тенденцій розвитку та впровадження подібних систем в Україні; способам та засобам отримання, та можливостям реалізації права на сбір, подання та доступу до інформації та до доказів в електронному кримінальному провадженні.

Актуальність цієї статті полягає в необхідності аргументованого порівняльного аналізу позитивного та ефективного досвіду діючих систем інформатизації кримінальної юстиції різних країн, задля вирішення проблеми реформування кримінальної юстиції України, шляхом створення інформаційної системи досудового розслідування – електронного кримінального провадження в Україні, з метою удосконалення сучасної концепції електронної складової частини кримінального провадження задля реалізації принципів демократичного суспільства, таких як доступ до правосуддя, як одного з найголовніший принцип забезпечення законодавчих прав і свобод людини в демократичній державі.

У дослідженні проведено аналіз досвіду функціонування інноваційних технологій в електронних системах органів кримінальної юстиції в розрізі огляду застосування різноманітних інформаційних програм за моделлю та способами отримання та збереження інформації; аналіз результатів роботи стратегічних елементів програм; порівняння комплексних методів підходу до впровадження інноваційних процесів організації, застосування та контролю в електронному кримінальному провадженні в різних країнах. За результатами дослідження відзначено основні напрями роботи, необхідної для впровадження системи сучасного та ефективного електронного кримінального провадження в Україні.

Ключові слова: *електронне кримінальне провадження, діджиталізація кримінальної юстиції, алгоритмізація електронного кримінального провадження, електронні системи органів кримінальної юстиції.*

Relevance of the study. Dynamic development of modern strategic elements of algorithmization and implementation of artificial neural network technologies in the sphere of criminal justice in the developed countries such as the USA, Japan, China, Germany, have become viable to be implemented and applied on a large scale and envisage promising directions for the development of smart technologies.

The development of the area of digitalization of the criminal justice system in different countries can be studied through the analysis of the experience of functions of electronic systems which use various innovative programs such as the ones in the USA ("Oasis", "Magic Lantem"), England ("Transforming Through Technology"), Germany ("INPOL-neu", "rsCASE", "Koyote", "Fall Bearbeitungs-System Thuringen", Hungary (National Computer Board), Belgium ("e-Justice", "Tax-on-Web", "Police-on-Web"), etc., therefore, we can conclude that numerous countries are far more advanced in this respect. This good practice also

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has advanced development in the following countries: Saudi Arabia, South Korea, the Republic of Kazakhstan, Singapore, Estonia and others. In the meantime, as of now, the practice of our native application of the principle of informatization and digitalization of the criminal proceedings uncovered how imperfect and outdated it is, exposed the difficulties of law enforcement as well as the absence of a unified national concept of the electronic criminal proceedings in Ukraine [2, 16, 17].

Recent publications review. Dynamic development of the functions of world electronic systems of the criminal justice system bodies encourages the systematic scientific studies of this experience. The development trajectory of the digitalization processes in the criminal justice systems in different countries pertains to the plane of academic interest of many native researchers. These studies are reflected in the academic papers by A. Stolitnii, V. Shepitko, K. Branovitskiy, L. Golovko, O. Zhuchenko, M. Mayetniy, G. Chigrin, O. Sirenko, etc [1-4].

The article's objective is to investigate the development of modern elements of algorithmization and implementation of artificial neural network technologies in the sphere of criminal justice

Discussion. The development of the modern electronic medium in the work of the criminal justice system in different countries can be studied on the basis of the following examples [5-16]:

1) The development of the information society in Lithuania: In 2011, the Government approved a program (2011-2019), in which were specified certain objectives of the governmental sector to expand the scope of eligibility and use of public electronic services. In order to promote the governmental strategic goal, the National Court System (NCS) implemented a project to develop electronic services in the courts, and on July 1, 2013 the web portal of govenmental electronic court services (EPP) was launched as a separate LITEKO module. Extra emphasis should be placed on the integration with the recently developed pre-trial investigation information system (IBPS). Since 2017, the pre-trial investigation procedure has been performed entirely through the information system, including all procedural actions of the courts at this stage. It is the first step in the electronic review of criminal cases, which is currently at the development stage. Meanwhile, the judiciary and procedural legislation often remain conservative and inert. Therefore, the decision-making and management system of IT systems must be built in such a way so that it is able to respond promptly to new challenges, reasonably adapt to existing norms and requirements (sometimes initiating legislative changes) and skillfully accommodate to different interests.

2) Due to the fully automated litigation and electronic means of communication – the so-called e-Justice decisions – Estonia has one of the most efficient judicial systems in the world. The central information system – Electronic File (e-File) – provides access to various stages of criminal, civil and administrative proceedings, court decisions and procedural acts to all parties, including citizens. The development of e-File was driven by the need to separate data storages that functioned independently of each other. Being an integrated system, the Electronic File provides simultaneous exchange of information between information systems of different parties: police, prosecutors, courts, penitentiaries, probation organizations, executors, free legal aid system, tax authorities and customs, public support center, lawyers and citizens. Electronic File is an online information system that collects documents regarding civil, administrative, criminal proceedings and proceedings concerning misdemeanor offenses, as well as allows you to take appropriate action, insert data and process it. Electronic File enables the parties of the case and their representatives to submit documents to the court in electronic form and to control the course of the corresponding court proceedings. Citizens can also appeal lawsuits and decisions, make payments related to proceedings, as well as make inquiries in the Criminal Records Database concerning themselves and others. The system allows persons to see only the proceedings in which they participate. The public part of the Electronic File is secure because you require an ID or mobile ID to log in. Electronic File saves time and funds because data is entered only once and communication between the parties is done electronically. The Estonian e-File project has received a special award from the "European Crystal Scales of Justice Award 2014", which is awarded for innovative practices that promote efficiency and high quality of justice.

3) Judicial Information System (JIS) in the Republic of Moldova is an automated information system which consists of multiple interrelated resources, information technologies and methods. The main purpose of JIS is the registration, processing and application of the information related to the court requirements and legal proceedings from the moment of their registraion to the point of their archiving and publication. Users have permission to acess the

information and data stored in the JIS, in accordance with the competence and authority they possess and on the basis of the legal regime of the information or data to which access is granted. The level of access to information for each participant corresponds with the level of their obligations and access profile. When registering a request for an indictment, inquiry, minutes of meetings and appeals, the system ensures a logical connection between the main category and the indicator of the case file. This ensures that the data in the case file is entered correctly. This data is then displayed in all further statistical reports. The new version of the Integrated Proceedings System (IPS) allows the person to access and edit Microsoft Word documents directly in the system. This ensures the security and confidentiality of data, as well as the storage of all corresponding documents in the IPS. The current version 5.0 of the IPS has been at the stage of experimental operation since 2019 and has been gradually implemented in all courts. Improving the functionality of this version is an ongoing process.

4) In Italy the control over the judicial system and the development of the IT system is assigned to the Ministry of Justice; therefore, the Ministry determines key roles. The Judicial Council is responsible for the matters related to the status of judges and prosecutors, and has recently gained responsibility to organize courts and prosecutors' offices. Lawyers – of whom there are approximately 300,000 in Italy – are organized in local bar associations (one in each local court), which are controlled by the National Bar Council. The Agency for Digital Italy (AgID) is the technical body of the Council of Ministers responsible for coordinating e-government initiatives and in a broader meaning, the national digital innovation strategy. It sets technical standards and components for a national e-government platform.

The state of the electronic litigation in criminal proceedings is fragmented. The SICP crime information system is the digital foundation for criminal proceedings. It was developed as a unique system that works for both courts and prosecutors with full regard to the organizational characteristics of the two institutions and the rules procedural code. It consists of various modules that offer registration and data collection, document management (including statistics), document work, workflows and data interaction with external databases. SICP database The SICP database is the main element of data collection in criminal proceedings. The data structure established between prosecutors and courts ensures the seamless interaction of data between the two institutions. The long list of software modules allows users to register, update and manage data, as well as use this data to support many of the tasks performed by prosecutors and courts in criminal proceedings. NdR Portal – (Crime Report Portal). The portal should be used by police officers across the country to report crimes to the appropriate prosecutor's office. The data is automatically uploaded to the SICP prosecutors' database, while the corresponding clerks check the data.

Re.Ge.WEB is the foundation of the system that ensures document management functions (registration and data management), integrated in the workflow system, which, based on the status of the proceedings, makes various procedural actions provided by the procedural code available to users. Clerks in courts and prosecutors' offices use this module for permanent document circulation. In addition, clerks should use different, somewhat compatible programs to work with specific procedures.

A&D is "Acts and Documents" module which allows you to compile procedural documents using data collected in the database and using verification mechanisms designed to reduce errors. It is mainly used to support the performance of tasks by clerks. "Point of work with criminal proceedings" (Digital desktop of the magistrate): this module ensures a set of functions essential for prosecutors and judges to manage the workload. It offers such functions as scheduling hearings integrated into the calendar of judges and prosecutors as well as the function of automatizing the work of courts and prosecutors' offices. SNT is the notification system that allows electronic transmission of messages to lawyers and expert witnesses. Notifications require a digital signature.

5) In Azerbaijan, all information about every case (procedural documents of the parties, data of participants of the process, information about procedural actions and events, material and procedural documents of courts, audio recordings) is stored in the centralized information system of all courts called AZEMIS (Electronic Judicial Information System of Azerbaijan). The system was created in 2014 and since then it has been maintained and constantly developed by the Ministry of Justice as part of the Judicial Services and Intelligent Infrastructure Project (JSSIP) in collaboration with the World Bank. In 2014, the portal of the governmental electronic court services (Electronic Cabinet) was launched as a separate AZEMIS module. The electronic cabinet (special portal emehkeme.gov.az) allows the parties

to form and submit procedural documents to the court in electronic form, to read the documents of the electronic case, to manage information about court fees, court expenses and fines. AZEMIS is integrated with 30 information systems and registers of other institutions, such as Azerbaijan Automated Tax Information System, Penitentiary Service Information System, Enforcement Proceedings Information System, Register of Individuals, Register of Legal Entities, Electronic Notary Service, Traffic Police Electronic Database, Information System of Electronic Criminal Cases, the State Register of Real Estate, the information system of banks, credit institutions, mobile operators, retail markets, etc., and it continues to be integrated.

6) According to the Judiciary Act, the Judicial Information System (JIS) of Latvia is a governmental information system developed by the Government of Latvia (Ministry of Justice).

In Latvia, there is only one centralized JIS, which was developed in 1998 and introduced in 1999 (in courts across the country in 2003). The system is maintained and developed by the Latvian Judicial Administration and is currently being transferred onto a new platform within the E-case project (Electronic Case). Authorization is ensured by: a password (provided by the Judicial Administration), electronic signature, electronic ID, Internet banking (through the portal Latvija.lv). The main advances in the JIS are currently being carried out within the framework of the E-case project launched in 2018. The Judicial Administration of Latvia is responsible for the management and administration of the project on all levels: development of an electronic case: interaction with the prosecutor's office, prisons and the probation service; development of new software for JIS (JIS 2).

After introducing the unified E-case and ensuring cooperation with the prosecutor's office, prisons and the probation service, it is planned to ensure interaction with other ISs: the registers of the Ministry of Internal Affairs, state police, forensic experts. The most important aspects of the development of the JIS are providing a fully electronic cycle within the procedure, reducing of the duration of proceedings and ensuring access to information, including fully electronic exchange of information between the court, parties and other participants in court proceedings. According to the strategic vision (concept) of the E-case solution, which is being developed involves both the development of existing IS and the implementation of new solutions. Users of the portal: parties, lawyers, experts, probation officers and clients, prisoners and their relatives. The electronic catalog of cases will be developed to ensure centralized case management, control over the access rights and data exchange between ISs integrated into the E-case (at stage 1 there will be interaction between the E-case IS of prosecutors, probation, penitentiary system, courts (JIS 2) and public E-case portal). The electronic catalog will serve as an information exchange point, but the case file will be stored in the system where it will first be registered. For instance, if the prosecutor's office registers evidence in a video format, the evidence will be stored in the IP of the prosecutor's office, but with the support of an electronic catalog of cases, judges and court employees will have access to evidence through JIS 2 and parties through the E-case portal.

7) The Austrian justice system, as a modern and innovative organization, provides necessary services to the society. It generates an annual income of 1.6 billion euros and employs about 11,900 people.

The Justice Automation Program (VJ) is a foundation in Austria. It assists all courts and prosecutors' offices in keeping registers of over 66 different types of proceedings. Some types of proceedings (for example, the payment order procedure) are fully automated; court decisions are issued automatically and sent by the centralized mailing service. Documents and decisions are transmitted through the Electronic Legal Notification System (ELC), and the court fee is charged as a cashless payment.

EliAs is an electronic integrated assistance for prosecutors; The IT solution is designed to facilitate the administration of case materials during the preliminary investigation of criminal cases and, for the most part, to replace a huge amount of materials in paper form (approx. 600,000 per year). Upon completion of the initial stage of proceedings against unknown offenders (UT) will be processed through EliAs (about two thirds of all cases). In order to do this, based on incoming (via ELC) reports, clearly structured EliAs files are created and transmitted to (district) prosecutors.

The goal of IVV is comprehensive automated administration of prisoners. This program, which has been in use since the beginning of 2000, includes records of prisoners in the main areas of prison administration and timing.

Electronic transmission of legal messages (ELC). Electronic transmission of legal communications with the courts was first introduced back in 1990 as a means of

communication with the parties, which would be on a par with the submission of documents in print. With the introduction of this system, Austria was the first country in the world to establish electronic transmission of legal communications. Electronic transmission of legal messages provides electronic document management and automatic receipt of detailed information on the case in the IT applications of the justice system.

Since 2013, Austrian citizens who use a mobile phone application for a signature which is called a citizen's card [Bürgerkarte] can send all applications to all courts and prosecutors' offices online via a secure web portal; and foreign nationals who use the complaint identification system in accordance with the EU eIDAS Regulation have been able to do so since 2018.

As one of the most prominent e-government programs in Europe in 2001, the Electronic Communication System was awarded the EU e-Government brand.

Justiz Network. In the early 1980ˢ, the Austrian justice system began to create a comprehensive information network. This network (Corporate Network Austria / CNA) supports the common Austrian use of information technology by all courts, prosecutors, prisons and the Federal Ministry of Constitutional Affairs, Reforms, Deregulation and Justice through a dual node called the Federal Computing Center [Bundesrechenzentrum/BRZ], where all the main applications of the justice system function.

Due to the progress in the field of digitalization in all areas, there is an increasing need of tools for efficient analysis, evaluation and processing of data in criminal cases. Apart from this, investigative bodies increasingly need additional support from experts in specific specializations to effectively deal with cases. The Austrian Department of Justice has responded, and in order to effectively structure and process large files, courts and prosecutors' offices can use "Normfall Manager" software (Manager of a standard case), which is designed to facilitate large data handling (reviewing, creating and identifying links, collecting information on the topic, etc.). They have also hired internal experts in the field of information technology and transferred them to the Central Office of Public Prosecutors for the Prosecution of Business Crimes and Corruption (Wirtschafts – und Korruptionsstaatsanwaltschaft).

Since 2018, the Artificial Intelligence Service has been in use and it has been "trained" to meet the specific requirements of the justice system, which can be expanded step by step into other spheres.

8) In 2017, for the first time in the history of independent Georgia, the judiciary officials developed and approved the Judiciary Strategy and Action Plan for 2017-2021 (Unified Court Proceedings System – UCPS). Like in many European countries, in the Georgian judicial system all information about every case (procedural documents of the parties, information about the participants in the proceedings, information about procedural actions and events, procedural court documents, audio recordings) is stored in the centralized information system of all courts which is called the Judicial System of Georgia (UCPS). All documents related to current lawsuits are submitted to the courts through the electronic case management system. In Georgia, this system is implemented throughout the country in courts of all levels (levels). This program is managed by the Department of General Courts. In Georgian courts, electronic cases are heard through an electronic case management program. Electronic proceedings in terms of the relevant court mean the electronic movement of documents (cases) from their receipt to the court to archiving or – in case of appeal – to the referral to a higher court. Hearing of a case in court begins with the submission of an application or claim through the electronic case registration system (ecourt.ge). Georgia's courts have introduced innovative service-oriented software that provides access to justice. Mechanisms for electronic transparency and proactive disclosure of information have been established, as well as a platform for electronic communication with citizens (service.court.ge). Electronic access to UCPS court decisions, in particular the software that is part of this system, has a special place in terms of ensuring access to justice. The software is directly user-oriented. The Lawyer Module was adopted in 2014, it allows the user to file a lawsuit remotely. This service is paid, and the cost is calculated according to the amount of material sent.

Prosecutorial module: involvement (integration) of various governmental institutions in the program of electronic case management will simplify the work of the judiciary, as well as the functioning of these institutions.

Before 2013, criminal judges used to work in an electronic criminal record program created by the prosecutor's office (hence, all documents were stored on prosecutors' servers), which was perceived as a threat to the independence of the judiciary. Starting from 2013,

courts have operated only in their own criminal justice program and stored documents on their own server. However, this has led to the fact that instead of electronic proceedings, the prosecutor's office is still forced to communicate with the court on paper. Integration into the program will have a positive effect on the prosecutor's office, as they will have access to generalized litigation practice, which will also improve the quality of the work of the prosecutor's office.

9) Israel's example in the sphere of digitalization of courts and the transition from paper to an online system of case management (hereinafter – SCM). In 2003, the Court Administration of Israel welcomed the development of a new software for managing cases in courts on the basis of electronic document management (electronic court cases). This SCM is called "NET-HA-MISHPAT" (which translates into "Justice Network"). The development and implementation of this software into the general courts system was supposed to have finished by the end of February, 2006. In reality, before September 2009, the program had been adopted in approximately 60 % of thelower and higher courts, and by the end of May, 2010, it had been adopted in all courts, except the Supreme Court, which uses different software. For limited review of cases and court decisions, access is provided via a link to the SCM through the Israeli Judiciary website: https://www.court.gov.il/ngcs.web.site/homepage.aspx. This website provides access to general information, such as information regarding the daily schedule of hearings in all courts; public decisions and final decisions in cases, as well as a list of cases pending in all courts (sorted by date). With the help of this site, the parties involved in a particular case may also view the following information about the case: general information about the case, dates of hearings and public decisions.

In order to perform an action in the system, lawyers need to make certain settings in the office computer system at their office (XML interface), and to access the SCM system you are required to have a card with a smart key. The card with a smart key allows you to identify the user when they're logging in and certify the electronic signing of documents. Smart card access allows you to take full advantage of all processes supported by SCM.

10) The informatization of Swedish criminal justice system regarding the implementation of electronic procedural processes and dedicated software products has been solved on the basis of RIF ("Rattsvasendets Informations Forsorjning"), a universal system for exchanging digital information between criminal justice authorities. As far as the legal aspect goes, RIF provides protection of personal data, electronic digital signature; software algorithms for the unification of the Swedish Criminal Code and the Swedish Criminal Procedure Code with the Swedish electronic system.

RIF provides digital exchange of "structured information" and electronic documents (regarded as "unstructured information" between the isolated electronic systems of the Swedish criminal justice system: BAS, BUS, (electronic system of the Swedish Tax System), DurTva (electronic system of the Swedish Police), Cabra (electronic the system of the Swedish Judicial Administration, which includes district courts and courts of appeal), etc.

11) The Electronic Proceedings Management System of the Czech Republic (ePMS) is an electronic system that digitizes physical documentation, which, in turn, allows the exchange of files in criminal cases between employees and departments. This makes the work of all those involved in criminal investigations, the police in particular, prosecutors and judges, easier. Therefore, it is a tool for administering and managing electronic versions of criminal case files, which are then made available online to all parties involved in the pre-trial investigation, each with separate levels of access and editing rights. This system helps to improve the coordination and supervision of the pre-trial investigation, which is difficult for the police and the prosecutor's office to overestimate. Documents such as criminal investigation plans, evidence, interrogations, prosecutorial orders, approvals and reports become instantly available online. As of today, it is a huge and well-designed electronic database called "Electronic Criminal Proceedings". Thus, it was an ideal system for Ukrainian prosecutors to get acquainted with.

In the Czech system, authorized police officers can monitor all cases assigned to their units online. They are able to track the progress of all tasks set by them or prosecutors. Any changes to the files uploaded to the system must be justified and reflected.

Prosecutors can coordinate certain steps of investigations online. The system is connected to 70 different databases of the police and state administrations, which are accessed directly in the system itself, which makes the lives of investigators significantly easier. Authorized officers can see the progress of specific criminal cases online, and the system itself can analyze the effectiveness of the investigation in the case. Tehre is also an option to

"extract" statistics on criminal investigations from the system. However, the most impressive aspect of the the system is that it uses "electronic data boxes" (data boxes), which are something like an e-mail service that securely transfers case files to registered users. With the help of such e-mail accounts, which work separately from ePMS, official messages, correspondence, summons and inquiries are instantly sent to registered users, regardless of where they are physically at the moment. And confirmation of their receipt is a special electronic stamp.

12) Digitalization of criminal proceedings in Kazakhstan: developed and implemented information system IS "TURELIK" ("Turelik" means Justice), as well as the "Unified Register of Pre-trial Investigations" (IS URPTI), which allowed to provide electronic registration of all criminal cases. The module "Electronic criminal case" was created, which allowed to automatize the stages of pre-trial investigation and prosecutorial supervision.

13) In russia, the State Automated System "Access to Justice" has been created and implemented, which eliminates unjustified red tape at the stage of criminal proceedings which provides access to justice (pre-trial proceedings) and reduces government spending by eliminating inefficient costs (2020).

14) In 2012, the "Zero Trust" system based on artificial intelligence was launched in China. Developed by the Chinese Academy of Sciences for "Internal Control, Evaluation or Interference in the Work and Personal Life of Civil Servants", "Zero Trust" currently operates in only 30 regions and cities – more than 1 % of China's administrative territories in a pilot project. Full-scale implementation of this system in China is expected in the near future, as there is a format of "distrust" of politicians to modern digital technologies.

The "Zero Trust" system has access to 150 secure databases, can create an analysis of the behavior of civil servants, detect suspicious transactions, alienation or acquisition of property, illegal construction, acquisition of land or demolition of houses, illegal enrichment using schemes.

One of China's most ambitious developments in this area is the "Police Cloud" system, which is designed to gather information from shopping history, food orders, visits to hospitals where DNA samples are collected and other sources. The system is similar to data collection methods for determining the social rating of citizens and integrates data sets ranging from IP addresses, accounts, phone numbers, incoming and outgoing calls and ending with the purchase of user data from private companies, while accessing mac addresses of personal computers and information from their routers.

15) Artificial neural networks are actively used by US police to prevent crime. Back in 2009, private American company Palantir Technologies developed modern software codenamed "Palantir" to predict the spread of crime. The company is known for working with intelligence agencies and government agencies, and a few years ago they secretly introduced police technology in one of the US cities to predict criminal offenses. The secret program detected and tracked the connections of gang members. It analyzed social networks and predicted the likelihood of certain people commiting a crime or becoming victims. The startup's collaboration with the New Orleans' authorities began in 2012. Palantir Technologies, whose regular customer was the Central Intelligence Agency, provided its software in the form of an unofficial charitable assistance. Most New Orleans' government officials, except for a small circle led by the mayor, were unaware of the project. The main operational functionality of this program is aimed at visualizing large amounts of information, which helps law enforcement officers to establish a cause-and-effect connection between the behavior of individuals and their offenses.

One of the tools of the HunchLab program combines crime statistics with social and economic data and other public information to determine the highest probability of an offense being committed. The practical use of this system by Chicago police has allowed the latest technology to significantly reduce crime. Another program, "Gotham", is used by police to identify and apprehend future criminals. Information from the protocols of detentions, materials of criminal cases are uploaded to a single database, which forms a corresponding list of persons who have some connections to crime.

16) Finland has made significant progress in the use of e-criminal justice, using a CMS called SAKARI. This system involves many parties in a single criminal process: the police, the prosecutor's office, victims and the courts. The case management system covers the work process of prosecutors and courts, and is linked to the system used by the police. The system registers and records all criminal cases in the country and ensures a continuous flow of

information between the police, the prosecutor's office and district courts.

The SAKARI system provides the opportunity to manage all documents related to a criminal case in the electronic form, as well as to edit corresponding documents. The prosecutor's office and the courts exchange documents within the system in electronic form. Since the police are connected to the system indirectly (through a "bridge" between their own internal system and the SAKARI CMS), the police and the prosecutor's office communicate via e-mail and exchange important documents, such as witness statements, electronically. However, as in the case of the Czech Republic, all documents must still be sent simultaneously in paper form by mail.

Thus, taking into account the examples of world experience in developing, implementing and using various innovative programs and electronic systems of digitalization of criminal justice, the advantages of using electronic software products aimed at combining various government databases for their effective use in the project "electronic criminal proceedings". The value of international experience, as an illustration of the list of effective mechanisms of electronic criminal procedure, indicates the possibility of algorithmic processes of collecting, using and storing information, which in our opinion can be taken as an example in developing our own national conceptual system of electronic criminal proceedings in Ukraine. Therefore, the way to create the concept of electronic criminal proceedings in Ukraine, as a system that digitizes physical documents in criminal proceedings – is not and cannot be the ultimate goal, but can only be a step towards creating an innovative modern domestic concept of electronic criminal proceedings with the possibility of a broad implementation of tools for algorithmization of criminal procedure interaction and electronic method of document creation and document circulation between the judicial and law enforcement systems of Ukraine.

It should also be noted that the reform processes, which are aimed, among others, at adapting domestic legislation to European standards, are typical of most areas of public administration. Thus, the main areas of work required for the implementation of modern, full-scale electronic criminal proceedings in Ukraine are [13, 16, 18-22]:

– radical reorientation of the modern approach of state e-government from the needs of the state apparatus to the needs of citizens;

– unification of electronic technologies in the field of e-government;

– personalization of access (access to information with limited access and other personalized services should be tied not to the state body of the information or service administrator, but to the citizen or legal entity directly affected by the information or service);

– radical reform of the digitalization process in order to increase the efficiency of the criminal justice system (the form of electronic document management must be basic, but also allow for a departure from the traditional paper form).

Consistent steps of implementation / improvement of electronic criminal proceedings in Ukraine, taking into account the listed experience of the countries are:

1. Urgent amendments to the procedural codes, which exercise the right to submit applications, evidence and other documents in electronic form, the ability to form electronic criminal cases, archives; to grant access to investigators, interrogators, detectives, prosecutors, lawyers and investigative judges to the materials of criminal proceedings, as well as other mechanisms for the implementation and use of electronic criminal proceedings.

2. Take measures to inform individuals about the procedure for obtaining electronic signatures as participants in the process.

3. Work on electronic criminal software: it must be functional, secure, effective, and at the same time accessible and understandable.

4. Transition to electronic document flow between the investigators, lawyers, the court and the prosecutor's office, the Ministry of Internal Affairs, fiscal authorities, etc. Governmental bodies should be directly interested in improving electronic criminal justice system, as this will save a lot of public money on tons of paper and supplies.

5. Provide the investigation bodies, courts and prosecutor's offices, the Ministry of Internal Affairs of Ukraine with technical means and employees responsible for performing the functions of electronic criminal proceedings.

Conclusions. Regarding the main areas of work on the implementation of modern and effective electronic criminal proceedings in Ukraine, taking into account the experience of developed countries, are a must:

– fundamental change of approach to the concept, method and mechanism of formation

and principles of electronic criminal proceedings: from the needs of the state apparatus to the needs of joint interaction of criminal justice bodies and citizens (parties and participants in criminal proceedings);

– unification of electronic technologies during the formation of electronic criminal proceedings, taking into account international experience;

– personification of access (development, adjustment and implementation of gradation of levels and levels of access to information (including restricted access and other personalized services), taking into account the possibility of realization of procedural rights of a person: citizen or legal entity who has a direct connection to certain information);

– radical reform of the process of formation and use of electronic criminal proceedings in order to increase the efficiency of the criminal justice system and the organization of a simple and accessible procedure for access to justice in Ukraine.

Conflict of Interest and other Ethics Statements
The author declares no conflict of interest.

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ABSTRACT

The article deals with the studying and comparative analysis of international experience of using software and innovative technologies in the criminal justice sphere in certain countries as well as determining of the key causes of the imbalance between the development tendencies and implementation of such systems in Ukraine; ways and methods of submitting and accessing the information and evidence in electronic criminal justice system.

The significance of this article is evident from the necessity of the comparative analysis of a positive and effective experience of the acting systems of informatization of the criminal justice system of different countries in order to resolve the issue of reforming the criminal justice system of Ukraine by means of creating an information system of pre-trial investigation – electronic criminal justice system in Ukraine with the purpose of improving the modern concept of the electronic component of the criminal justice system in order to realize the fundamental principles of a democratic society such as access to justice as one of the key principles of ensuring legislative rights and freedoms of a person in a democratic state.

This research paper contains the analysis of the experience of the innovative technology functions in the electronic systems of the official bodies of the criminal justice system in the context of reviewing the application of various information programs based on the model and methods of receiving and saving information; performance analysis of the program's strategic elements; comparison of the complex approach methods to implementing innovative processes of organization, application and control in the electronic criminal proceedings in different countries. Based on the research results, the main areas of focus have been established in order to implement the system of modern and effective electronic criminal proceedings in Ukraine.

Keywords: *electronic criminal proceedings, digitalization of the criminal justice system, algorithmization of the electronic criminal proceedings, electronic systems of the bodies of the criminal justice system.*

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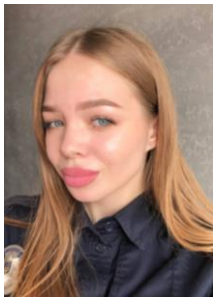

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ANALYSIS OF THE REASONS THAT AFFECT THE CRIME RATE DURING THE CORONAVIRUS PANDEMIC

Ганна Бідняк, Дар'я Оргієць. АНАЛІЗ ПРИЧИН, ЩО ВПЛИВАЮТЬ НА РІВЕНЬ ЗЛОЧИННОСТІ ПІД ЧАС ПАНДЕМІЇ, СПРИЧИНЕНОЇ КОРОНАВІРУСОМ. В науковій статті зосереджено увагу на вирішенні актуальної наукової проблеми щодо вивчення причин динаміки правопорушень під час карантинних обмежень та шляхів їх запобігання в Україні. Підґрунтям дослідження стали законодавчі та наукові джерела, аналіз яких дозволив дійти певних висновків.

В роботі була зроблена спроба систематизувати причини, які впливають на динаміку показників різних видів правопорушень у період пандемії коронавірусу. Наголошено, що

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карантинні обмеження вплинули на зростання числа випадків домашнього насильства, онлайн-шахрайства, інтернет-тренди небезпечних контентів, фальсифікації лікарських засобів та адміністративних правопорушень, однак, зменшилася кількість кишенькових крадіжок, хуліганства, вандалізму.

Ключові слова: *коронавірус, COVID-19, карантин, пандемія, криміналістична профілактика, правопорушення.*

Relevance of the study. The COVID-19 coronavirus has covered all countries, as well as our state: since the beginning of the pandemic in Ukraine, at the time of our research, more than 1,546,363 people have fallen ill. In order to prevent the spread of a deadly infection, quarantine measures are introduced all over the world, which limit the presence of people in public places, the sale of food products in markets; all mass events are cancelled, training takes place at home online, etc. Lockdown (English Lockdown) – a situation in which people are prohibited from freely entering and leaving a building or a certain area due to an emergency situation. Often used recently in the form of a shorter designation of the mode of full or partial restriction of social contacts in connection with the pandemic of the new coronavirus SARS-CoV-2.

And although the situation with the coronavirus was called a pandemic back in March 2020 – almost a year ago, despite the measures taken, there is no improvement. Currently, the incidence rate in Ukraine is breaking new records, the third wave of the coronavirus pandemic has begun. Resolution No. 104 of the Cabinet of Ministers dated February 17, 2021 "On Amendments to Certain Acts of the Cabinet of Ministers of Ukraine" amended Resolution No. 1236 of the Cabinet of Ministers of Ukraine dated December 9, 2020 "On Establishing Quarantine and Introducing Restrictive Anti-Epidemic Measures to Prevent the Spread of of the territory of Ukraine of the acute respiratory disease COVID-19 caused by the SARS-CoV-2 coronavirus", extending the quarantine until April 30, 2021 [1].

At the beginning of russia's military invasion of our territory, the situation with pine needles somewhat decreased. However, in today's difficult times, the COVID-19 virus continues to make life difficult. The COVID-19 pandemic is often referred to as the watershed that marked the beginning of a new reality: the media often exaggerated research results and spread panic, businesses struggled to adapt, and criminals came up with new ways to deceive people. Therefore, the development of measures to increase countermeasures against crime during quarantine restrictions in Ukraine and their implementation by the National Police is an urgent issue today.

Recent publications review. Generalization of modern approaches to understanding the essence of the offense, its causes, patterns of occurrence, social and historical conditionality is considered by many domestic and foreign researchers, including: Y. Vedernikov, O. Bandurka, R. Kalyuzhny, S. Lyagina, T. Kolomoyets, V. Kotyuk, M. Kravchuk, P. Rabinovych, M. Sambor, E. Sutherland and others. Directly the issue of activation of some types of crime is considered in the works of M. Burke, I. Klymenko, R. Richardson, A. Tompkins, S. Fielding. However, the issues of the reasons that affect the crime rates during the coronavirus pandemic and the development of ways to counteract crime during this period have remained outside the attention of researchers.

The article's objective. The purpose of this work is to study and identify the causes that contributed to the commission of various types of offenses under quarantine restrictions.

Discussion. Speaking about the causes of offenses, it is advisable to determine what exactly this concept means. So, an offense is a socially dangerous or harmful, unlawful, culpable act of a capable subject (individual or legal entity), which is provided for by current legislation and for which legal responsibility is established [2, p. 23]. In scientific literature, the cause is understood as "a phenomenon, or a set of them, which directly causes, generates another phenomenon, which is considered as a consequence". The reason is a force that causes the development of events in one of the possible directions. This force may contain several components: grounds, i.e. basic social contradictions that play the role of a trigger, conditions as internal qualities that contribute to the implementation of the event, causal factors that directly generate this phenomenon or event [3].

Crime is a social phenomenon that is subject to constant changes in intensity, nature, age and gender. The analysis of foreign and domestic periodical literature proves that in the context of the global coronavirus pandemic, quarantine around the world has affected crime, however, there are two points of view regarding its level. The first is that in countries where strict quarantine measures have been introduced, the crime rate is decreasing. Firstly, because most people stay at home and go outside in case of emergency, that is, the chances of

becoming a victim are reduced, as well as the level of road accidents. Secondly, the police are on high alert [4]. The number of police patrols (and with the involvement of senior cadets in this process) that catch quarantine violators has increased on the streets of cities. The second point of view says that if the total quarantine is prolonged for a long time, people will lose their source of income and this will lead to an increase in crime. The number of thefts, robberies, hunger riots and looting will increase [5].

As potential criminals follow orders and stay home, many cities around the world are currently experiencing a significant drop in both property and violent crime. This is primarily due to the lack of opportunities and the understanding of potential criminals that it is vital to stay away from the public to protect themselves from the coronavirus. These virus containment measures have reduced overall crime rates. In Chicago, drug arrests fell by 42 percent, and in Los Angeles, the number of reported crimes fell by 30 percent after the cities were cordoned off. In New York, crime fell by about 40 percent in just a few weeks after the cities were closed. In San Francisco and Oakland, the total daily number of criminal incidents dropped by 40 percent after the house arrest order. These are global trends, as street crime continues to decline in many states across America and around the world after travel restrictions have come into effect. Even if there are no reliable data for Germany yet, the number of reported criminal offences is also decreasing compared to the same period last year [6].

According to a recent study in Norway, the unemployed commit 60 % more crimes related to other people's property (such as theft, shoplifting, burglary and vandalism) during the year after losing their job and have 20 % more criminal charges than the employed. Historical experience suggests that a combination of frustration, need and leisure time combine to increase crime rates when people are unemployed [5]. In addition, during the quarantine period, criminals adapt to the new conditions, find other means of illegally obtaining funds and actively exploit people's fears during the crisis [7, 8].

During the January, 2021 lockdown, according to Advisor to the Minister of Internal Affairs V. Martynenko, more than 2500 administrative protocols were drawn up under Part 1 of Article 44-3 of the Code of Administrative Offenses, more than 7000 decisions were made under Part 2 of Article 44-3 of the Code of Administrative Offenses. In total, for the entire time of quarantine due to coronavirus, the police drew up about 72.5 thousand administrative protocols and opened 795 criminal cases. Fines totaling almost UAH 29.5 million were imposed, Martynenko added [9].

Activists around the world report an alarming increase in the number of cases of domestic violence since the beginning of quarantine procedures related to the coronavirus. This is due to both financial uncertainty and the fact that the closed space puts victims of domestic violence in constant proximity to their abusers. In February, in Wuhan, when the province was under strict control, only one police station reported a threefold increase (+22 %) in the number of complaints (+22 %) about family quarrels compared to the same period last year [10]. The number of reported cases of child abuse in families has also increased by almost 60 % since February, as children stay at home and classes are conducted online. In February, the Utah County Sheriff's Office reported that authorities received more than 20 calls about domestic violence. The following month (March), officials received 37 calls, most of which led to arrests [11]. Judging by the comments in domestic social networks, adults sometimes cannot withstand the psychological burden of helping to do homework. In addition, alcohol can affect the level of domestic crimes, which is perceived as a way to brighten up the period of self-isolation [4].

The rise in crime during the announced nationwide quarantine was discussed in Britain. There, the authorities recorded an increase in the number of robberies during the mass hysteria with the purchase of food in reserve. In London, there were five brazen robberies of stores at once. Prison riots broke out in Italy, Colombia and Sri Lanka. Prisoners were outraged by the ban on visits with relatives and restrictions on walks. In some countries, the authorities took an unprecedented step and began to release prisoners. As a result, for example, in the United States, local residents, fearing an increase in crime and looting, are massively buying weapons and ammunition. Demand has increased by 222 % in recent months. And this is understandable, for example, in New York the crime rate increased by 12 % in the first three months of this year. Especially the number of car thefts has increased, the increase was 65.5%. But the number of accidents decreased by 32 %, and traffic violations – by 29 %. The same decrease is observed in the issue of break-ins (–45 %), thefts in public transport (–44 %) [Burke]. During the quarantine period in Ukraine, the number of robberies and robberies decreased by 35 % on average in the country. There were also fewer road accidents [4, 12].

Europol investigators have seen an increase in cybercrime, especially as many people have moved to working from home, where their data security can be compromised. Since the crisis began, there has been a significant increase in the number of counterfeits sold in various markets, including face masks, disinfectants and medicines. Criminal organizations are modernizing and exploiting public fear, taking into account the fact that people are looking for information about coronavirus in any sources, including unverified ones [13].

Cybercriminals attack customers of travel agencies, airlines and hotels who want to return money for unrealistic trips. People often, without hesitation, give the full details of bank cards and end up with an empty personal account. There is also a certain revival of telephone fraud, the growth of online crimes aimed at exploiting increased anxiety and the fact that so many people work from home [14].

Cybercriminals are highly creative when it comes to scamming money from Internet users. Criminals can use a variety of methods to deceive their victims, from impersonating government officials to creating fraudulent websites on the Internet, adapting them to current topics. Last year, many fraudsters used the COVID-19 pandemic to impersonate health authorities or offer to sell scarce protection products. Today, fraudsters are trying to make money using the interest of users in the topic of coronavirus vaccine. It is worth remembering that the schemes of attackers are not limited to health emergencies or global events [15].

Table 1

Analysis of the reasons that affect the crime rate

Increase in crime rates	
Type of offense	*Reason*
Administrative offenses	Violation of quarantine requirements (wearing a protective mask, violation of trade rules, presence of people over 60 in public places, etc.)
Online fraud	Increase in online shopping due to tightening of quarantine measures: closure of industrial stores, restriction of free movement of people, increase in free time
Domestic violence	Psychological disorders due to the majority of family members being in a closed space, drinking alcohol because of boredom at home
Apartment burglaries	Fraudsters impersonate employees of sanitary and epidemiological services, freely entering apartments to "treat" them from the COVID-19 coronavirus
Robbery of shops	Mass hysteria of the crowd
Petty thefts from shops	Lack of funds due to job loss or sending people on vacation at their own expense
Cruel treatment of animals	Fear of people that animals are carriers of coronavirus
Car theft (USA)	Leaving cars unattended for a long time
Burglary and burglary	Due to the closure of institutions during the quarantine
Falsification of medicines	Fear of people due to the possibility of coronavirus infection
Mass riots	People perceive mass riots as entertainment and are not afraid of responsibility due to other political priorities in the country
Child crime	Reducing supervision of children during parents' working hours, through distance learning
Reduction of crime rates	
Type of crime	*Reason*
Petty crimes	Failure to record crimes by police representatives, in order not to spread the virus in the vehicle, or in prison, where the virus can spread very quickly
Vandalism, hooliganism, rape	More police patrols on the streets, closure of entertainment venues
Pickpocketing	Reducing the number of people on the streets of cities
ACCIDENT	Reduction of vehicles on the roads

Fraudsters also often post job ads on websites. They offer to perform easy tasks for a moderate payment (assembling pens, sticking stamps, collecting accessories, etc.) The fraudulent employer offers to send the potential victim materials for such work by mail. However, to allegedly avoid any risk, he sets a minimum deposit, which he then promises to return with the first salary for the work done. After paying the deposit, the victim will not receive the materials for the work and will lose their money.

Following the closure of schools and preschools, Europol has noted an increase in child

exploitation, as well as making them open to paedophiles who have stepped up their criminal activities as millions of children have started spending more time online. Recently, social networks and the media have been actively spreading information about dangerous teenage games that are spreading through social networks and are rapidly gaining popularity among children. Such "entertainment" is very quickly transformed, multiplied and spread. During the quarantine period, when children are often left alone for long periods of time during the day, criminals take advantage of children's dreams, hopes, their need for love and communication, and the search for new sensations.

British police data say that the number of murders, assaults and robberies has fallen sharply. The closure of pubs and restaurants has led to a decrease in crimes committed under the influence of alcohol. It has become much harder for shoplifters to live: most stores are closed, and only a limited number of people are allowed into supermarkets, they keep a two-meter distance. And there is more security in stores. The phenomenon, which a year ago no one knew what to do with – the "epidemic of knife crimes" – has almost completely disappeared. Teenagers began to arm themselves with knives for attacks and self-defense, and in 2018-2019, due to them, crime in the country increased to the level of World War II. Now schools are closed, teenagers are sitting at home [16].

Instead, the decrease in crime rates may only be official because the police deliberately do not make as many arrests. Police want to keep people out of jails, where the virus can spread quickly and cause even more problems. And some departments, such as in Philadelphia, have decided not to arrest people on charges such as drugs, theft, burglary and vandalism. Some legal scholars believe that a lenient justice system will contribute to an increase in crime [5].

In Table, we analyzed the rates of offenses during the quarantine caused by the spread of the coronavirus pandemic and their causes. It should be noted that some types of offenses were relevant in the first wave of the pandemic. These types are indicated at the end of the title.

Among the reasons that affect the indicators of offenses, opposition to criminal justice and pre-trial investigation should be noted separately. Many scientific studies have been conducted on this topic. In order to overcome resistance, scientists recommend the use of various means, including non-verbal information [17].

Conclusions. Over the past year, the pandemic, quarantine, epidemic risks and people's own fears have changed people's behavioral patterns. Communities, especially vulnerable groups, usually become more accessible to organized crime in times of crisis. Economic crisis often leads to changes in consumer demand for certain types of goods and services. Financial hardship makes citizens more receptive to certain offers, such as cheaper counterfeit goods or recruitment of vulnerable people.

During the COVID-19 coronavirus pandemic, there has been a decrease in crime rates related to burglaries, robberies, assaults, fights, and road accidents due to people staying at home. However, fraud, cybercrime, domestic violence, including child abuse, have intensified around the world. young people for criminal activities.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

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ABSTRACT

The scientific article focuses on solving the current scientific problem of studying the causes of crime dynamics during quarantine restrictions and ways to prevent them in Ukraine. The research was based on legislative and scientific sources, the analysis of which made it possible to reach certain conclusions.

In the work, an attempt was made to systematize the reasons that affect the dynamics of indicators of various types of offenses during the coronavirus pandemic. It was emphasized that the quarantine restrictions had an effect on the increase in the number of cases of domestic violence, online fraud, Internet trends of dangerous content, falsification of medicines and administrative offenses, however, the number of pickpocketing, hooliganism, and vandalism decreased.

Keywords: *coronavirus, COVID-19, quarantine, pandemic, forensic prevention, offense.*

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THEORETICAL AND PRACTICAL FEATURES OF THE TACTICS OF PUBLIC USE BY CRIMINAL POLICE UNITS DURING OPERATIONAL AND INVESTIGATIVE SUPPORT OF CRIMINAL PROCEEDINGS

Олександр Христов. ТЕОРЕТИКО-ПРИКЛАДНІ ЗАСАДИ ТАКТИКИ ГЛАСНОГО ВИКОРИСТАННЯ ГРОМАДСЬКОСТІ ПІДРОЗДІЛАМИ КРИМІНАЛЬНОЇ ПОЛІЦІЇ ПІД ЧАС ОПЕРАТИВНО-РОЗШУКОВОГО ЗАБЕЗПЕЧЕННЯ КРИМІНАЛЬНОГО ПРОВАДЖЕННЯ. Стаття присвячена дослідженню тактичних особливостей гласного використання громадськості підрозділами кримінальної поліції під час оперативно-розшукового забезпечення кримінального провадження. Ефективність проведення процесуальних дій досягається умілим застосуванням та комбінуванням гласних і негласних сил, заходів і засобів, які використовуються під час їх оперативно-розшукового забезпечення. Тактика використання громадськості підрозділами кримінальної поліції під час оперативно-розшукового забезпечення кримінального провадження у системі оперативно-розшукової тактики умовно відноситься до спеціальної оперативно-розшукової тактики.

Перевага (цінність, суспільна корисність) використання представників громадськості перед іншими негласними силами оперативно-розшукової діяльності, які використовуються під час оперативно-розшукового забезпечення кримінального провадження, полягає у тому, що негласна

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форма (вид) такого сприяння у разі необхідності (за добровільною згодою особи) може перетікати в гласну на наступних етапах кримінального провадження, а сам представник громадськості може виступати свідком (джерелом ідеальних слідів кримінального правопорушення). Саме залучення представників громадськості до виконання окремих дій під час оперативно-розшукового забезпечення проведення гласних слідчих (розшукових) дій за їх добровільною згодою не вимагає їх обов'язкової конспірації. Тактика гласного використання представників громадськості підрозділами кримінальної поліції під час оперативно-розшукове забезпечення проведення гласних слідчих (розшукових) дій обумовлюється завданнями оперативних працівників, які визначає (доручає) їм слідчий (дізнавач), прокурор: самостійне проведення або виконання окремих завдань.

Ключові слова: *дізнавач, гласні слідчі (розшукові) дії, громадськість, оперативно-розшукове забезпечення кримінального провадження, оперативно-тактичні ситуації, підрозділи кримінальної поліції, слідчий.*

Relevance of the study. Today, operational-search support of criminal proceedings is in the center of scholars' and practitioners' increased attention, since a number of problems that arose in connection with the adoption of the Criminal Procedure Code in 2012 (in particular, certain institutions: confidential cooperation, covert investigative-search actions, inquiries and etc.), caused, in a certain sense, a "systemic collapse" of such activity, which has not yet been resolved in the 10 years this code has been in force, even despite numerous amendments and supplements to this law. But the speed, completeness and objectivity of the entire process of pre-trial investigation and court proceedings (exposing the criminal activity of all accomplices (links) and proving their roles in the commitment of a criminal offense; establishing the location and return of property and finances) largely depend on the successful implementation of such activities illegally acquired; prevention (neutralization) and/or overcoming opposition to the investigation or influence on persons authorized to conduct it or make procedural decisions; ensuring the safety of persons who contributed to the implementation of investigative activities, pre-trial investigation, court proceedings or participate in it, etc.), as well as the timeliness of the initiation (opening) of criminal proceedings, the effectiveness of open and covered investigative (search) actions or other procedural and non-procedural actions or measures.

Such support (operational and investigative) by criminal police officers involves the use of all legally permitted opportunities (forces, means, measures, methods), both open and covered, among which members of the public often contribute to the successful resolving of complex operational-tactical situations with the least expence of state funds resources.

Almost no pre-trial investigation by the National Police is carried out without the open use of public representatives, who are involved in the fulfilment of various tasks, provide operationally significant information, or receive direct access to the housing, premises, vehicles and other property that they own, necessary for the fulfilment of these tasks, take a direct part in the preparation and/or implementation of operational measures and procedural actions, act as witnesses, etc.

But today, the tactics of open use of the public by units of the criminal police during operational-serach support of criminal proceedings have not yet been developed in practice, which determines the timeliness and necessity of researching this issue.

Recent publications review. The problems of operative investigative support of criminal proceedings were studied by many scholars, including: K. Antonov, Zh. Bygu, O. Ignatyuk, O. Kyrychenko, Yu. Kramarenko, V. Lysenko, V. Mosyazhenko, S. Obshalov, P. Pavlyk, M. Pohoretskyi, O. Podobnyi, V. Pcholkin, V. Rudik, S. Savenko, V. Sas, S. Safronov, V. Sokurenko, M. Stashchak, O. Tarasenko, D. Khamatov, R. Khalilyev, S. Chernyavskyi, V. Shendryk, O. Yukhno and many others. At the same time, in the works of the mentioned authors, not enough attention was paid to the issue of the tactics of open use of the public by the criminal police units during operational-search support of criminal proceedings.

In special studies dealing with problem of the use of the public as a force of operational-saerch activities (V. Davydyuk, A. Kyslyy, V. Krugly, V. Otrudka, etc.), these aspects were considered fragmentarily as part of the theory of "Assistance in operational-search activities". At the same time, conceptual views of supporters of the mentioned theory (A. Kisly, V. Otrudka) do not allow for a clear meaningful distinction between representatives of the public and other forces of operational-saech activity (undercover out of staff agents) who are involved in it. The conceptual views of researchers who studied this problem from the point of view of the forces of operational-search activity (V. Davydyuk, V. Krugliy) do not separately investigate the tactics of open and secret use of public representatives. In addition, V. Krugliy

did not define the legal relationship between the public and operational-search officers as the subject of his research. V. Davydyuk in his dissertation research limited himself to the list of directions for the use (involvement) of public representatives in the operational-search activities of the National Police. In addition, scholars do not consider such use in the context of operational-saerch support of criminal proceedings. Thus, there was no comprehensive study of problems of the tactics of open use of public by the criminal police units during operational-saerch support of criminal proceedings.

The research paper's objective is to determine the theoretical and applied principles of the tactics of public use by criminal police units during operational and investigative support of criminal proceedings.

Discussion. The concept "operational-search support" has a special place in the theory of operational-search activities, which has great theoretical and practical significance [1, p. 14-15].

Taking into account that in modern science it is considered from different points of view, we believe that it is key in the context of the coverage of the issues under consideration, as it specifies the object and subject of the research (open use of the public) through the prism of the stages in relation to which it is carried out, as well as through the prism of measures included in its system. As for the latter, for example, S. Obshalov believes that operational search support is "a complex of the most appropriate open and covert operational search measures" ... [1, p. 14-15]; O. Kyrychenko – "a system of actions, measures of operational (initiative) search (or operational-search measures)" [2, p. 267]; V. Pcholkin – "a system of operational investigative measures and covert investigative (serach) actions..."; [3, p. 260]; V. Bilyaev – "a system of operational-search measures, overt and covert investigative (search) actions..." [4, p. 19]; K. Antonov, M. Stashchak – "one of the organizational-tactical forms of operational-search activities..." [5, p. 49; 6, p. 236].

First, we share the opinion of the authors who believe that operational-search support is an independent form of operational-search activities. Secondly, we also consider its definition as a "system" to be correct, but the content of this activity cannot be investigative (search) actions or covert investigative search actions, since the latter are part of the process (criminal proceedings) that such activity is aimed at supporting. The content of such activity is the making of favorable conditions through the use of open and covert operational-search capabilities (resources): forces, means, measures of operational (initiative) search (or operational search measures carried out within the scope of the operational search case "Search") and other actions aimed at achieving the final result.

Next, we will note the scientists' opinions regarding the stages that cover such activity. For example, one group of scholars (V. Bilyaev, V. Daragan, O. Podobny, etc.) believes that such activity is a time-space process during pre-trial investigation and during court proceedings [7, p. 273; 8, p. 302]. Other scientists do not clearly distinguish stages (O. Kyrychenko) in which such activity takes place, but note that its purpose is "to make optimal conditions for a full and objective process of pre-trial investigation ..., to ensure the participants safety in criminal proceedings" [2, p. 267].

The third group of scientists generally believes that sometimes operational-search support begins long before the initiating of criminal proceedings, namely at the stages of preliminary verification of operational information and operational elaboration (V. Davydenko) [9, p. 120] or may go beyond the limits of criminal proceedings, both before its initiation and after its closure (S. Obshalov) [1, p. 15].

In the context of our research, we believe that this activity can be understood in a broad and narrow sense. In a broad sense, it goes beyond the beginning and end of criminal proceedings and can conditionally begin with the professional training of specialists (operational officers) who carry it out; be combined with separate elements of operational maintenance of the territory (line, object), since it is during such activity that the majority of public representatives are selected (chosen), who are effectively used in combating the most widespread (typical) types of criminal offenses committed in the territory (lines, objects) of maintenance. And it ends after the criminal punishment is served and the conviction of the persons who committed the criminal offense is expunged.

We make such a conclusion from the fact that the latest research by scholars states a wide range of tasks (goals) that are put forward for the operational-search support of criminal proceedings. These include: making of optimal conditions for the detection of crimes and implementation of a complete and objective process of proof; termination or neutralization of the opposition of an organized criminal group members to the carrying out of law enforcement

function of the state and justice; fulfilment of the function of protection (security) of criminal procedure participants [8, p. 302]; guaranteeing the implementation of the principle of inevitability of the responsibility of the guilty for the committed crime [3, p. 260]. The objective execution of these tasks goes beyond the beginning and end of criminal proceedings. Conventionally, they cover the stages (limits) we have mentioned, in which it is theoretically possible to carry out such support.

In the narrow sense, operational-search support begins from the moment of completion of operational-search measures, which were carried out within the framework of an operational-search case, and from the moment of initiating (beginning) of criminal proceedings and/or from the moment of the initiation of investigative (search) actions, which are carried out before the initiating of criminal proceedings (investigative examination), that is, within the framework of responding to statements or reports of a committed criminal offense, and the moment of its end is the sentencing.

The content of operational-search support of criminal proceedings is the making of favorable conditions through the use of open and covert operational-search capabilities (resources): forces, means, measures of operational (initiative) search (or operational-search measures carried out within the scope of operational-search case "Search") and other actions aimed at achieving the final result.

For the most part, the effectiveness of open and covert investigative (research) actions depends on the availability of reliable operational information, which is obtained with the help of operational capabilities (forces, means, measures of operational-research activity), accurate analysis and assessment of the operational-tactical situation, operational-tactical forecasting, making operational-tactical decisions, including regarding the determination of the moment and sequence of execution, operational skill in the application of operational combinations (combining investigative (search) actions with operational (initiative) search measures), etc.

Along with this, the effectiveness of procedural actions is achieved by the skillful use and combination of open and covert forces, measures and means used during their operational-search support. In theory and practice, these elements of such activity are usually called tactics. Today, in the theory of operational-search activities, there is a tendency to consider operational-search support of criminal proceedings in the way of determining the tactical features of carrying out certain procedural actions, in addition, mostly only the activities of investigative or operational workers are taken into account, and such an aspect as the implementation of interaction and the involvement of third parties remains out of the attention of both scholars and practitioners [10, p. 305-306].

In the context of our research, it is worth noting that the tactics of using the public by criminal police units during operational-search support of criminal proceedings in the system of operational-search tactics tentatively belong to special operational-search tactics.

Special operational-search tactics in legal science is understood as a system (subsystem) of scientific and theoretical provisions and recommendations developed on their basis, containing algorithms (programs) of operational-tactical actions of operational units' officers regarding the use of forces, means, methods of operational-search activities in the most optimal (effective) method, taking into account features of a specific operational-tactical situation [11, p. 120-121].

V. Otrudko rightly claims that the specifics of the tactics of using open and covert citizens' assistance to criminal police operational units during combating crimes are dictated by factors related to the phenomenon of crime, namely: the presence of a socially closed criminal environment, penetration into which is complicated by the conspiracy of the latter; the distribution of criminal activity areas and the emergence on this basis of a carefully disguised system of relations; the desire of criminals to establish rules of behavior and relationships that cause fear in people who know about them, encourage them to hide the truth; the presence of such phenomena as criminal professionalism and criminal qualifications. To the concept of the tactics of using open and covert assistance, the scientist includes both the tactics of involvement and the tactics of working with persons who provide such assistance [12].

The open use of the public by the criminal police units should be understood as such use of its individual representatives, in which the information about the content of the events in which they took part does not require concealment (conspiracy), but the fact of involving such persons in the fulfilment of certain tasks (their personal or profile data) do not need to be kept secret [13].

The advantage (value, social utility) of the use of members of the public over other

covert forces of operational-search activities, which are used during operational-search support of criminal proceedings, is that the covert form (type) of such assistance in case of need (with the voluntary person' consent) can flow into the vopenice at the next stages of criminal proceedings, and the public representative him/herself can act as a witness (the source of ideal traces of a criminal offense). At the same time, unlike hidden forces, there is no need to keep secret (to change) data about his/her identity during the interrogation. In addition, it is the involvement of members of the public in the performance of certain actions during the operational-search support of open investigative (search) actions with their voluntary consent that does not require their mandatory conspiracy.

In addition, their involvement in the conduct of procedural actions or the provision of operationally significant information does not require the use of special tactical techniques, complex checks or operational combinations, which are mandatory when involving persons as undercover out of staff agents. This feature does not mean that tactical techniques are absent or not used at all. On the contrary, in contrast to the above-mentioned category of operational-search forces, public representatives are, as a rule, educated, law-abiding persons, sensitive to the violation of individual space boundaries, the boundaries of the correctness of business communication, which are often characteristic of operational officers and are caused by the professional deformation of the latter under the influence constant communication with criminal contingent.

In this regard, there is a high probability of conflicts between operational unit officer and individual ordinary citizens, public members, where the factors of confrontation are the negative assessment of methods and measures of operational-search activity by the household morality and the prevalence of social stereotypes of a distorted attitude towards police detectives. As a result of the high probability of conflicts in the field of legal relations, the actor of operationa-search activity is primarily characterized by those conflict management capabilities, means of their prevention or constructive reslving, which were acquired by him/her as an actor in the field of legal relations, including both during acutely conflictual and probably conflict-free communication with various categories of citizens, interaction with the population, the public, mass media, etc. From a psychological point of view, a significant characteristic of the actor of operational communication is the ability and skills to exert a legitimate psychological influence on various "objects" of operational interest in the conditions of conflict confrontation; knowledge of techniques and technologies and the ability to counteract attempts to manipulate oneself during conflict relations; the ability to negotiate with offenders during operational development, reaching a consensus decision, etc. [14, p. 10, p. 108-109].

It should be noted that the tactical techniques of open use of public members during operational-search support of criminal proceedings are important not only for establishing psychological contact during the involvement of such persons, but also throughout the entire process of their assistance. But the tactics of such use are open use of public members during operational-search support of criminal proceedings include, first of all, tasks that can be solved with the help of such use, which are determined by certain measures or procedural actions of a open nature carried out by agents. The system of public investigative (search) actions according to the Criminal Procedure Code of Ukraine includes: interrogation (Articles 224-226, 232); presentation for identification: person, items, corpse (Articles 228-230); search (Articles 233-236); examination (Articles 214, 237-239); investigative experiment (Article 240); examination of the person (Article 241); assignment and conducting examinations (Articles 242-243), obtaining samples for examination (Article 245) [15].

Tactics of public use of public members by criminal police units during operational-search support for the specified investigative (search) activities is conditioned by the tasks of operational officers determined (assigned) to them by the investigator (inquiry officer), prosecutor: independent conduct or fulfilment of individual tasks. At the same time, their open use of public representatives may consist in involvement in: protection of the scene of the incident or material evidence; performing actions related to the provision of qualified services (divers, rock climbers, diggers, locksmiths, etc.); execution of technical actions to record the progress and results of the procedural action; participation as witnesses; persecution and detention "in the heat of the moment"; surveillance of suspicious persons who are in the area of procedural action; "by yard" or "apartment-by-apartment survey" etc.

Thus, on the example of the open use of public members by criminal police units during activities within the framework of the inspection of the scene of the incident

(response to statements or reports of a committed criminal offense), we will consider some of its tactical features, in particular, with regard to facilitating the interview of a large number of people of the same profession for the purpose of possessing them operationally significant information.

For example, if it is necessary to establish possible witnesses (eyewitnesses) of a criminal offense among the number of taxi drivers of one service, it is advisable to involve a representative from this "micro-community" of a driver of one of the cars (who usually works in this area). His/her assistance consists in: providing personally known information; providing of video recordings; surveying other drivers using radio communication (for example, Zello-radiation – a mobile application) for possession of such information or video recorder recordings; identification of persons from the number of drivers known to him/her who, in his/her opinion, could be accomplices (carriers) or direct perpetrators of a criminal offense.

The significance of such use is that in such a "micro-environment", the representative of the latter inspires trust, especially among witnesses who are not involved in the commitment of a criminal offense, but for various reasons refrain from proactively reporting information about a criminal offense known to them or are unaware of its significance such information. Among the widespread reasons for reluctance to proactively assist law enforcement agencies is the avoidance of time-consuming and repeated calls to the National Police to conduct investigative (search) actions. In this regard, a tactical technique that must be applied to such persons through a representative of this microenvironment is modeling the situation last in a conversation with other representatives of the situation, as if he/she saw the event with his/her own eyes and emotionally commenting on it in order to arouse the desire of the interlocutors to support the dialogue and share their impressions of the events they actually saw.

Conclusions. The results of the study allow us to state that the content of operational-search support of criminal proceedings is the makin favorable conditions by using open and covert operational-sefrch capabilities (resources): forces, means, operational (initiative) search measures (or operational investigative measures carried out in within the limits of the investigative case "Search") and other actions aimed at achieving the final result. Mostly the effectiveness of open and covert investigative (search) actions depends on the availability of reliable operational information, which is obtained with the help of operational capabilities (forces, means, measures of operational-search activity), accurate analysis and assessment of the operational-tactical situation, operational-tactical forecasting, making operational-tactical decisions, including the determination of the moment and sequence of execution, operational skill in the use of operational combinations (combining investigative (search) actions with operational (initiative) search measures), etc.

Along with this, the effectiveness of procedural actions is achieved by the skillful use and combination of open and covert forces, measures and means used during their operational-search support. The tactic of using the public by criminal police units during the operational-search support of criminal proceedings in the system of operational-search tactics tentatively refers to special operational-search tactics.

The advantage (value, social utility) of the use of members of the public over other covert forces of operational and investigative activity, which are used during operational-search support of criminal proceedings, is that the covert form (type) of such assistance in case of need (with the voluntary person’s consent) can flow into the open one at the next stages of criminal proceedings, and the public representative him/herself can act as a witness (the source of ideal traces of a criminal offense). At the same time, unlike covert forces, there is no need to keep (to change) secret data about his/her identity during the interrogation. In addition, it is the involvement of public members in the performance of certain actions during the operational-search support of public investigative (search) actions with their voluntary consent that does not require their mandatory conspiracy.

Tactics of open use of public members by criminal police units during operational-search support for conducting public investigative (detective) actions is determined by operational officers’ tasks, which are determined (assigned) to them by the investigator (inquiry officer), prosecutor: independent conduct or performance of individual tasks. At the same time, the public use of public representatives by operational officer may consist in involvement in: protection of the scene of the incident or physical evidence; performing actions related to the provision of qualified services (divers, rock climbers, diggers, locksmiths, etc.); execution of technical actions to record the progress and results of the procedural action;

participation as witnesses; persecution and detention "in the heat of the moment"; surveillance of suspicious persons who are in the area of procedural action; "yard" or "per-apartment" survey, etc.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

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ABSTRACT

The article is devoted to the study of the tactical features of the public's voice use by the criminal police units during operational investigative support of criminal proceedings. The effectiveness of procedural actions is achieved by the skillful use and combination of overt and unspoken forces, measures and means used during their operative and investigative support. The tactic of using the public by criminal police units during the operational-investigative support of criminal proceedings in the system of operational-investigative tactics tentatively refers to special operational-investigative tactics.

The advantage (value, social utility) of the use of members of the public over other covert forces of operational and investigative activity, which are used during operational and investigative support of criminal proceedings, is that the covert form (type) of such assistance in case of need (with the voluntary consent of a person) can flow into the voice at the next stages of criminal proceedings, and the public representative himself can act as a witness (the source of ideal traces of a criminal offense). It is the involvement of members of the public in the performance of certain actions during the operational-investigative provision of public investigative (search) actions with their voluntary consent that does not require their mandatory conspiracy.

Tactics of public use of members of the public by criminal police units during operative investigative support for conducting public investigative (search) activities is determined by the tasks of operatives determined (assigned) to them by the investigator, prosecutor: independent conduct or performance of individual tasks.

Keywords: *investigator, public investigative (search) actions, public, operational and investigative support of criminal proceedings, operational and tactical situations, criminal police units.*

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CERTAIN ISSUES OF THE ORGANIZATION OF UNDERGROUND INVESTIGATORS (DEVICE) ACTIONS IN THE INVESTIGATION OF CRIMINAL OFFENSES

Володимир Приловський. ДЕЯКІ ПИТАННЯ ОРГАНІЗАЦІЇ НЕГЛАСНИХ СЛІДЧИХ (РОЗШУКОВИХ) ДІЙ ПРИ РОЗСЛІДУВАННІ КРИМІНАЛЬНИХ ПРАВОПОРУШЕНЬ. В науковій статтіі досліджуються деякі аспекти організації негласних слідчих (розшукових) дій (далі – НСРД) при розслідуванні кримінальних правопорушень. Розглядаються існуючі проблемні питання сьогодення щодо організації проведення НСРД та можливостей спрощення й оптимізації для досконалого розслідування кримінальних правопорушень (злочинів), особливо у теперішній час. Розглядаються погляди вчених щодо вказаного аспекту як взагалі протиправної (злочинної) діяльності, так і в умовах сучасних реалій в Україні.

Автором зазначено необхідність та безперечність певної процесуальної послідовності при організації проведення НСРД без виключення методики розслідування кримінальних правопорушень. Адже як розуміння так і визначення сутності й наповнення і зазначеної, і будь-якої іншої наукової категорії визначає подальше її дослідження та й окремих її складових. Тобто визначення сутності організації проведення НСРД при розслідуванні кримінальних правопорушень так чи інакше має важливе значення для структуризації й оптимізації зазначеного процесу. В той же час, вагомим елементом визначеної категорії є поняття організації (тобто організації діяльності), що є підґрунтям будь-якого процесу при розслідуванні кримінальних правопорушень, виявленні, фіксації, вилученні й дослідженні фактичного (доказового) матеріалу. Вказана складова існує в структурі методики й тактики розслідування, і вона посіла відповідне місце в її структурі. Тому її дослідження в розрізі загальної наукової категорії має значення для удосконалення дієвої методики розслідування кримінальних правопорушень (злочинів).

На основі дослідження наукових думок та висновків вчених, практики оперативних підрозділів Національної поліції України визначено основні питання якщо не гальмування, то пробуксування процесу якісної оперативної організації проведення НСРД.

Ключові слова: *організація, розслідування, кримінальне правопорушення, злочин, слідчі дії, розшукові дії, негласні слідчі (розшукові) дії, оперативні заходи, оперативно-розшукові заходи.*

Relevance of the study. The processes of modernity, which have recently been taking place in Ukraine, necessitate the prompt obtaining of true information, its quick and timely analysis, systematization and use for the purpose of qualitative investigation of criminal offenses not only of a general criminal orientation, but also of specific crimes committed in modern conditions. An extremely important element of society's functioning is its fundamental values and ensuring their proper implementation by citizens.

It would be appropriate to emphasize the importance of conducting a systematic analysis of the objective modern conditions in which criminal acts are committed. In addition, when investigating the above-mentioned direction, it is important to establish the hindering factors. Therefore, consideration of this issue is necessary and timely.

Recent publications review. Considering the importance of the institute of secret investigative (detective) actions in criminal proceedings and the presence of a number of problematic issues, including the organizational nature of its functioning, it was the object of scientific research by specialists, in particular, M. Bagrieya, B. Baranenko, O. Bochkovo, V. Hlushkova, S. Hrynenko, M. Hribova, Yu. Groshevoy, K. Husevouyi, O. Drozdova,

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V. Kolesnyka, I. Komarnytska, S. Kudinova, D. Nikyforchuka, M. Pohoretskyi, D. Sergeeva, O. Tatarova, M. Tsutskiridze, R. Shehavtsova. They made noise and others, however, the problematic issues of the organization of secret investigative (search) actions in the studies of the mentioned authors were either investigated indirectly, or are of a debatable nature, which is not very positively reflected in law enforcement practice.

The article's objective is the analysis of problematic issues in the organization of the NSRD in the investigation of criminal offenses (crimes), including in modern conditions.

Discussion. Undoubtedly, the implementation of a pre-trial investigation into a criminal proceeding is carried out exclusively at the expense of the entities authorized to do so. That is why only a clear and consistent regulation of the procedural capabilities of all subjects of criminal proceedings will allow to fully ensure the fulfillment of the main tasks of criminal proceedings specified in Art. 2 of the Criminal Procedure Code (hereinafter – the Criminal Procedure Code) of Ukraine [1], as well as to ensure the legal and impartial exercise of authority with full compliance with the provisions of the Constitution of Ukraine, the Convention on the Protection of Human Rights and Fundamental Freedoms, and criminal procedural legislation of Ukraine [2, p. 265].

In exceptional urgent cases related to saving people's lives and preventing the commission of a serious or particularly serious crime, provided for in Chapters I, II, VI, VII (Articles 201 and 209), IX, XIII, XIV, XV, XVII of the Special Part of the Criminal Code of Ukraine, an undercover investigative (search) action may be initiated prior to the decision of the investigating judge in cases provided for by the Criminal Procedure Code of Ukraine, by the decision of the investigator, agreed with the prosecutor, or the prosecutor. In such a case, the prosecutor is obliged to apply to the investigating judge immediately after the start of such secret investigative (search) action [1, Art. 250].

Therefore, a so-called "procedural chain" can be seen: "investigator" – "prosecutor" – "investigating judge" (between the prosecutor and the investigating judge, also with the consent of the prosecutor, there is an investigator, receiving the consent of the prosecutor to conduct the NSRD, the head of the operational unit, who by his powers will appoint an executor and an operative who will be entrusted with the implementation) for the implementation of the main organizational measures of the NSRD. The latter, unfortunately, refutes one of the main provisions of the rapid investigation of criminal offenses – efficiency.

In most cases, during the investigation of criminal offenses (crimes), investigative situations are quite complex (the suspect is known, but material and personal evidence is not enough to notify him of suspicion; the criminal is known, but is hiding from the investigation and the court; the identity of the criminal has not been established, etc.).

In this regard, along with conducting investigative (search) actions to establish all necessary data about a criminal offense (crime) and persons who could be involved in its commission, who could be eyewitnesses (witnesses) or have any important for investigation of information, it is considered necessary to carry out NSRD (audio and video monitoring of the suspect; removal of information from transport telecommunication networks and electronic information systems, etc.) [3, p. 120-122].

In order to obtain information regarding the fastest and most optimal investigation of a criminal offense (crime), it is necessary to carry out search and overt and covert investigative (search) actions aimed, among other things, at the search for accomplices [4, p. 103].

It should be noted that the indisputable fact is that the investigation of crimes is closely related to investigative activities and largely depends on the effectiveness of the organizational actions of the investigator and investigative activities carried out by the investigative bodies on his behalf, as well as the actions carried out by these bodies in the execution them functional duties. It is known that the investigation of a crime is a rather difficult cognitive process that takes place within specific time (often limited) and spatial boundaries and in certain environmental conditions.

In modern conditions, when conducting investigative actions, there are time limits for the operative (fastest) search for sources of information important for the investigation, and obtaining it is the most urgent of what could be in other conditions, in peacetime conditions. Although in any state of society and the state, this question of relevance does not lose its operative status. We will publish several important provisions regarding important elements of investigative (search) actions in the investigation of criminal offenses (crimes). Operative – are able to correctly and quickly perform certain practical tasks; active [5, p. 845].

Organization is an action with the meaning of organizing, organizing and being organized. To organize is to carry out certain events of public importance, developing their

preparation and implementation [5, p. 853]. Unspoken – unknown to others; hidden, secret [5, p. 753]. Investigative (search) actions are actions aimed at obtaining (collecting) evidence or checking already obtained evidence in a specific criminal proceeding. The grounds for conducting an investigative (search) action are the availability of sufficient information indicating the possibility of achieving its goal [1, Art. 223]. We will analyze the latest statements regarding any situation related to the investigation of a criminal offense (crime).

Suppose an experienced operative (employee of an operational unit) when conducting investigative actions (or on the authority of an investigator - operational and search actions), to achieve the goal of obtaining (collecting) evidence or checking already obtained evidence in a specific criminal proceeding, at the place of the commission of a criminal offense the offense (crime) was discovered by a person who has factual information about the persons who committed this crime.

The information must be verified, but for this it is necessary to obtain the written permission (order) of the investigator. The identified person (source of information) wishes to remain anonymous, confidential to law enforcement agencies, cannot wait and refuses to publish (record in a protocol or other document) data about himself, including the possibility of contacting him through any networks. What should the operator do in this case? An experienced operative would have carried out all the necessary measures by himself without any notifications and instructions, and would have obtained the maximum amount of information necessary for the investigation. But how to officially record it? According to the current legislation – either not at all, or very difficult, almost impossible! Although the operative did not waste time to obtain and verify information important for the investigation.

With perfect monitoring of the chain of legally regulated actions of the operative, it is possible to improve without special research that the most important value in the investigation, especially on "hot leads", is lost during the implementation of procedural norms - time. It will take time until the investigator is notified, then the investigator's decision as to what exactly the warrant should be, until he fills out the necessary form in which he will write the warrant... And if the investigator, according to his departmental instructions, wants to notify his immediate supervisor to did he confirm his decision? And if the investigator does not have the necessary forms, there is no communication, and the investigator hesitates in making an independent decision?

And if the manager wants to consult with the prosecutor or investigating judge? Unfortunately, procedural legislative acts take into account the human factor or factors of so-called force majeure situations or circumstances (force majeure circumstances (circumstances of force majeure) are extraordinary and unavoidable circumstances that objectively make it impossible to fulfill the obligations stipulated in the terms of the contract (contract, agreement, etc.), obligations in accordance with legislative and other regulatory acts, namely: the threat of war, armed conflict or a serious threat of such a conflict, including but not limited to enemy attacks, blockades, military embargoes, actions of an external enemy, general military mobilization, military actions, declared and undeclared war, actions of the public enemy, riots, terrorist acts, sabotage, piracy, disorder, invasion, blockade, revolution, mutiny, uprising, mass riots, introduction of curfew, quarantine established by the Cabinet of Ministers of Ukraine, expropriation, forced seizure, seizure of enterprises, requisition protest, public demonstration, blockade, strike, accident, illegal actions of third parties, fire, explosion, long interruptions in the operation of transport, regulated by the terms of relevant decisions and acts of state authorities, closure of sea straits, embargo, prohibition (restriction) of export/import, etc., as well as caused by extreme weather conditions and natural disasters, namely: epidemic, strong storm, cyclone, hurricane, tornado, storm, blizzard, snow drift, hail, hail, frost, freezing of the sea, ports channels, passes, rain flows, lightning , fire, drought, subsidence and landslides, other natural disasters, etc.) [6] are covered briefly or not at all.

The situation is even simpler. And yet, at the same time, efficiency, non-publicity, and organization are practically included. It remains only the main purpose of investigation: "to complete the difficult process of recognition, which occurs in specific sentinels and expanses of space and in the singing minds of an insane middle ground". It takes a real sense to understand "operationality", "non-publicity", that "organization" is transformed into an untrue bureaucratic routine. Particularly note the situation in the event of the presence of a police-operational group at the scene of criminal offense under the hour of special minds. An operative, carrying out searches, come in (for example, when eyewitnesses were detected), for example, having revealed a military malice (svidome, rude, violation of the laws of that kind of war, for some kind of guilt (participants of combative acts and individuals, if they were given a

significant punishment) decisions of international military tribunals [7]) military serviceman of the guardian army (abo kimos inshim). There is no possibility of inflicting evil, but there is also the possibility of a negain (operational) covert photo or video fixation of illegal actions. If and how have similar minds taken away allowed to carry out the NSRD?

A lot of names are accumulating a lot of other meanings. For example, a witness in court against a police officer is guilty not just of asking, but of goiter to present sufficient factual evidence of his dishonesty or innocence? The video fact from the cameras of the video warning or from the mobile phone serves as evidence against the police officer, but sometimes you can't see it, as there is a confirmation of the illegal actions of the suspect, that is, the withdrawal without a legal procedural procedure. And yet, without any procedure, the fact remains a fact.

I have a thought about those who are right-wing defense lawyers thinking about the innocence of right-wing guardians in the world, that the law is signed for right-wingers and evil-doers. From where? By itself, it is important that the conclusion, that the legislator behind the statutes of legislative acts, may grant the status of suspected and judicial offenses (which can be attributed to the most severe violations of the rights of the victims, often even to the violent victims of the victims).

Conclusions. Summarising up, we note that based on the research of the opinions of scientists, the practice of operational units of the National Police of Ukraine, the main problematic issues that arise during the investigation of criminal violations at the present time have been determined:

1) legal restrictions on the initiative of operational units to organize the NSRD, which is necessary for a quick investigation of a criminal offense (crime);

2) procedural limitations of the initiative of operative units to organize the NSRD in any realities of today, but it is too necessary for the timely investigation of a criminal offense (crime);

3) organizational delays or obstacles in the coordination of documentation regarding decisions and obtaining permission to conduct NSRD.

In modern conditions, the same illegal acts are committed in Ukraine as at any other time, but the importance of their prompt investigation, identification and exposure of the guilty in the shortest possible time from the moment of commission or receipt of a notification of a committed criminal offense (crime) becomes especially relevant The legislative and procedural simplification of the procedure for the organization of secret investigative (search) actions is a real contribution to solving issues of operational and optimal investigation, especially in modern conditions.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

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ABSTRACT

The scientific article examines some aspects of the organization of undercover investigative (search) actions (hereinafter – NSRD) in the investigation of criminal offenses. The existing problematic issues of today regarding the organization of NSRD and the possibilities of simplification and optimization for perfect investigation of criminal offenses (crimes), especially at the present time, are considered. The views of scientists regarding the specified aspect of illegal (criminal) activity in general, as well as in the conditions of modern realities in Ukraine, are considered.

The author indicated the necessity and indisputability of a certain procedural sequence in the organization of the NSRD without excluding the methodology of investigation of criminal offenses. After all, both the understanding and definition of the essence and content of both the specified and any other scientific category determine its further research and its individual components. That is, the determination of the essence of the organization of the NSRD in the investigation of criminal offenses is one way or another important for the structuring and optimization of the specified process. At the same time, an important element of the defined category is the concept of organization (that is, the organization of activities), which is the basis of any process in the investigation of criminal offenses, detection, fixation, extraction and examination of factual (evidential) material. This component exists in the structure of the methodology and tactics of the investigation, and it took the appropriate place in its structure. Therefore, its research in the context of a general scientific category is important for improving effective methods of investigating criminal offenses (crimes).

On the basis of the study of scientific opinions and conclusions of scientists, the practice of operational units of the National Police of Ukraine, the main issues, if not inhibitions, then slippage of the process of high-quality operational organization of the NSRD, have been determined.

Keywords: *organization, investigation, criminal offense, crime, investigative actions, detective actions, covert investigative (detective) actions, operational measures, operational and investigative measures.*

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FEATURES OF THE CONDUCT SEARCH UNDER THE CONDITIONS OF THE STATE OF WAR

Олена Солдатенко, Володимир Кияниця. ОСОБЛИВОСТІ ПРОВЕДЕННЯ ОБШУКУ В УМОВАХ ВОЄННОГО СТАНУ. Збройна агресія російської фдерації кардинально змінила життя кожного українця, а разом з тим призвела до ряду викликів під час здійснення кримінального провадження на території України. І тому, з метою наближення кримінальної процесуальної діяльності до воєнних реалій, Верховна Рада України прийняла низку законів, що спрямовані на регламентацію

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питань кримінального провадження в умовах воєнного стану, зокрема щодо особливостей проведення окремих процесуальних дій на підставі ухвали слідчого судді.

Наскільки оправданими є такі зміни, чи не звужується об'єм прав людей які потенційно можуть стати об'єктами кримінального переслідування, яким чином правоохоронні органи мають впливати на дотримання прав людини в умовах війни, як працювати слідчому в цілому, щоб був збережений баланс інтересів – це лише невеликий перелік питань які постають в умовах сьогодення.

В статті проведено системний аналіз норм, що регламентують процесуальний порядок проведення обшуку в умовах воєного стану. У роботі проаналізовано законодавство України, практику застосування вітчизняного законодавства, наукові позиції вітчизняних вчених процесуалістів щодо гарантій захисту прав, свобод та законних інтересів учасників кримінального провадження під час проведення обшуку. Розроблено науково-практичні рекомендації щодо законного застосування положень, що регламентують процесуальний порядок проведення обшуку в умовах воєного стану, які викликають питання у практичних працівників.

Ключові слова: *слідчі (розшукові) дії, обшук, досудове розслідування, кримінальне провадження, ухвала слідчого судді, воєнний стан, кримінальне процесуальне законодавство.*

Relevance of the study. One of the basic human rights enshrined in the Constitution of Ukraine is the right to inviolability of housing or other possessions. The basic law indicates that it is not allowed to enter a person's home or other possessions, conduct an inspection or search in them other than by reasoned court decision. This provision means that the state is authorized to reasonably limit the above-mentioned right. However, as evidenced by law enforcement practice, such restriction of the right to inviolability of housing or other possessions is not always justified and there is uneven and incorrect application of regulatory provisions that regulate the procedure for conducting this investigative (search) action. This, in turn, requires a comprehensive analysis of problematic issues that arise during a search and a unified approach to their solution, especially in wartime conditions.

Recent publications review. In the scientific literature, certain aspects of conducting a search of housing or other property were the subject of scientific research by such scientists as: V. Honcharenko, I. Glovyuk, V. Zaborovskyi, V. Nor, O. Kaplina, O. Komarnytska, E. Manivlets, V. Malyarenko, O. Shvidkova, M. Shumylo, L. Udalova, Yu. Chornous and others. At the same time, the development of science, the reform of legislation, as well as the formation of appropriate law enforcement practice pose new and new tasks that need to be solved, especially in the conditions of the state of war.

The article's objective is to develop the problems of regulation and ensuring the procedural activity of the investigator during the search, the ways to solve them, as well as the formulation of proposals aimed at improving the criminal procedural legislation of Ukraine regarding the regulation of the procedural activity of the investigator and the procedural order of conducting the search under the state of war.

Discussion. According to part 1 of article. 223 of the Criminal Procedure Code of Ukraine investigative (search) actions are aimed at obtaining (collecting) evidence or checking already received evidence in a specific criminal proceeding. The procedure for conducting investigative (search) actions is defined in Chapter 20 of the Criminal Procedure Code of Ukraine [1].

In order to exercise judicial control over the observance of the rights, freedoms and interests of persons in criminal proceedings during a pre-trial investigation, individual investigative (search) actions may be carried out at the request of a party only on the basis of a decision of the investigating judge. In particular, the CPC of Ukraine refers to such investigative (search) actions:

1) questioning of a witness, a victim during a pre-trial investigation in a court session in the presence of circumstances that may make it impossible to question them in court or affect the completeness or reliability of testimony (Article 225 of the Code of Criminal Procedure);

2) breaking into a person's home or other property (Article 233 of the Criminal Code);

3) search, including the home or other property of a person (Articles 234, 235 of the Criminal Code);

4) inspection, including of housing or other possessions of a person (Article 237 of the Criminal Procedure Code);

5) examination of a corpse, combined with an examination of a person's home or other property (Article 238 of the Criminal Code);

6) an investigative experiment conducted in a person's home or other property (Article 240 of the Criminal Procedure Code);

7) forced involvement of a person to conduct a medical or psychiatric examination (Article 242 of the Criminal Procedure Code);

8) appointment of expert examination at the request of the defense party in case of refusal of the investigator, prosecutor to satisfy such a request (Article 244 of the Criminal Procedure Code);

9) forced collection of biological samples from a person for examination (Article 245 of the Criminal Procedure Code) [2].

In connection with the introduction of martial law on the territory of Ukraine, an important role in maintaining the internal stability of the state is played by mechanisms for ensuring law and order, which the legislator forms and improves based on today's challenges. Changes were also made in the criminal procedural legislation. In particular, the legislator made changes to Section IX-1 "Special regime of pre-trial investigation, trial under the state of war" of the Criminal Procedure Code of Ukraine, which also affected the procedure for conducting investigative actions, including such investigative (search) action as a search [3].

A search is an investigative (search) action aimed at identifying and recording information about the circumstances of the commission of a criminal offense, finding the instrument of a criminal offense or property obtained as a result of its commission, as well as establishing the location of the wanted persons [1].

According to Art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950 (Convention), everyone has the right to respect for his private and family life, his home and correspondence. State authorities may not interfere with the exercise of this right, except when the interference is carried out in accordance with the law and is necessary in a democratic society in the interests of national and public security or the economic well-being of the country, for the prevention of riots or crimes, for the protection of health or morality or to protect the rights and freedoms of other persons [4].

According to the provisions of Art. 30 of the Constitution of Ukraine, everyone is guaranteed the inviolability of their home, it is not allowed to enter a home or other possessions of a person, conduct an inspection or search in them other than by reasoned court decision [5]. The Constitution of Ukraine is one of the sources of criminal procedural law, therefore one of the principles of criminal proceedings in accordance with Art. 13 of the Criminal Code of Ukraine is the inviolability of a person's home or other property. But at the same time, the norms of the Code of Criminal Procedure of Ukraine, in Art. 233, provide for methods of breaking into a person's home or other property before a reasoned court decision is issued. In accordance with Part 1 of Art. 233 of the Criminal Procedure Code of Ukraine, no one has the right to enter a person's home or other property for any purpose, other than only with the voluntary consent of the person who owns them, or on the basis of the decision of the investigating judge. But in accordance with Clause 1, Part 2, Art. 615 of the Criminal Procedure Code of Ukraine, the legislator provides for a situation during the period of the state of war, when the investigating judge for objective reasons cannot perform his powers in accordance with Art. 233–235 of the Criminal Procedure Code of Ukraine in such a case, these powers are entrusted to the head of the relevant prosecutor's office, who in turn issues a resolution on conducting a search.

As the judge of the Criminal Court of Cassation as part of the Supreme Court O. Yanovska noted, in each specific case the subject of proof in court and assessment by the court should be whether there really was no objective possibility, for example, to turn to the investigating judge for a decision on the application of a preventive measure, conducting a search. When applying the provisions of Art. 615 of the Criminal Procedure Code of Ukraine, the investigator and the prosecutor must indicate in the relevant documents (resolutions, petitions) why there is no objective possibility to follow the standard procedure for conducting procedural actions [6].

At the same time, in accordance with Part 3 of Art. 233 of the Criminal Procedure Code of Ukraine, the investigator, investigator, prosecutor has the right to enter the house or other property of a person before the decision of the investigating judge is issued only in urgent cases related to saving lives and property or direct prosecution of persons suspected of committing a criminal offense. In such a case, the prosecutor, investigator, investigator, in agreement with the prosecutor, is obliged to apply to the investigating judge immediately after taking such actions with a request to conduct a search. The investigating judge considers such a petition in accordance with the requirements of Art. 234 of the Criminal Procedure Code of Ukraine, checking, among other things, whether there really were grounds for breaking into a person's home or other property without a decision of the investigating judge.

However, the bodies of the pre-trial investigation do not always comply with the

specified norms of the law, which entails the recognition of certain evidence (search protocols) as inadmissible evidence. The criminal court of cassation, deciding one of these cases, referring to the provisions of Art. 30 of the Constitution of Ukraine and part 1, 3 of Art. 233 of the Criminal Procedure Code of Ukraine indicated that the right of an investigator, a prosecutor to enter a dwelling and conduct a search in it can arise in three cases:

1) by the decision of the investigating judge;

2) without issuing such a resolution on the basis of the voluntary consent of the owner of a home or other possession of a person;

3) before the decision of the investigating judge is issued only in urgent cases related to saving lives and property or direct prosecution of persons suspected of committing a crime.

At the same time, the urgency of conducting such a search without a decision of the investigating judge, in the opinion of the court of cassation, should be connected exclusively with saving lives and property or with the direct prosecution of persons suspected of committing a criminal offense. In all other cases, such a search should be carried out only on the basis of the decision of the investigating judge [7].

In addition, when making a decision based on the presence of the specified circumstances, the courts refer to the practice of the European Court of Human Rights regarding the application of the "fruits of the poisoned tree" doctrine, set forth, in particular, in the decision "Yaremenko v. Ukraine (No. 2)" dated 04/30/2015 [8, p. 66], according to which not only the evidence that is directly obtained as a result of the violation, but also the evidence that would not have been obtained if the former had not been obtained, are recognized as inadmissible.

A search or inspection of a person's home or other possessions, a search of a person is carried out with the mandatory participation of at least two witnesses, regardless of the use of technical means of recording the relevant investigative (search) action, except for the features established by Art. 615 of the Criminal Code of Ukraine, namely, when conducting a search or inspection of a person's home or other possessions, a search of a person, if the involvement of witnesses is objectively impossible or is associated with a potential danger to their life or health, appropriate investigative (search) actions are carried out without the involvement of witnesses. In such a case, the course and results of a search or inspection of a person's home or other possessions, a search of a person, are necessarily recorded by available technical means by means of continuous video recording. As for recording the results of the pre-trial investigation, procedural actions during criminal proceedings are recorded in relevant procedural documents, as well as using technical means of recording criminal proceedings, except for cases where recording using technical means is impossible for technical reasons. In the absence of the possibility of drawing up procedural documents about the progress and results of investigative (search) actions or other procedural actions, recording is carried out by available technical means with the subsequent drawing up of the corresponding protocol no later than seventy-two hours after the completion of such investigative (search) actions or relevant procedural actions.

Also, in accordance with Part 7 of Art. 223 of the Criminal Procedure Code of Ukraine search or inspection of housing or other possessions of a person, the search of a person turned out to involve the mandatory participation of not two smaller concepts, independent of the use of technical means of recording the relevant investigative action in addition to the features established by Art. 615 of the Criminal Code of Ukraine, namely, when conducting a search or inspection of a person's home or other possessions, a search of a person, if the involvement of witnesses is objectively impossible or is associated with negative safety for their life or health, appropriate investigative (search) actions are performed . without the involvement of witnesses. In the case of such an exit and the results of a search or inspection of a person's home or other possessions, the search of the person is necessarily recorded by available technical means by continuous video recording.

In general, a search without witnesses is an interesting and important change, which, under the conditions of proper testing, can be useful for its implementation in the future on a permanent basis. As for recording the results of the pre-trial investigation of procedural actions during criminal proceedings, they are recorded in the relevant procedural documents, as well as using technical means of recording criminal proceedings, except if recording using technical means is impossible for technical reasons. If it is possible to draw up procedural documents about the output and result of investigative (search) actions or other procedural actions, the record will be created by available technical means with subsequent drawing up of the appropriate protocol no later than seventy-two hours after the completion of such investigative

(search) actions or relevant procedural actions.

Also in accordance with the requirements of Part 4 of Art. 223 of the Criminal Procedure Code of Ukraine it is not allowed to conduct investigative (search) actions at night (from 22 years to 6 years) in inappropriate cases, which are associated with a delay in their implementation, which may lead to the loss of traces of a criminal offense or the escape of the suspect, as well as in accordance with the procedure established by Art. 615 of the CCP of Ukraine. So, referring to Art. 615 of the Criminal Procedure Code of Ukraine, the legislator provides the opportunity for investigators and prosecutors to conduct investigative (search) activities under the state of war around the clock.

Conclusions. Thus, the peculiarities of pre-trial investigation under the conditions of the state of war, provided for by Section IX-1 of the Criminal Procedure Code of Ukraine, consist in determining the separate powers of pre-trial investigation bodies, prosecutors, investigators, etc. judge, court, which differ from the usual scope and order of exercise of powers by these entities in peacetime and must comply with the general principles of criminal justice.

Conflict of Interest and other Ethics Statements
The authors declare no conflict of interest.

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ABSTRACT

The armed aggression of the russian federation radically changed the life of every Ukrainian, and at the same time led to a number of challenges during the implementation of criminal proceedings on the territory of Ukraine. Therefore, with the aim of bringing criminal procedural activities closer to wartime realities, the Ukrainian Parliament adopted a number of laws aimed at regulating issues of criminal proceedings under the conditions of the state of war, in particular, regarding the specifics of carrying out certain procedural actions based on the decision of the investigating judge.

To what extent are such changes justified, does the scope of rights of people who can potentially become objects of criminal prosecution narrow, how should law enforcement agencies influence the observance of human rights in war conditions, how should the investigator work as a whole, so that the balance of interests is preserved – this is just a small list of questions that arise in today's conditions.

The article provides a systematic analysis of the norms regulating the procedural order of conducting a search under the conditions of state of war. The work analyzes the legislation of Ukraine, the practice of applying domestic legislation, the scientific positions of domestic procedural scientists regarding guarantees of protection of the rights, freedoms and legitimate interests of participants in criminal proceedings during a search. Scientific and practical recommendations have been developed regarding the legal application of provisions regulating the procedural order of conducting a search under the conditions of state of war, which raise questions for practical workers.

Keywords: *investigative (search) actions, search, pre-trial investigation, criminal proceedings, decision of the investigating judge, the state of war, criminal procedural legislation.*

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METHODS, PATTERN AND CIRCUMSTANCES OF DOMESTIC VIOLENCE

Юлія Гришко. СПОСОБИ, ФОРМА ТА ОБСТАВИНИ ВЧИНЕННЯ ДОМАШНЬОГО НАСИЛЬСТВА. У статті розглянуто способи вчинення домашнього насильства; сліди, що виникають після застосування того чи іншого способу та обстановку, у якій відбувається вчинення зазначеного злочину. Окремо розглянуто способи вчинення: фізичного насильства, що полягає у нанесення тілесних ушкоджень, які можуть призвести до смерті постраждалого, порушення фізичного чи психічного здоров'я, нанесення шкоди його честі й гідності; психологічного

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насильства, що пов'язано з дією на психіку людини шляхом словесних образ або погроз, переслідування, залякування, якими навмисно спричиняється емоційна невпевненість, нездатність захистити себе та може завдаватися або завдається шкода психічному здоров'ю; економічного насильства, що полягає в позбавленні людини їжі, одягу та іншого майна чи коштів, на які постраждалий має передбачене законом право, що може призвести до його смерті, викликати порушення фізичного чи психічного здоров'я.

Розглянуто сліди, що виникають при вчиненні домашнього насильства, у широкому розумінні, а саме сліди боротьби: безлад у приміщенні, перекинуті меблі, розбите скло, посуд, розкиданий одяг тощо та у вузькому – як сліди-предмети, сліди-речовини та сліди-відображення. Встановлено, що сліди при вчиненні домашнього насильства можуть бути матеріальними та ідеальними. Ідеальні сліди при вчиненні домашнього насильства утворюються в пам'яті учасників злочинної події. Конкретизовано види означених слідів у співвідношенні до способу вчинення злочину. При аналізі обстановки домашнього насильства встановлено, що до її структури входять місце, час вчинення злочину, морально-психологічні стосунки суб'єктів правопорушення та їх оточення, соціально-психологічне середовище у якому перебуває особа кривдника та впливає на його вчинки, а також соціально-політичне становище у країні. Обстановка пов'язана з іншими елементами криміналістичної характеристики: здатна впливати на вибір способу вчинення правопорушення, виникнення слідів, обрання потенційної жертви тощо. Відомості щодо способів вчинення правопорушення, обстановки та слідів використовуються насамперед на початковому етапі розслідування та дозволяють висувати версії, сприяють виявленню та затриманню підозрюваного.

Ключові слова: *домашнє насильство, криміналістична характеристика, способи вчинення злочину, сліди злочину, обстановка вчинення правопорушення.*

Relevance of the study. Despite the socio-political conditions in which our country found itself, domestic violence remains a fairly widespread crime. The victims of domestic violence are the most vulnerable and unprotected segments of the population: children, adolescents, women, disabled people, and the elderly. According to the Office of the Prosecutor General, as of November 2022, 1,468 crimes qualified under art. 126-1 of which persons were served with a notice of suspicion in 1202 cases [1]. However, the statistics reflect only the most dangerous forms of domestic violence: bodily harm, harm to health of various degrees of severity, assault, that is, those that cannot be hidden from law enforcement agencies. Considering the peculiarities of the participants of domestic violence, namely: the age of the victims, family and other dependence on the criminals, a significant part of the cases remain outside the attention of law enforcement agencies. In the methodology of investigation of domestic violence, considerable attention is paid to the forensic characteristics, in particular to such elements as the methods of commission, trace pattern and setting. The information that makes up the content of these elements is used, first of all, at the initial stage of the investigation to establish the identity of the criminal and the mechanism of the crime.

Recent publications review. Development of methods of investigation of certain types of criminal offenses such scientists as: Y. Alenin, V. Bakhin, V. Bernaz, V. Veselsky, A. Volobyev, V. Galagan, A. Ishchenko, N. Karpov., N. Klymenko, V. Kolesniknik, A. Kolesnichenko, V. Konovalova, V. Kuzmichev, V. Lisichenko, V. Lukashevich, E. Lukyanchikov, D. Nikiforchuk, O. Odery, I. Pyrih, M. Pogoretsky, A. Sainchin, M. Saltevsky, M. Segay, D. Sergeyeva, R. Stepanyuk, V. Tishchenko, L. Udalova, P. Tsimbal, K. Chaplinsky, S. Chernyavsky, V. Shepitko, M. Shcherbakovsky and other scientists. However, insufficient attention was paid to the development of a forensic characterization of domestic violence in their works.

The article's objective is to determine the methods, corresponding traces and circumstances of domestic violence, based on the analysis of the opinions of scientists and the data of judicial and investigative practice,

Discussion. A sign of family violence is the presence of moral, physical or mental damage to the health of a family member caused by illegal acts. Domestic violence, according to Art. 126-1 is a deliberate systematic commission of physical, psychological or economic violence against a spouse or ex-spouse or another person with whom the perpetrator is in a family or close relationship, which leads to physical or psychological suffering, health disorders, loss of work capacity, emotional dependence or deterioration of the victim's quality of life [2].

From the content of the specified article, the following types of domestic violence can be distinguished: physical - intentional infliction by one family member of another family member of beatings, physical injuries that may lead to or have led to the death of the victim,

violation of physical or mental health, causing damage to his honor and dignity; psychological, which is related to the action of one family member on the psyche of another family member through verbal insults or threats, harassment, intimidation, which intentionally causes emotional insecurity, inability to protect oneself and may cause or is causing damage to mental health; economic – deliberate deprivation by one family member of another family member of housing, food, clothing and other property or funds to which the victim has a legal right, which may lead to his death, cause a violation of physical or mental health.

There are the following ways of physical violence in the family: 1) use of coercion and threats: expressing threats and causing harm to health; a threat to leave the victim, to commit suicide, to leave without means of subsistence; forcing the victim to withdraw the accusations; forcing the victim to commit illegal acts; 2) intimidation: look, actions, gestures; breaking things; destruction of the victim's property; violence or killing of domestic animals; intimidation with a weapon; 3) use of emotional violence: underestimation of the victim's self-esteem; calling the victim names; making the victim think they are crazy; humiliation of the victim; making the victim feel guilty; 4) application of isolation: control of the victim's actions, his movements and surroundings; control of what the victim reads; limitation of the victim's social activity; 5) reduction, denial and blame: simplifying the problem of violence and refusing to take seriously the concerns of the victim; making a statement that violence did not occur; shifting responsibility for one's violent behavior to the victim; making statements that the victim is to blame; 6) using children: making the victim feel guilty because of the child; using children to transmit messages; using the child's visitation to annoy the victim; threat to take away children; 7) the use of male superiority: treating the victim as a servant; single-handedly making all important decisions; the behavior of the "lord of the castle"; definition of female and male roles; threatening to kill or harm children; 8) use of economic violence: preventing the victim from getting a job or staying at work; forcing the victim to ask for money; failure to provide monetary assistance to the victim; taking the victim's money; hiding from the victim information about family income and limiting access to these funds [3, p. 32-33]. The method of committing a criminal offense is a central element of the forensic characterization of any criminal offense, including domestic violence. Based on the study of the materials of investigative and judicial practice, it is necessary to note the need to expand the list of methods of domestic violence determined by scientists, taking into account the individual characteristics of the victim, his individual psychological and physiological traits.

In the system of elements of the forensic characteristics of any type of crime, the trace picture is an element that combines the setting and method of committing a criminal offense and indicates the characteristics of the person who committed it. Traditionally, in criminology, traces are understood in a broad sense, as changes in the environment, state, and appearance of objects that occur as a result of the commission of a crime, and in a narrow sense, as materially fixed reflections of the external structure of some objects on others. Traces in a broad sense can include both material and ideal (imaginary image in people's minds) reflections of actions, phenomena, objects, animals, people [4, p. 103; 5, p. 19]. The concept of "trace pattern", according to M. Saltevskii, includes ideal reflections and material traces, as sources of visible and invisible, projected traces that were formed at the time of the commission of the crime [6, p. 420].

When domestic violence is committed, traces in the broadest sense are traces that appeared during possible resistance of the victim, namely, traces of a struggle: a mess in the room, overturned furniture, broken glass, dishes, scattered clothes, etc. Traces in the narrow sense in forensics are traditionally divided into three groups: object traces, substance traces and reflection traces. Objects left in the case of domestic violence can be: torn, cut clothes of both the suspect and the victim, torn off buttons, tools of the crime, for example, with which bodily injuries were inflicted: knives, sticks, household objects (hammer, ax, screwdriver, rolling pin, etc.). Typical traces of domestic violence are traces of contact interaction: traces of resistance on the body of the suspect and violent actions on the body of the victim: bruises, wounds, bites, skin tears, sores, fractures, layering of various substances, burns, torn clothes on the victim, hematomas on the hands, face, neck, hips, etc.

Physical traces of domestic violence are, as a rule, traces of biological origin, which can remain on the body and clothes of the victim or suspect, as well as on objects of the surrounding environment: instruments of the crime, the floor, walls, furniture. These are, as a rule, traces of blood or saliva or microparticles of these substances. Traces of reflections remain on objects of decoration. These are traces of papillary patterns of hands (sometimes bloody) on instruments of violence, objects of decoration; traces of bare feet, socks or shoes on

the floor; traces of tools used for violence on furniture. Such traces can be used in the future when the offender denies his presence in a certain place.

We agree with T. Ishchenko, who notes that material traces also arise when economic violence is committed. First of all, they are formed in the context of domestic violence, for example, damaged property by arson, broken windows, gutted front doors and furniture, broken dishes, scattered things, lack of food, children's toys, mess, unsanitary conditions, lack of heating during the heating season, etc. In addition, such traces can be reflected in the appearance of the victim: dirty clothes, clothes that are out of season, out of size, neglected, sickly appearance [7, p. 58].

Ideal traces of domestic violence are formed in the memory of the participants of the criminal event. They can be the suspect, the victim, witnesses from among relatives, acquaintances or, more rarely, outsiders who happened to be at the scene of the incident. Ideal traces can contain information about the course of events, a description of the suspect, the instrument of the crime. The traces of committing psychological violence are formed in the consciousness of the victim and can be reflected in his psychophysiological reactions, manners of behavior, emotions, and also affect the mental state of a person. Information about the traces of domestic violence is necessary, first of all, at the initial stage of the investigation to determine the correct classification of the offense and the involvement of a specific person in the commission of the crime.

An important element of the forensic characteristics of a criminal offense is the situation in which it is committed. The circumstances of the commission of a crime are understood to mean a system of various interacting objects, phenomena and processes that characterize the place, time, natural and climatic, industrial and household, material and other environmental conditions before and at the time of the commission of the crime, as well as individual factors of objective reality, which determine the conditions, the possibility of committing and some other circumstances of the crime [4, p. 352].

Establishing the event of a criminal offense and the person who committed it most often begins with the analysis of the situation. The assessment of the situation allows obtaining data on the conditions and factors that immediately preceded the crime, interacted with each other, and influenced the course of the act; which of the elements of the situation were prepared by the offender, and which did not depend on him; which of them prevented or contributed to the preparation, commission and concealment of the crime; who could take advantage of the situation at a certain moment. The circumstances of the commission of a criminal offense in many ways adjust or even determine the choice of the method of its commission, affect the mechanism of activity. In the environment, certain important personal traits of the offender are revealed, which partially or completely forms the given environment and adapts to it.

To the structure of the situation of a criminal offense, V. Tishchenko includes the temporal and spatial characteristics of its stages; natural and climatic conditions; the material conditions for the preparation, commission and concealment of the crime; the behavior of event participants and the relationship between them; conditions of the criminal event; circumstances contributing to or hindering the offense [8, p. 88]. In turn, V. Dintu includes the material, microsocial, and moral and psychological environment in the structure of the situation of a criminal offense [9, p. 14].

By analyzing the materials of criminal proceedings, we found that the structure of the situation of domestic violence should include the place and time of the crime, the moral and psychological relations of the subjects of the offense and their environment, the social and psychological environment in which the perpetrator is located and influences his actions, and as well as the socio-political situation in the country.

The place of domestic violence is determined by the very concept of "home", which should be understood, first of all, as the place where the perpetrator and the victim live together. Such a place can also be the place of residence of either the criminal or the victim, if they do not live together. For example, when violence occurs between relatives or between former or current spouses, or other persons who lived together in the same family, but were not in a family relationship or married to each other. According to the research of T. Ishchenko, the place of domestic violence is the same as the place of cohabitation of the perpetrator and the victim in 50,7 %, the place of residence of the perpetrator that is shared with the victim – in 39,7 %, according to the place of residence of the victim – in 8,9 %, relatives, neighbors to whom the offender visited – in 0.9 %, in public places (store, railway station, medical institution, on the street, river, etc.) – in 2,6 % of cases [7, p. 56].

Our research of materials of criminal proceedings and court practice found that domestic violence is committed in the following places: where the offender and the victim live together – 77 %; residence of the victim, if he lives separately – 11 %; residence of the offender, if he lives separately – 2 %; residence of relatives, acquaintances, neighbors with whom the participants ended up together – 6 %; in public and places of joint recreation (shop, street, bar, restaurant, in the forest, on the river, etc.) – in 4 % of cases. In terms of time, domestic violence is committed most often in the evening from 6 to 11 p.m. (62 %), and on weekends and holidays – during the day, which is explained by the common location of the victim and the perpetrator at these times. For the same reason, most of the crimes in question are committed during cold seasons (late fall, winter, and early spring), when weather conditions force people to stay indoors.

The moral and psychological relationships of the perpetrators and their environment have a significant impact on the perpetration of domestic violence. Domestic violence is characterized by the appropriate environment in the family, built on unfriendly relations between its members, which can be the result of various circumstances, in particular, the lack of funds to fully obtain the necessary material support: clothing, food, satisfaction of cultural needs. As a result, there are mutual accusations that lead to violent actions. Conflict situations between the criminal and the victim can arise both suddenly and be the result of long-term hostile relations. In any case, there is a significant role of the victim's victim behavior in creating conditions conducive to the commission of an offense. Sometimes the victim's behavior is thoughtless, immoral and illegal. The analysis of the data of judicial and investigative practice shows that at the time of committing family violence, about 30 % of the victims were intoxicated and drank alcoholic beverages together with the criminals, about 10 % of them were the initiators of insults and fights and ultimately contributed to the commission of the crime.

Another component of the situation is closely related to family relationships – the social and psychological environment in which the offender is located and which influences his actions: the immediate family environment at the place of residence, study or work, friends with whom a person spends his free time. Especially if immoral traditions are widespread in such places: debauchery, drunkenness, drug use, propensity for violence, cruelty, etc. It is common knowledge that during the consumption of alcoholic beverages and drugs, individuals use profanity, their communication is accompanied by conflicts and fights. In addition, the perception of impunity and the permissibility of violent actions to resolve conflicts has spread among certain sections of the population. This is facilitated by mass media propaganda of the cult of violence and cruelty, racial, national or religious intolerance and discrimination, sexual depravity, debauchery. Such information can encourage violent crimes because it carries stereotypes of behavior [10, p. 275].

In the case of domestic violence committed by a minor or a person under the age of 25 in relation to the elderly, it is necessary to consider the shortcomings of his upbringing, which contributed to the formation of an aggressive and violent orientation of a person's character, which is formed in childhood and adolescence. R. Blaguta notes the following factors of aggressive behavior of teenagers: upbringing in the family and in the education system, where aggression can be encouraged, facilitated and provoked; peer group influence, in particular, informal youth associations; the influence of youth subculture; the influence of mass communication and computer technologies, etc. [11, p. 8]. Demonstration of brutality and violence on television also has a negative effect on young people, who as a result become more cruel to others, lose compassion for others. The consciousness of young people is also affected by information from the Internet with the demonstration of fragments of cruel treatment among peers, scenes of bullying in which peers humiliate their friends, cause them bodily harm.

Conclusions. As a summary, it can be noted that we have considered the components of the situation, which are interconnected. The situation is also related to other elements of forensic characteristics: it can influence the choice of the method of committing an offense, the appearance of traces, the choice of a potential victim, etc. Information on the methods of committing the offense, the situation and the traces are used primarily at the initial stage of the investigation and allow to put forward versions, contribute to the detection and arrest of the suspect.

Conflict of Interest and other Ethics Statements
The author declarei no conflict of interest.

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ABSTRACT

The article discusses ways of committing domestic violence; traces arising after the use of one or another method and the environment in which the specified crime is committed.

The methods of committing: physical violence, which consists in inflicting bodily injuries that can lead to the death of the victim, violation of physical or mental health, damage to his honor and dignity, are considered separately. psychological violence, which is related to the effect on the psyche of a person through verbal insults or threats, harassment, intimidation, which intentionally causes emotional insecurity, the inability to protect oneself and may cause or is causing damage to mental health; economic violence, which consists in depriving a person of food, clothing and other property or funds to which the victim has a legal right, which can lead to his death, cause a violation of physical or mental health.

Traces of domestic violence are considered in a broad sense, namely, traces of struggle: a mess in the room, overturned furniture, broken glass, dishes, scattered clothes, etc. It has been established that the traces of domestic violence can be material and ideal. Ideal traces of domestic violence are formed in the memory of the participants of the criminal event. The types of identified traces are specified in relation to the method of committing the crime.

When analyzing the situation of domestic violence, it was established that its structure includes the place and time of the crime, the moral and psychological relations of the subjects of the offense and their environment, the social and psychological environment in which the offender is located and influences his actions, as well as the socio-political situation in the country.

Keywords: *domestic violence, forensic characteristics, ways of committing the crime, traces of the crime, the circumstances of the crime.*

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THE IDENTITY OF THE CRIMINAL AS A KEY ELEMENT OF THE CRIMINAL CHARACTERISTICS OF OFFENSES REGARDING FORGERY OF COVID DOCUMENTATION

Юрій Харкевич. ОСОБА ЗЛОЧИНЦЯ ЯК КЛЮЧОВИЙ ЕЛЕМЕНТ КРИМІНАЛІСТИЧНОЇ ХАРАКТЕРИСТИКИ ПРАВОПОРУШЕНЬ ЩОДО ФАЛЬСИФІКАЦІЇ КОВІД-ДОКУМЕНТАЦІЇ. В науковій статті зосереджено увагу на одному з таких елементів криміналістичної характеристики як особа злочинця під час розслідування правопорушень за фактами підроблених ковід-документів. Проаналізовано особи злочинця через сукупність даних про соціально-демографічні, психофізичні, психологічні, біологічні і інші особливості суб'єкта, його виробничу, побутову, соціально-правову характеристики.

Зазначено, що особа злочинця представлена не тільки медичним персоналом, керівниками закладів охорони здоров'я, а й громадянами, які працюють у лікарнях на немедичних посадах або не мають відношення до медичної сфери, та діють через Інтернет самостійно або у змові з лікарями, медичними сестрами тощо. Наголошено, щодо у більшості випадків протиправні дії вчиняються у співучасті – групою осіб за попередньою змовою або організованою групою. Доведено, що криміналістичне дослідження особи злочинця у кримінальних провадженнях, пов'язаних із фальсифікацією ковід-документації, дозволяє встановити кореляційні зв'язки між іншими елементами криміналістичної характеристики (способом, місцем, часом, тощо) та повинно враховуватись для розкриття та попередження правопорушень. Акцентовано на взаємодії слідчих, оперативних підрозділів з відділами боротьби з кіберзлочинністю. Всі зазначені досягнення підтверджуються статистичними даними та практичними прикладами.

Ключові слова: *пандемія, коронавірус, заклади охорони здоров'я, ковід-сертифікати, особа злочинця, криміналістична характеристика, підробка документів.*

Relevance of the study. The duration of the pandemic, mutations of the virus became a kind of impetus for new manifestations of illegal activity. There was a temporary lull in coronavirus diseases at the beginning of the war, but it was short-lived. Sanctions of the Criminal Code of Ukraine, which provide for sanctions ranging from fines to imprisonment, do not stop criminals. Art. 362 "Unauthorized actions with information processed in electronic computing machines (computers), automated systems, computer networks or stored on the media of such information, committed by a person who has the right to access it", was registered together with others articles, such as Art. 366. "Official forgery", Art. 358 "Forgery of documents, seals, stamps and forms, sale or use of forged documents, seals, stamps", Art. 190 "Fraud", Art. 325 of the Criminal Code "Violation of sanitary rules and norms for the prevention of infectious diseases and mass poisoning" is not an exhaustive list of criminal offenses.

And if the provision of services to health care workers, there are effective legal methods of countering and preventing the commission of criminal offenses in the relevant field, such as the removal from the duties and positions of managers whose subordinates have entered false data into the electronic database, the registration of licenses of private entities. management elements, services, certification of laboratories, annulment of the contract between health care institutions and the National Health Service, etc. Civilians, ignoring the current legislation, not only spread fake information about vaccinations, but also actively engage in criminal activities in the form of their native "help" to unwitting citizens, using a wide variety of schemes from primitive to IT developments.

Recent publications review. The scientific basis for the study of forensic characteristics became the works of such outstanding scientists as: K. Antonov, V. Bakhin, A. Volobuev, V. Honcharenko, G. Gramovych, V. Zhuravel, A. Ishchenko, N. Klymenko, V. Konovalova, V. Lysychenko, V. Lysenko, G. Matusovskyi, M. Saltevskyi, M. Segai, L. Skalozub, P. Tsymbal, V. Shepitko, M. Shcherbakovsky and others. But scientific developments need constant updating in accordance with the modern needs of practice, technological development, etc. In today's conditions, the spread of coronavirus infections continues to grow, giving rise to offenses in the medical field, and requires additional research.

The article's objective is to research one of the elements of the forensic characteristics of offenses related to the falsification of COVID-documentation, i.e. the identity of the criminal.

Discussion. In numerous disputes regarding the components of forensic characteristics, both in ancient times and in the present conditions, scientists unanimously emphasize that such an element as the person of the criminal occupies a separate place and for objective research requires the study and analysis of numerous sources [4].

Scientists note that the study of the identity of the criminal is important for putting forward and verifying investigative versions of the involvement of a specific person in the investigated crime, his search and identification, for the tactically correct organization of individual investigative (search) actions and operative and investigative measures, establishing all accomplices of the crime, as well as other circumstances [13, p. 36].

The specified element is considered from a criminological, criminal-legal, operational-investigative, psychological point of view, which highlight only certain aspects. Scientific works on criminalistics consider such concepts as the identity of the criminal, the characteristics of officials who commit misappropriation of budget funds, the use of the subject of embezzlement, embezzlement of the subject, etc. We supplement the classic structure of criminal-legal characteristics and consider it more accurate from a criminalistics point of view to use the concept of "the person of the criminal", which represents general information for criminals of a certain category of proceedings, and not a single case.

As rightly noted by A. Volobuev, terminological confusion does not carry a useful scientific load, as a result of which it creates theoretical discussions that distract the attention of scientists from real investigative practices [1, p. 64]. So, the outstanding Ukrainian criminologist M. Saltevsky noted that the forensic characterization of a criminal should describe a person as a socio-biological system, the properties and signs of which are reflected in the material environment and used to investigate crimes. Such human properties include: physical, biological and social. This is a description of the features of a person's appearance and internal properties, which allows one to imagine the image of a person, his portrait as a socio-biological being [11, p. 422].

There are definitions of the identity of the criminal in a more narrow sense. Yes, I. Pisarchuk, considering budget crimes, claims that the subject of the crime can be any official

who has the right to dispose of budget funds, including relevant officials of enterprises, institutions and organizations whose financing is carried out at the expense of the budget and which are regulated by current budget legislation are recognized as administrators or recipients of budget funds. Managers of budget funds are budget institutions represented by their heads, authorized to receive budget allocations, make budget commitments, and make budget expenditures [10, p.103].

But in our research, only in some cases the subject of the crime can meet the above definition. Our earlier study of forensic and expert practice on offenses related to the falsification of COVID-documentation shows that in about 80 % of cases there is intellectual forgery of documents carried out by medical representatives, 10 % are forgery with signs of changes to the signs. As for the creation of fake electronic applications, developed as an attachment to the single portal of public services "Diya", all of them make up about 7 %. Such a relatively small percentage can be explained by the complexity of actions that require special knowledge in the field of IT technologies. Also, according to official data of the National Police of Ukraine, among the registered criminal proceedings for fraud and forgery of COVID-documentation, 92 % related to forgery of documents, the rest – fraudulent actions, implementation of electronic and computer systems and services [14, p. 64].

It is clear that the offenses investigated by us do not always encroach on the state budget. Therefore, during the study of the identity of the criminal, we will use the classic structure in criminology and consider as a set of data about socio-demographic, psychophysical, psychological, biological and other features of the subject, his production, household, socio-legal and socio-political characteristics. Considering crime in the sphere of the economy of Ukraine, O. Kalman rightly highlights the socio-demographic characteristics, which includes information about gender, age, marital status, education, profession, criminal record, etc., determines a certain status of a person, determined by his belonging to a certain class (social stratum) and to a group with socio-demographic characteristics [5].

Based on the predecessors, we will consider the forensic characteristics of the perpetrator of offenses related to the falsification of COVID documentation, and first of all, we will highlight the following properties: gender, age, marital status, education, profession, criminal record, level of culture, intelligence, emotional and volitional, psychological state, etc. Analyzing data from the verdicts of the Unified State Register of Court Decisions for the specified category of offenses, it is possible to obtain the necessary data on the identity of the offender. Here is one example.

PERSON_1, born in Kostopil, Ukrainian, citizen of Ukraine, officially not employed, registered and living at ADDRESS_1, not convicted, not being registered as a person who, in compliance with the requirements of Clause 15, Part 1, Article 7, Paragraph 1 Part 2 of Article 9 of the Law "On Licensing Types of Economic Activities", the right to carry out economic activities from medical practice is granted, in violation of the requirements of the Resolution of the Cabinet of Ministers of Ukraine dated March 11, 2020, No. 211 "On preventing the spread of acute respiratory disease on the territory of Ukraine COVID-19, caused by the SARS-CoV-2 coronavirus", as well as the procedure for conducting PCR testing specified by the order of the Ministry of Health of Ukraine No. 722 dated 28.03.2020, and the form for recording the results of laboratory tests provided for by the order of the Ministry of Health of Ukraine No. 1 dated 04.01.2001 "On approval of forms of medical accounting documentation used in laboratories of medical and preventive institutions", understanding that such investigations are carried out by licensed laboratories, the results of which are recorded in the appropriate format of certificates, which are an official document, as they are issued by an authorized entity that has a license to conduct laboratory research, with direct intent and anticipating the occurrence of socially dangerous consequences, using the details of the LLC "Medical Laboratory", with the indication of the license of the Ministry of Health of Ukraine for conducting economic activities from medical practice No. AE 571609 dated 20.11.2014, without conducting any laboratory tests, at a time not determined by the pre-trial investigation, being in a place not determined by the pre-trial investigation, using his own laptop brand "FUjITSU", Serial No: YLND020237, model: AH512, created and with the use of office equipment, produced a fake certificate about passing a laboratory test for the presence of the disease – COVID-19, No. 07636711 dated 09.09.2020, by the patient PERSON_2, noting in it a known false test result I am negative, as well as other data necessary for the possibility of using such a document as valid [3].

But for a greater study of the identity of the criminal, criminologists also pay attention

to criminal proceedings registered in the Unified Register of Pretrial Investigations, which, in combination with the analyzed verdicts, allowed us to obtain the following results. The age of offenders is mostly between 17 and 50 years old. However, the age had a direct dependence on the sex and profession of the criminals, as well as the method of producing forged documents. Women committed offenses at a more mature age, mostly worked in medical institutions, young people aged 27 and over used real forms in which they entered unreliable data. At the time, men involved in computer technology committed the offenses between the ages of 17 and 30 using color printers to produce forged documents.

Also, it can be seen that in 31 % of cases the criminals had a higher medical education, in 42 % – a secondary medical education, in 20 % – a higher education in the field of computer technologies or incomplete education in this direction, in 7 % – other. 90 % of people had family relationships (we believe that in this case, the official registration of the relationship does not affect the criminal behavior of the offender), among whom 73 % had minor children. 93 % of offenders had no previous convictions, were not registered with a psychiatrist or narcologist. In almost all cases, the place of residence was characterized positively. The person of the criminal is represented not only by medical personnel, managers of health care institutions, but also by citizens who work in hospitals in non-medical positions or are not related to the medical field, and act through the Internet independently or in collusion with doctors, nurses, etc.

We will give an example from practice, common in literally every region of our country. In one of the hospitals in Ratniv region, the offender, working as a software engineer, using his official position, entered false information about immunization against COVID-19 into the medical electronic information system and forged vaccination certificates, which he later sold. The reward was from 1,500 to 2,000 hryvnias. The suspect has a higher technical education, age 38, marital status – married, no criminal record. As we can see, although the offender was an employee of a health care institution, he did not have a medical education and his functional duties were not related to medical practice. In Khmelnytskyi, a traumatologist from one of the region's hospitals received 5,000 hryvnias through an intermediary. For this amount, he guaranteed vaccination documents and entering data into the relevant database [8].

Previously, scientists absolutely rightly proved that crimes related to economic activity are one of the constituent parts of crimes committed in connection with professional labor activity [7, p. 64.]. However, in today's conditions, this axiom does not work. Therefore, we believe that special attention should be paid to the developers of fake electronic applications, since this direction is relatively new and can lead to negative consequences if not warned in time.

For confirmation, we will give the following examples. In Kharkiv, the cyber police exposed a 17-year-old boy who not only faked the Diya application, but also created the largest channel for the distribution of fakes. More than 20,000 people subscribed to his Telegram bot and Telegram channel, which have already been blocked. The system worked according to a conceptually new scheme: user data was stored on a server that generated simulating web page of the "Action" program and there you could change any information about yourself.

A 21-year-old man, who was exposed by the employees of the department for countering cybercrimes in the Zaporizhia region, together with the investigators of the Zaporizhia district police department, in cooperation with representatives of the Ministry of Statistics, acted in a similar manner. The attacker developed a smartphone app that was identical in design to the state-run Action app. In addition, the web platform displayed a fake QR code, which even after scanning showed its successful validation page [8].

The analysis of other registered criminal proceedings allowed us to reach the following conclusions – these are young people, about 18-20 years old, male, with unfinished higher education, whose activities are related to the field of computer technologies, acting with guides from their circle of communication or relatives. Forensic scientists who studied economic crimes, including budget crimes, rightly claim that in most cases, illegal actions are committed with complicity – by a group of persons with a prior conspiracy or an organized group [10; 12]. Potential accomplices of such crimes are often medical workers, as a rule, who have friendly relations, their relatives, roommates, acquaintances from other fields of activity, in some cases – doctors who held managerial positions and their subordinates.

Let's give some examples. In 2001, in Vinnytsia, for 250 euros, criminals, which included medical workers, entered unreliable information about vaccination into the electronic health care system. Such services were advertised in closed messenger groups, and after paying

for them, unvaccinated citizens received digital certificates displayed in the "Action" application. A doctor from one of the capital's laboratories searched for clients himself or with the help of intermediaries. He was also assisted by three nurses who entered false data into the database and printed ready documents. In Vinnychyna, the cyber police exposed a criminal group of sellers of fake COVID-certificates. For 250 euros, criminals entered false information about vaccinations into the electronic health care system. The Vinnytsia businessman advertised his services in closed messenger groups. He was assisted in his criminal activities by medical professionals to whom he sent clients [8].

The psychological characteristics of the criminal in the specified offenses are characterized by a negative attitude towards the law, delusions of quick and easy enrichment, etc. Given that, in most cases, those accused of crimes related to the falsification of COVID-documentation signed a plea agreement, showed sincere remorse and actively assisted in solving the crime, it is possible to count on a change in their erroneous views. Therefore, the forensic investigation of the identity of the criminal in criminal proceedings related to the falsification of COVID-documentation allows establishing correlations between other elements of forensic characteristics (method, place, time, etc.) and should be taken into account for the detection and prevention of offenses.

Conclusions. Thus, it should be noted that the person of the criminal is represented not only by medical personnel; heads of health care institutions; as well as citizens who work in hospitals in non-medical positions; ordinary citizens who are not related to the medical field, but due to their professional skills have the opportunity to make changes in the electronic space independently or in collusion with doctors, nurses, etc. Establishing this element of forensic characteristics affects the qualification of the offense, the chosen method of committing the offense, the method of forging COVID-documentation, place, time, etc., and requires the coordinated interaction of investigators, operational units and cybercrime fighting departments.

Conflict of Interest and other Ethics Statements
The author declares no conflict of interest.

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ABSTRACT

The scientific article focuses on one of such elements of forensic characterization as the person of the criminal during the investigation of offenses based on the facts of forged COVID-documents. The identity of the criminal was analyzed through a set of data on socio-demographic, psychophysical, psychological, biological and other features of the subject, his production, household, socio-legal characteristics.

It is noted that the person of the criminal is represented not only by medical personnel, managers of health care institutions, but also by citizens who work in hospitals in non-medical positions or are not related to the medical field, and act via the Internet independently or in collusion with doctors, nurses etc. It is emphasized that, in most cases, illegal actions are committed in complicity – by a group of persons with a prior conspiracy or an organized group.

It has been proven that the forensic investigation of the identity of the criminal in criminal proceedings related to the falsification of COVID documentation allows establishing correlations between other elements of forensic characteristics (method, place, time, etc.) and should be taken into account for the detection and prevention of offenses. Emphasis is placed on the interaction of investigative and operational units with cybercrime fighting departments. All mentioned achievements are confirmed by statistical data and practical examples.

Keywords: *pandemic, coronavirus, health care facilities, COVID certificates, identity of the criminal, forensic characteristics, forgery of documents.*

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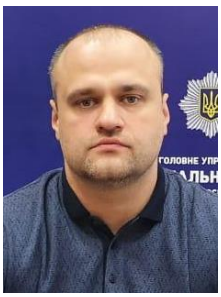

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TACTICS FOR EXAMINING THE SCENE WHEN INVESTIGATING SHOPLIFTING

Тарас Воліков. ТАКТИКА ОГЛЯДУ МІСЦЯ ПОДІЇ ПРИ РОЗСЛІДУВАННІ КРАДІЖОК З МАГАЗИНІВ. В статті розглядаються організаційні та тактичні особливості проведення огляду місця події при розслідуванні крадіжок з магазинів. Наголошується, що від своєчасності та якості проведення оглядів у багатьох випадках залежить успіх розслідування кримінальних правопорушень зазначеної категорії. Організаційно-тактичні особливості огляду місця події розглядаються на кожному з трьох етапів: підготовчому, робочому та заключному.

Приділяється увага тактиці огляду на робочому етапі. Після проведення організаційно-підготовчих заходів слідчий переходить до робочої стадії огляду. Метод огляду обирається в залежності від конкретної обстановки, що склалась на місці події. При розслідуванні крадіжок з магазинів, огляд починається з вхідних дверей та проводиться концентричним способом. У разі, коли спочатку виявлено місце проникнення до магазину, огляд проводиться також концентричним способом, починаючи з цього місця. У будь-якому випадку, огляд території приміщення магазину проводиться не суцільно, а вибірково. Щоб виявити сліди на місці події, необхідно скласти модель події, тобто загальне уявлення про характер і хід події, що відбулася; ознайомитися з обстановкою місця події, встановити стан і положення окремих предметів до події, виділити місця ймовірного розташування слідів, взаємозв'язок різних слідів та механізм їх утворення, визначити шляхи приходу та відходу злочинців. Виходячи зі створеної моделі події в цілому, визначаються вузлові ділянки приміщення, місцевості, конкретизуються предмети, що знаходяться на ділянках, на яких, ймовірніше могли бути залишені сліди. При цьому треба виходити з обстановки місця події, з властивостей слідосприймаючої поверхні, механізму утворення різних слідів. Під час огляду доцільно керуватися принципом комплексного підходу до пошуку слідів, тобто необхідно ретельно шукати сліди, утворені різними об'єктами: сліди рук, взуття, знарядь злому, мікрочастинки, запах тощо. Сліди треба виявляти в повному обсязі, не варто робити передчасні висновки щодо ідентифікаційної значимості слідів, оскільки часто навіть неповні або нечіткі сліди можуть мати важливе криміналістичне значення.

Приділяється увага негативним обставинам, що можуть свідчить про інсценування крадіжки. Ними можуть бути невиправдані порушення обстановки, замикаючих пристроїв, відсутність слідів злочину у місцях, де вони за логікою повинні бути. В окремих випадках характер злому перешкод може свідчити, що їх було зламано не ззовні, а з внутрішньої сторони приміщення. Заключний етап огляду полягає в узагальненні, аналізі та оцінці зібраної інформації та фіксації його результатів. Про проведення огляду слідчий складає протокол, який є обов'язковим засобом фіксації даної слідчої (розшукової) дії.

Зроблено висновок, що розглянута слідча (розшукова) дія є однією з важливих з точки зору інформативності. Від успіху її проведення залежить подальший хід розслідування. Вдосконалення тактичних прийомів проведення огляду та вплив його результатів на проведення інших слідчих (розшукових) дій за даною категорією справ є перспективним напрямом наукових розробок.

Ключові слова: *розслідування, слідчий, крадіжки з магазинів, огляд місця події, сліди, тактичні прийоми.*

Relevance of the study. The Constitution of Ukraine declares the inviolability of the right to private property and the inviolability of housing from any illegal encroachments (Art. 30, 41). The inviolability of private property is recognized as an extraordinary social value in the conditions of the renewal of our society, the formation of a democratic, legal state. Protection of private property, its protection from criminal encroachments was and remains one of the most important tasks of law enforcement agencies. The economic situation in the state,

the level of prosperity of the population in recent years, unfortunately, does not contribute to reducing the level of self-interested crime. Shoplifting accounts for a significant amount. Statistical data show that the disclosure and investigation of these thefts is not fully satisfactory in the practice of combating crime.

The reasons for the low effectiveness of the investigation are diverse, both objective and subjective in nature. The main factors include insufficient security of store premises; criminals' choice of the time of committing crimes, which does not contribute to the establishment of witnesses and eyewitnesses; untimely notification of the police authorities about the committed crime, which makes it impossible to use the method of investigating crimes on "hot" tracks; the heavy workload of investigative units, which leads to the relegation of the investigation of these thefts to the "second plan". One of the reasons is also the lack of scientifically based recommendations for carrying out separate investigative (search) actions, in particular, inspections during the investigation of shoplifting.

Recent publications review. The peculiarities of conducting investigative (search) actions during the investigation attracted the attention of many. Among them, such scientists as: V. Bakhin, V. Bernaz, A. Volobuev, V. Goncharenko, V. Zhuravel, A. Ishchenko, N. Klymenko, V. Konovalova, V. Kuzmichev, V. Lysychenko, V. Lukashevich, E. Lukyanchikov, G. Matusovskyi, M. Saltevskyi, K. Chaplinskyi, V. Shepitko and others. However, in the works of scientists, attention was not paid to the specifics of conducting an inspection in the investigation of thefts from stores, which testify to the relevance of the study of these problems.

The article's objective. The purpose of the article is to highlight the tactical techniques used when conducting an inspection of the scene during the investigation of shoplifting.

Discussion. A special place among investigative (research) actions aimed at obtaining evidentiary information from material sources belongs to the review. According to art. 237 of the Criminal Procedure Code of Ukraine, in order to identify and record information about the circumstances of the commission of a criminal offense, investigators and prosecutors conduct an inspection of the area, premises, things and documents.

One of the main types of inspection is the inspection of the scene. It belongs to the primary, unique and irreplaceable investigative (search) actions. It cannot be replaced by other investigative (search) actions, in particular, interrogations of persons who are eyewitnesses to a criminal event, since no witness is able to give in their testimony the necessary amount of information that the investigator can discover directly during the inspection of the scene of the event. During its conduct, all objects that may relate to a criminal offense are examined, depending on the specific investigative situation, according to the internal conviction of the investigator. Therefore, the informativeness of an investigative review is much higher than, for example, a search or an investigative experiment [1, p. 51]. That is why the development and improvement of tactical methods of this investigative (search) action is relevant for the practice of investigation.

Summarizing the views of scientists, it can be noted that inspection is understood as a procedural action, which consists in the direct perception of objects with the aim of identifying traces of a criminal offense and other material evidence, clarifying the mechanism of a criminal event, as well as circumstances relevant to criminal proceedings [2, p. 217; 3, p. 3; 4, p. 334]. During the investigation of thefts, the inspection allows the investigator to: directly perceive the scene and objects in order to identify traces of the crime; create an idea about the mechanism of the committed criminal offense; to identify, record, remove, investigate and evaluate traces of a crime, negative circumstances and other material evidence that is important for criminal proceedings; to establish the circumstances, reasons and conditions that contributed to the commission of a criminal offense; create an idea about the identity of the criminal; timely put forward investigative or investigative versions and correctly determine the directions of the pre-trial investigation; to receive initial information for the organization of the search for the criminal and the implementation of urgent investigative (search) actions; detain criminals on the hot trail or determine the directions of their pursuit, establish the number of criminals, etc.

The generalization of criminal proceedings regarding thefts committed from store premises allowed us to conclude that the inspection was carried out in 95 % of cases. It should be noted that the success in the investigation of criminal offenses of the specified category depends on the timeliness and quality of inspections in many cases. Any unwarranted delay in the inspection of the crime scene may result in the destruction of the crime scene. When

investigating thefts committed from store premises, the scene may be the following objects: premises of the store's sales hall; storage facilities located in the store; offices of store management; utility rooms, corridors; possible places of arrival and departure of criminals (windows, passage for unloading and loading goods); the surrounding area.

The inspection of the scene consists of three main stages: preparatory; working and final [4, p. 336]. We can agree with the opinion of V. Shepitka, who points out that the preparation for the inspection is a certain set of measures of an organizational and security nature, which create favorable conditions for its implementation [5, p. 198].

During the investigation of thefts committed from the premises of shops, the preparatory stage of the inspection must begin from the moment of decision on the conduct of an investigative (search) action and include the activities of the investigator, the prosecutor before going to the scene of the incident and directly at the scene of the incident.

The study of investigative practice, the generalization of scientific literature and the results of the survey of employees of investigative units allow us to conclude that before going to the scene of the incident, the investigator should carry out the following organizational and preparatory measures:

– to ensure the immediate arrival of the investigative team at the scene of the incident. The review may be postponed due to adverse conditions, but with the mandatory security of the scene. A minimum period of time must elapse between the receipt of initial information about the commission of a criminal offense and the beginning of an investigative review. The generalization of investigative practice allows us to conclude that the optimal period of time should not exceed 15 minutes. Ignoring the principle of urgency, unjustified and unwarranted delay in the examination can lead to negative consequences, in particular, to a change in the situation at the scene, destruction of traces of a criminal offense and physical evidence [1, p. 58];

– in the case of the impossibility of the immediate arrival of the investigative-operational team at the scene of the incident, to ensure its protection. This measure is most often provided at the request of police officers by store security or sellers, depending on the time of the crime;

– to ensure that witnesses and eyewitnesses are left at the scene of the incident until the arrival of the investigative team;

– to prepare the necessary scientific and technical means. The use of scientific and technical means, the use of scientific achievements and strict adherence to forensic rules for handling material sources of evidentiary information is important for conducting an examination [6, p. 50].

– to resolve the issue regarding the use of a service search dog.

Upon arrival at the scene, the investigator must take the following organizational measures:

– remove outsiders from the scene and take measures to preserve traces of a criminal offense and material evidence;

– take measures to identify eyewitnesses to a criminal offense;

– take measures to organize the pursuit and detention of hot-track criminals.

After carrying out organizational and preparatory measures, the investigator proceeds to the working stage of the inspection, during which he gets acquainted with the situation at the scene of the incident, determines the boundaries of the inspection, puts forward versions of the crime event. If the activity of the investigator at the organizational and preparatory stage has an organizational nature, then at the working stage it acquires a research character. The working stage of the investigative review consists of a number of tactical techniques that precede the review itself and accompany it [1, p. 51]. Review tactics should be understood as a complex of the most effective and rational techniques and methods of action or the most appropriate line of behavior of the investigator, which ensures the detection of the maximum number of traces of a criminal offense, physical evidence and the establishment of circumstances that are important for criminal proceedings.

The inspection method is chosen depending on the specific situation at the scene. As a rule, the examination in the investigation of thefts committed from store premises begins with the entrance door to the store. In this case, the concentric method of inspection should be chosen. In the event that the point of entry to the store is first detected, the inspection is also carried out in a concentric manner, starting from this point. In any case, the inspection of the territory of the store premises is not carried out continuously, but selectively. In order to detect traces at the scene of the event, it is necessary to make a model of the event, that is, a general

idea of the nature and course of the event that took place; familiarize yourself with the situation at the scene of the event, establish the condition and position of individual objects before the event, identify the likely locations of traces, the relationship of various traces and the mechanism of their formation, determine the ways of the criminals' arrival and departure. Based on the created model of the event as a whole, the nodal areas of the premises and terrain are determined, and the objects located in the areas where traces could most likely have been left are specified. At the same time, it is necessary to proceed from the situation of the scene, from the properties of the trace-receiving surface, and the mechanism of the formation of various traces. During the inspection, it is advisable to be guided by the principle of an integrated approach to the search for traces, that is, it is necessary to carefully search for traces formed by various objects: handprints, shoes, burglary tools, microparticles, odor, etc. Traces should be detected in their entirety, one should not make premature conclusions about the identification value of traces, since often even incomplete or unclear traces can have important forensic value.

A thorough and high-quality investigation of the situation at the place of theft allows you to get the maximum amount of information for the successful identification and search of the criminal. For example, random destruction of obstacles, specifics of stolen items can indicate the age of criminals; the place of penetration and its dimensions - on the body; the method of opening locking devices and other obstacles – on the used hacking tools and professional skills of the criminal; location of broken obstacles – on his physical strength. Researching the subject of illegal encroachment allows you to make assumptions about the places of possible sales, connections of criminals, their inclinations, preferences.

The objects discovered during the inspection must be pre-examined directly at the scene, which allows to obtain a certain amount of information necessary for the search of the criminal on the hot tracks. Such an investigation is usually carried out by a forensic specialist. Thus, the study of handprints allows with a certain percentage of probability to determine the gender, age, features of the structure of the hands, and the number of criminals. The study of shoe traces determines the number of criminals, their gender, height, and characteristics of shoes.

When inspecting the place of theft, it is necessary to pay attention to negative circumstances that may indicate that the theft was staged. They can be unjustified violations of the situation, locking devices, the absence of crime traces in places where they should logically be. In some cases, the nature of breaking obstacles may indicate that they were broken not from the outside, but from the inside of the room.

When removing traces, the following rules must be followed: try to remove traces together with the object on which they are formed. If the trace is on a low-value bulky object, it is advisable to remove the trace together with a part of the object; if it is impossible to remove the object or its part with a trace, it is copied by making casts or by copying onto trace copying materials; when removing traces on an object, it is important to record the position of the object or its parts at the place of detection, indicate where the outer and inner sides, lower or upper sides of the object are, etc.; the objects themselves or their copies should be packed in such a way as to exclude the possibility of damage to traces during transportation and storage. The package is sealed, an accompanying text is attached to it indicating what is in it, where, when, by whom and in connection with what it was removed and certified by the signatures of the investigator and witnesses [7, p. 98].

The final stage of the review consists in summarizing, analyzing and evaluating the collected information and recording its results. The investigator draws up a report on the inspection, which is a mandatory means of recording this investigative (search) action.

Conclusions. Having considered the peculiarities of conducting an inspection in the investigation of shoplifting, it can be noted that the considered investigative (search) action is one of the most important from the point of view of informativeness. The further course of the investigation depends on its success. Improving the tactical techniques of conducting the review and the influence of its results on the conduct of other investigative (search) actions for this category of cases is a promising direction of scientific development.

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

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ABSTRACT

The article deals with the organizational and tactical features of conducting an inspection of the scene during the investigation of shoplifting. It is emphasized that the success of the investigation of criminal offenses of the specified category depends on the timeliness and quality of inspections in many cases. Organizational and tactical features of the inspection of the scene of the event are considered at each of three stages: preparatory, working and final.

Attention is paid to review tactics at the working stage. After carrying out organizational and preparatory measures, the investigator moves to the working stage of the review. The inspection method is chosen depending on the specific situation at the scene. Based on the created model of the event as a whole, the nodal areas of the premises and terrain are determined, and the objects located in the areas where traces could most likely have been left are specified. At the same time, it is necessary to proceed from the situation of the scene, from the properties of the trace-receiving surface, and the mechanism of the formation of various traces. During the inspection, it is advisable to be guided by the principle of an integrated approach to the search for traces, that is, it is necessary to carefully search for traces formed by various objects: handprints, shoes, burglary tools, microparticles, odor, etc.

Attention is paid to negative circumstances that may indicate that the theft was staged. They can be unjustified violations of the situation, locking devices, the absence of crime traces in places where they should logically be. In some cases, the nature of breaking obstacles may indicate that they were broken not from the outside, but from the inside of the room. The final stage of the review consists in summarizing, analyzing and evaluating the collected information and recording its results.

It was concluded that the considered investigative (research) action is one of the important ones from the point of view of informativeness. The further course of the investigation depends on its success. Improving the tactical techniques of conducting the review and the influence of its results on the conduct of other investigative (search) actions for this category of cases is a promising direction of scientific development.

Keywords: *investigation, investigator, thefts from the shops, review of place of event, tracks, tactical receptions.*

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CRIMINAL LAW AND FORENSIC CLASSIFICATION OF CRIMES RELATED TO FIRES

Катерина Покраса. КРИМІНАЛЬНО-ПРАВОВА І КРИМІНАЛІСТИЧНА КЛАСИФІКАЦІЯ ЗЛОЧИНІВ, ПОВ'ЯЗАНИХ З ПОЖЕЖАМИ. В статті розглянуто кримінально-правова та криміналістична класифікація злочинів, пов'язаних з пожежами. Наголошено, що кримінальним законодавством України передбачено кілька видів злочинів, у механізмі вчинення яких має місце пожежа. Це різноманітні злочини, склади яких сформульовано в різних розділах Особливої частини Кримінального кодексу України. Розглянуто категорію кримінальних правопорушень об'єднаних з криміналістичної точки зору в одну групу, де засобом вчинення є підпал: диверсія; умисне знищення або пошкодження майна; незаконне заволодіння ґрунтовим покривом земель; порушення правил охорони або використання надр, незаконне видобування корисних копалин; знищення або пошкодження лісових масивів; умисне знищення або пошкодження територій, взятих під охорону держави, та об'єктів природно-заповідного фонду; терористичний акт; масові заворушення; умисне знищення або пошкодження майна працівника правоохоронного органу, державної виконавчої служби, приватного виконавця; умисне знищення або пошкодження майна службової особи чи громадянина, який виконує громадський обов'язок у зв'язку з їхньою службовою чи громадською діяльністю; умисне знищення або пошкодження майна, що належить журналісту, його близьким родичам чи членам сім'ї; умисне знищення або пошкодження майна судді, народного засідателя або присяжного; умисне знищення або пошкодження військового майна.

Зазначається, що наведені кримінальні правопорушення зазвичай суттєво відрізняються один від одного за своїми кримінально-правовими ознаками: об'єктом і предметом посягання, суб'єктом, формою вини тощо. Але у механізмі їх вчинення важливу роль відіграє спосіб вчинення – підпал та виникаюча при цьому пожежа, що відбувається у специфічній обстановці, утворює характерні сліди. Тобто, за криміналістичними ознаками зазначені кримінальні правопорушення можуть бути об'єднані в одну групу для якої потрібно розробити загальні теоретичні положення та практичні рекомендації.

Зроблено наголос на тому, що у розглянутих кримінальних правопорушеннях є спільне та важливе з криміналістичної точки зору: наслідки дії вогню, виявлення яких є підставою для початку кримінального провадження. Саме наслідки пожежі, як правило, є вихідною інформацією і фактором, що визначає характер слідчих ситуацій на початковому етапі розслідування. Ця обставина обумовлює спільність окремих теоретичних положень і практичних рекомендацій щодо розслідування цих правопорушень і дає підстави об'єднати їх в окрему однорідну з криміналістичної точки зору групу для розробки основних положень методики їх розслідування.

Ключові слова: *кримінальні правопорушення, кваліфікація, розслідування, спосіб вчинення злочину, пожежа, підпал.*

Relevance of the study. The criminal legislation of Ukraine provides for several types of crimes, in the mechanism of which fire takes place. These are various crimes, the components of which are formulated in various sections of the Special Part of the Criminal Code of Ukraine [1]. But they also have something in common, which is important from a forensic point of view: the consequences of fire, the detection of which is the basis for initiating criminal proceedings. As a rule, the consequences of the fire are the initial information and the factor that determines the nature of investigative situations at the initial stage of the investigation. This circumstance determines the commonality of certain theoretical provisions and practical recommendations regarding the investigation of these offenses and

gives grounds for combining them into a separate homogeneous group from a criminological point of view for the development of the main provisions of the methodology of their investigation.

Recent publications review. Development of methods of investigation of certain types of criminal offenses such scientists as: Y. Alenin, V. Bakhin, A. Volobyev, A. Ishchenko, N. Klymenko, V. Konovalova, V. Kuzmichev, V. Lisichenko, V. Lukashevich, E. Lukyanchikov, O. Odery, I. Pyrih, M. Pogoretsky, M. Saltevsky, M. Segay, R. Stepanyuk, V. Tishchenko, L. Udalova, P. Tsimbal, K. Chaplinsky, S. Chernyavsky, V. Shepitko and other scientists. However, in the scientific works of these scientists, insufficient attention was paid to the qualification and investigation of criminal offenses related to fires.

The article's objective. Identifying the category of criminal offenses and combining them from a criminalistics point of view into one group, where the means of commission is arson.

Discussion. Let's consider the category of criminal offenses united from a criminological point of view into one group, where the means of commission is arson.

Sabotage is a crime against the foundations of national security of Ukraine and provided for in Art. 113 of the Criminal Code. This crime can be committed by arson and is aimed at the mass destruction of people, harming their health, destroying or damaging objects of important economic or defense importance with the aim of weakening the state. The direct object of this crime is the economic basis and internal security of Ukraine.

Deliberate destruction or damage to property is a criminal offense against property, the direct object of which is property relations and provided for in Part 2 of Art. 194 of the Criminal Code. The crime consists in destroying or damaging someone else's property by arson, explosion or other generally dangerous means.

Liability for illegal possession of the soil cover (surface layer) of lands, provided for in Part 2 of Art. 239-1, if it created a danger to life, health of people or the environment, committed by arson, explosion or other generally dangerous method or caused the death of people, mass death of objects of animal or plant life or other serious consequences.

Among the criminal offenses against the environment (Chapter VIII of the Criminal Code of Ukraine), which consist in the destruction or damage of objects of the natural environment by fire, the following can be distinguished:

– violation of the rules of protection or use of subsoil, illegal extraction of minerals (Part 4, Art. 240 of the Criminal Code), if this created a danger to life, health of people or the environment, committed by arson, explosion or other generally dangerous method;

– destruction or damage of forest areas (Art. 245 of the Criminal Code), committed by arson.

– intentional destruction or damage of territories taken under state protection and objects of the nature reserve fund, committed by arson or in another generally dangerous way, if this caused the death of people or other serious consequences (Part 2, Art. 252 of the Criminal Code).

The object of a terrorist act (Art. 258 of the Criminal Code) is public safety. It can be committed, including by carrying out explosions, arson or other actions that create a danger to human life or health or cause significant property damage or the occurrence of other serious consequences. The purpose of a terrorist act is a violation of public security, intimidation of the population, provocation of a military conflict, international complication, influence on decision-making or the execution or non-execution of actions by state authorities or local self-government bodies, officials of these bodies, associations of citizens, legal entities, international organizations, or drawing public attention to certain political, religious or other views of the terrorist.

The object of committing mass riots (Art. 294 of the Criminal Code) is public order. This crime manifests itself in the organization of group actions accompanied by violence against a person, pogroms, arson, destruction of property, seizure of buildings or structures and other dangerous actions aimed at disrupting public order.

Separate articles of Chapter XV of the Criminal Code of Ukraine "Crimes against the authority of state authorities, local self-government bodies, citizens' associations and criminal offenses against journalists" provide for liability for criminal offenses committed, including by arson:

– intentional destruction or damage to the property of an employee of a law enforcement agency, a state executive service, a private executor (Part 2 of Art. 347 of the Criminal Code);

– intentional destruction or damage to the property of an official or a citizen who performs a public duty in connection with their official or public activities, as well as committing such actions against their close relatives (Part 2 of Art. 352 of the Criminal Code);

– intentional destruction or damage to property belonging to the journalist, his close relatives or family members, in connection with the journalist's legitimate professional activity (Art. 347-1 of the Criminal Code)

Intentional destruction or damage to the property of a judge, people's assessor or juror (Part 2 of Art. 378 of the Criminal Code), intentional destruction or damage to the property of a defender or representative of a person or their close relatives, in connection with activities related to the provision of legal assistance (Part 2 of Art. 399 of the Criminal Code). These crimes encroach on the life, health, personal safety, and property of judges, people's assessors, and other members of the judiciary in connection with their performance of duties, administration of justice, or provision of legal aid (Chapter XVIII of the Criminal Code of Ukraine).

Intentional destruction or damage to military property (Part 2 of Art. 411 of the Criminal Code) involves the destruction or damage of weapons, military supplies, means of transportation, military and special equipment or other military property by arson or in another generally dangerous way. The direct object of this crime is the procedure for using military property (Chapter XX of the Criminal Code).

The listed criminal offenses usually differ significantly from each other in terms of their criminal law characteristics: the object and subject of the offense, the subject, the form of guilt, etc. But in the mechanism of their perpetration, the method of perpetration plays an important role – arson and the resulting fire, occurring in a specific environment, form characteristic traces. That is, according to forensic characteristics, the mentioned criminal offenses, in our opinion, can be combined into one group for which general theoretical provisions and practical recommendations need to be developed.

Analysis of criminal legislation shows that concepts such as "arson" and "fire" are used to determine the characteristics of certain crimes of this group. Our study of the norms of criminal law and special legal literature allows us to conclude that until now there is no single approach to defining these concepts that would be acceptable for use in special and legal literature, although this is important for the legal assessment of the event under investigation. A clear definition of the content of these concepts is important for learning the essence of crimes of this group and carrying out their criminological classification.

In the explanatory dictionary of the Ukrainian language, a fire is defined as "a flame that engulfs and destroys everything that can burn, as well as burning itself, the destruction of something by fire, a place where something burns or burned" [2, p. 1013]. In the normative legal acts that regulate legal relations in the field of fire safety, a fire is defined as an uncontrolled process of destruction or fire damage to property, during which factors dangerous to creatures and the natural environment arise [3]. In the special literature, essentially the same definition is used [4]. The corresponding concept of fire as the uncontrolled burning of objects outside a special fire, which creates a direct threat to the life and health of people, property or the environment, is used in criminal and legal literature and scientific research [5, p. 252].

Considering a fire as a burning process that causes harmful consequences, these definitions from a legal point of view, in our opinion, do not take into account a number of important points. According to the criminal law, a fire is a crime in those cases when its occurrence and development are causally related to a careless or deliberate, criminally punishable act of a person, resulting in socially dangerous consequences. Therefore, from a legal point of view, a fire should be defined as uncontrolled burning, which appeared as a result of an illegal act of a person, resulting in socially dangerous consequences. Such consequences include: physical harm to life and health of people or destruction or damage to property. A fire that was the result of certain human actions and caused property or physical damage to people's health entails criminal responsibility, i.e., constitutes a certain component of the crime. At the same time, the concept of "arson" is used to define such acts in criminal legislation.

Arson or arson is an action that consists in bringing fire to any objects, or "setting fire to something, forcing it to engage, burn" [2, p. 961]. The concept of arson is used to define the intentional actions of a person who wants to use the properties of fire to achieve a criminal goal: loss of life, destruction or damage to property, disorganization of the activities of state bodies, intimidation of government officials and the population, etc. Due to the ease of

obtaining fire, criminals use it to commit or conceal criminal offenses. Once ignited, the fire spreads quickly and has a devastating effect on the environment. At the same time, the combustion process is difficult and sometimes impossible to control. Thus, arson is a type of generally dangerous way of committing various crimes. In addition, arson can be used by a criminal as a means of concealing the traces of other, previously committed crimes, such as, for example, murder, misappropriation or waste of property or taking possession of it by abuse of official position, etc.

When defining the concept of arson as a way of committing a crime, it is necessary to take into account that in the event of a fire, not only the specified property is destroyed or damaged, but also the life, health and property interests of a significant number of persons are put in real danger. In addition, arson acts as a method of committing such crimes as sabotage and mass riots, the object of which is the internal security of the state and public safety, respectively. Among the crimes in which arson acts as a method of committing the crime, the legislator classified them as serious, therefore, in the definition of the concept of «arson», this should be reflected in the indication of causing serious consequences, which characterize the high degree of public danger of the considered method. It should also be noted that in Resolution No. 3 of the Plenum of the Supreme Court of Ukraine dated 03.03.2000 "On amendments and additions to the Resolution of the Plenum of the Supreme Court of Ukraine dated July 2, 1976 No. 4 "On issues arising in the judicial practice in cases of destruction and damage of state and collective property by arson or as a result of violation of fire safety rules" it is determined that the intentional destruction or damage of state or collective property by arson is the destruction or damage of such property by fire, if at the same time there was a threat to life and health. people or causing significant material damage. Therefore, the intentional destruction or damage of property by fire, which did not create such a threat (for example, burning an item in the oven), cannot be considered as a qualifying sign of arson [6].

When arson is used to commit a crime, almost any circumstance aggravating responsibility may occur, or a combination of these circumstances, because, having triggered the destructive forces of fire, the guilty person loses the opportunity to control them, to stop their spontaneous development. The objective side of this composition is characterized by active physical actions aimed not only at the occurrence of combustion, but also, mainly, at the creation of conditions for the occurrence of fire.

When a criminal intentionally commits arson, he expects that the maximum material damage or other harmful consequences will be caused with the help of fire. After the introduction of such a source of increased danger as a fire, the culprit, as a rule, is deprived of the opportunity to limit the spread of the fire and thereby affect the amount of harmful consequences or voluntarily refuse to bring the crime to an end. Taking into account the above, arson can be characterized as a deliberate, illegal, socially dangerous act that caused uncontrolled burning, committed with the aim of depriving a person of life or health or causing him material damage.

From a criminalistics point of view, the following are distinguished from the methods of committing offenses in the case of using fire as a means of intentionally causing harm: "1) that do not require significant preparation when introducing a source of combustion for their ignition; 2) with the use of auxiliary combustible materials or substances that were at the scene of the crime or were brought from outside to guarantee ignition; 3) with the use of special technical means, pre-prepared ignition devices, designed for high reliability and conspiracy when committing criminal acts, as well as a given ignition time" [7].

Conclusions. Taking into account the above, arson can be characterized as a deliberate, illegal, socially dangerous act that caused uncontrolled burning, committed with the aim of depriving a person of life or health or causing him material damage. The methods of committing arson are a key element of the forensic characterization of criminal offenses committed by arson, which connects other elements: the environment in which the crimes are committed, the trace pattern, the characteristics of the criminal's identity. The development of the method of committing arson in connection with other elements of forensic characteristics is a promising direction for further scientific research.

Conflict of Interest and other Ethics Statements
The author declares no conflict of interest.

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ABSTRACT

The article deals with the criminal law and forensic classification of crimes related to fires. It is emphasized that the criminal legislation of Ukraine provides for several types of crimes, in the mechanism of which fire takes place. These are various crimes, the components of which are formulated in different sections of the Special Part of the Criminal Code of Ukraine. The category of criminal offenses united from a criminalistics point of view into one group, where the means of commission is arson, is considered.

It was concluded that the considered criminal offenses have something in common and important from a criminalistics point of view: the consequences of fire, the detection of which is the basis for initiating criminal proceedings. This circumstance determines the commonality of certain theoretical provisions and practical recommendations regarding the investigation of these offenses and gives grounds for combining them into a separate homogeneous group from a criminological point of view for the development of the main provisions of the methodology of their investigation.

Keywords: *criminal offenses, qualification, investigation, method of committing the crime, fire, arson.*

PSYCHOLOGICAL AND EDUCATIONAL ASPECTS OF MODERN PROFESSIONAL ACTIVITIES

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CORRELATION OF INDICATORS OF COMBAT STRESS AND PSYCHO-EMOTIONAL STATE OF POLICE OFFICERS DURING THE WAR

Ірина Кофан, Олена Никифорова, Валентина Ляшенко. КОРЕЛЯЦІЯ ПОКАЗНИКІВ БОЙОВОГО СТРЕСУ ТА ПСИХОЕМОЦІЙНОГО СТАНУ ПРАЦІВНИКІВ ПОЛІЦІЇ В УМОВАХ ВІЙНИ. У статті аналізуються психоемоційні та особистісні зміни поліцейських після ротаційного повернення із зони ведення бойових дій. Викладені і проаналізовані результати емпіричного дослідження доводять деструктивний вплив бойового стресу на формування комплексу симптомів підвищеної збудливості. Їх розвиток обумовлений фіксацією поліцейських на надмірній інтенсивності травматичної події, досвіді реальної загрози життю. досвід участі у бойових діях свідчить, що напруженість, часто непідготовленість до діяльності в екстремальних ситуаціях, недостатність часу для відпочинку, погане харчування й матеріально-технічне постачання, відрив від родини – потужні фактори, які, накопичуючись, викликають негативні психічні зміни у певної частини поліцейських.

Зазначена необхідність попередження таких змін, зневага ними може привести до незворотних наслідків та викликати серйозні захворювання. Вивчення поширеності станів психічної дезадаптації серед особового складу залежно від строків перебування в районах активних бойових дій на території України свідчить про значне наростання подібного числа випадків при тривалому безперервному знаходженні в такій ситуації. При цьому, в ході дослідження виявлено, що стійко знижувалася кількість осіб, у яких на момент обстеження не виявилися симптоми нервово-психічних розладів. Найбільшою мірою підпадали психологічному

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впливові бойової обстановки ті, хто мав високий рівень освіти, був більш старшого віку, а головне, мав велику кількість соціальних зв'язків. Отже, психіка нормальної людини без спеціальної підготовки до дій в бойових умовах не здатна витримати впливу бойових стрес-факторів.

Ключові слова: *тривожність, бойовий стрес, посттравматичний стресовий синдром.*

Relevance of the study. Immediately after the president of the russian federation announced the start of a "special military operation in Donbas" on February 24, 2022, powerful explosions were heard in many cities of Ukraine, russia resorted to a massive missile attack on our territory and went on the offensive on land from the north (the territories of Belarus and the russian federation), the south (from Crimea) and from the east (ORDLO). An active phase of hostilities on the territory of Ukraine began, which continues to this day. However, the problem of post-traumatic stress disorders, psychological rehabilitation of police officers on rotation, adaptation of forced migrants remains relevant and have a permanent nature. The peculiarity of the situation in Ukraine is that the ongoing war has an unpredictable course in time, and powerful modern psychological weapons can lead to a massive negative impact on the mental state of the civilian population.

The problem of studying, diagnosing and correcting negative psychological consequences arising from the influence of stressful factors, the sources of which are various traumatic events (accidents, disasters, military actions, violence), is one of the most urgent. Combat actions in the country affect the formation of combat mental injuries in police officers, which in turn can lead to disorders of mental activity, complete or partial loss of combat capacity, and subsequently, work capacity and maladaptation in society. Many police officers, in particular those who came from the zone of active hostilities (Kyiv direction), encountered a dissonance in the perception of peaceful life in large cities of Ukraine, which are located in the rear, against the background of a large number of cases of torture of the civilian population, the death of fellow citizens, etc. Therefore, the military-political and socio-psychological situation in the country determines the relevance of the issue of the impact of combat stress on the psycho-emotional states of police officers who were in the zone of active hostilities and during the investigation of crimes committed by russian attackers.

Recent publications review. The research is based on the theoretical propositions of E. Potapchuk on preserving the mental health of military personnel [5], L. Kitaeva-Smyk on the regularities of the influence of chronic stress on the psyche of military personnel [2, 3], M. Korolchuk on psychophysiological principles of stress resistance of police officers in conditions of extreme professional activity [3], etc.

The analysis of works [1, 3, 4, etc.] devoted to the study of the impact of combat stress on the occurrence of negative mental states of police officers, on the basis of which post-traumatic stress disorders develop, allows us to clarify the concept of combat stress.

The article's objective. The purpose of the research is theoretical and experimental substantiation of the psychological regularities of the impact of combat stress on the psycho-emotional state of police officers during the war.

Discussion. We understand the multilevel process of adaptive activity of the human organism in combat conditions, which is accompanied by the tension of reactive self-regulation mechanisms and the consolidation of specific adaptive psychophysiological changes.The intensity and duration of combat stress experienced by the policemen determines the probability of developing destructive mental states in him, which can manifest both a few months after leaving a combat situation, and after several decades of peaceful life in the symptoms of post-traumatic stress disorder.

The main focus of our research was on the study of the characteristics of post-traumatic stress disorders and the resources of readaptation to a peaceful life in police officers who are on rotation for 7-10 days. For this purpose, 36 police officers who took part in combat operations were examined. These were male persons aged from 23 to 48 years.

The examination of the research participants was conducted by interviewing the research participants, who were necessarily informed about the purpose of the experiment, as well as about the arbitrariness and requirements for their participation in it. One of the tasks of this stage was to establish a trusting atmosphere of communication. The research included a psychological diagnostic examination using a battery of techniques. The participants were tested after returning from the combat zone. At this stage, discovered post-traumatic stress disorders were reported to each participant of the experiment. To solve the research objectives, a set of methods was used in the work, which includes: a questionnaire for a socio-

psychological survey of police officers, a traumatic stress questionnaire for the diagnosis of the psychological consequences of service by employees, an integrative test of anxiety, a questionnaire for assessing neuropsychological stability and methods of mathematical and statistical analysis.

According to the results of the study of biographical and official data, interviews and questionnaires, it was established that 69 % of the respondents participated in active combat operations, while 31 % of respondents were involved in non-combat tasks. In the studies of the German scientist E. Dinter, it was established that the stay of personnel directly on the front line for 30-40 days is unproductive. This is due to the fact that after reaching the maximum of a moral and mental capability, which occurs after 20-25 days, police officers experiences a rapid decline due to exhaustion of spiritual and physical forces. However, according to the results of our survey, 100 % of the experiment participants were in the war zone for more than 40 days; more than 60 days – 75 % of police officers who performed combat duties and 25 % of police officers who performed non-combat duties.

The results of self-assessment of mental states and properties by police officers, which were included in the self-assessment scales in the questionnaire, showed that participants in combat operations and workers who performed non-combat tasks, in the self-assessment of destructive states, indicate a low level of their severity: from 12.55 % to 25.50 % among police officers and from 16.25 % to 36.65 % among workers who performed non-combat tasks. In the self-assessment of combat stress, 27.33 % of police officers who were at the epicenter of hostilities reflect its pronounced signs, and 18.40 % as those that remind them of themselves situational. Among the policemen who did not participate in active combat operations, only 9.75 % indicate constant signs of combat stress, and 17.54 % as periodically worried.

The highest indicators on self-assessment scales acquired the results of "disappointment". Thus, among the soldiers, 6.87 % of the respondents indicate a strong experience of this oppressive feeling, and 27 %, which is a fourth part of the respondents, also indicate disappointment. Men who did not conduct active military operations also indicated the pain of disappointment in 16 % of the answers, and 11.67 % indicated an average level of disappointment.

Close in content to the previous mental state is the experience of the "senselessness of war". 2.5 % and 7.5 % of soldiers and 10 % of police officers who performed non-combat tasks indicated a strong and pronounced feeling of the senselessness of the events. In our opinion, police officers from the combat zone are witnesses of the horrors of war and concerned about the pain and losses suffered by the country's population. Also, 2.5 % to 5 % of police officers felt guilty. According to the results of self-assessment by police officers of the components of morale and fighting spirit, we can state that for Ukrainian police officers, a sense of brotherhood is a significant value, which has withstood the test in a combat environment (67.5 % – high and 12 % – medium level) and in conditions of intense work in the combat zone actions (62.5 % and 11 %, respectively). Police officers note high indicators in self-assessment of morale – 46 % (high level) and 10.5-13 % (average level). 57.5-62.5 % of respondents indicate high levels of courage and belief in the correctness of actions. At the same time, about 17 % of police officers have low scores for all parameters of morale, which proves the presence of deep destructive conditions caused by extreme conditions of professional activity.

The main methodology of the research was the questionnaire of combat traumatic stress, used to diagnose the psychological consequences of serving as a police officer in extreme conditions, developed by O. Kolisnychenko [6]. The most intense combat stress manifested itself in forms that prevented the implementation of combat activities for a relatively long time. The borderline forms of its manifestation are neurotic and psychotic disorders. At the same time, the more police officers experienced the most intense forms of combat stress, the more psychological losses there were in the unit, unit, or unit. A disorder is a clinically defined group of symptoms or behavioral signs that, in most cases, cause distress and interfere with personal functioning. It is obvious that the more intensively a police officer experienced combat stress in a combat environment, the greater the likelihood of negative consequences after the cessation of exposure to combat stressors, including acute psychogenic reactions (acute stress reaction, acute stress disorders), adaptation disorders.

The results of the police survey showed that the psyche of a person who participated in battles for a long time or got into extreme situations undergoes significant changes. These changes are directly related to the level of constructiveness or destructiveness of the behavior of police officers who are in a dangerous situation. In the combination of factors contributing

to the development of stress, an important place is occupied by the conditions of service, the peculiarities of the established daily routine and disciplinary requirements, the organization of life, the degree of satisfaction of the needs and requests of police officers. The character of the moral and psychological atmosphere that has formed in the team, the style of attitude of commanders to subordinates, public opinion, prevailing personal and group attitudes and traditions of the unit are significantly reflected on the mental state of the police officer.

The consequences of traumatic stress, which are observed in police officers, are most pronounced in the complex of symptoms of increased excitability. Almost half of the surveyed police officers rate themselves as high indicators of personal aggressiveness (37.5-39.5%).

At the same time, pronounced symptoms of increased excitability in police officers are problems with sleep (16 % – a high level in police officers who conducted combat operations and 12.5 % in those who were involved in non-combat tasks). Overestimated indicators of the average level of manifestation of sleep problems (insomnia, terrible dreams, dreams with violence, etc.) were also established in 35-37.5 % of police officers. Dreams in the form of nightmares reproduce not only the traumatic situation, but also the reaction to it or convey the horror of the experience in the form of associations. Every time after such dreams; they wake up drenched in sweat and then cannot fall asleep for a long time. Men who see terrible dreams note that it is not the event itself that frightens, but the experienced feelings and emotions that accompanied it: despair, fear and a sense of complete helplessness. A large group of various sleep disturbances was found in the examined workers: difficulty falling asleep, disturbances in the depth of sleep, frequent awakenings. In this category of employees, the basis of sleep disturbances, in our opinion, is the feeling of disorientation, confusion, which they will experience in situations of real threat to their life and health.

Excessive vigilance, which is expressed at a high level in 15 % of police officers who were directly involved in combat operations. And in 15.7 % of those who performed non-combat tasks, also exhausts police officers. The average level of this property is indicated by 40-42.5 % of employees. Men complained of impaired memory and concentration (average level – 37.45-38.50 %), which are also manifestations of symptoms of increased excitability.

According to the results of the application of the questionnaire of traumatic conditions, as well as based on the data of individual interviews, the symptoms of hyperactivation were found in employees who arrived from a business trip, which are expressed in an increased level of excitability, increased aggressiveness, irritability, the appearance of psychosomatic disorders in the form of diseases of the gastrointestinal tract (gastritis, duodenitis, ulcers), headaches and backaches, various dermatitis.

Most of the interviewees noted deep personal changes after returning from the zone of armed conflict. The perception of time for them was divided into events before and after the business trip. Moreover, these changes occur in two opposite directions and depend on the individual, personal and adaptive characteristics of a person. More than 46% of police officers after returning from combat operations had increased irritability and vulnerability, expressed in the readiness to respond with aggression on the slightest pretext.

We would like to draw attention to the fact that men who did not directly participate in hostilities have higher rates of "rage attacks", "sleep problems", "excessive vigilance" and "exaggerated reaction" compared to those who were in the vanguard of the Ukrainian resistance. In our opinion, the higher level of excitability of these boys is related to the unresolved contradiction, which is that the policemen were simultaneously immersed in the traumatic situation of the combat zone, but did not have the opportunity to be actively in combat positions. They were forced to act in liberated settlements, taking part in the recording of thousands of war crimes committed by russian policemen and not being able to influence the reduction of the consequences of the illegal actions of the attackers, thereby simultaneously accumulating a significant level of internal tension. Police officers were especially annoyed by the bureaucratic component of their professional activities. Therefore, it is possible that the symptoms of increased excitability reflect excessive internal tension that was stimulated in the combat zone.

Police survey results also indicate high rates of avoidance symptoms on the "emotional blunting" scales. Among the typical reasons is the police's lack of constructive resources to overcome traumatic stress, relieve tension in the conditions of martial law. Unfortunately, the unfavorable circumstances of being forced to stay in a combat zone, quite difficult living conditions, and psychological overload often lead them to the possibility of drinking alcohol. Alcohol consumption is mostly associated with phobic reactions ($r = 0.343$; $p \leq 0.01$) and anxious

assessment of prospects ($r = 0.399$; $p \leq 0.01$); complex of PTSD symptoms: anxiety ($r = 0.675$; $p \leq 0.01$), exaggerated response ($r = 0.601$; $p \leq 0.01$), flashbacks ($r = 0.376$; $p \leq 0.01$), dream disturbances ($r = 0.640$; $p \leq 0.01$), depression ($r = 0.508$; $p \leq 0.01$), guilt ($r = 0.322$; $p \leq 0.01$).

The symptom of "dullness of emotions" is a consequence of distress, which is expressed at a high level in 18 % of police officers who have returned from combat operations and in 22.43- 34.75 % at an average level. The mechanism of the disorder is related to the brain's response to stress: there is an active production of endorphins with a high affinity for μ-opioid receptors. Strong activation of these receptors leads to a violation of feedback mechanisms (negative changes to positive), necessary for maintaining neurochemical homeostasis. These disturbances lead to cascade changes in other receptor systems. As a result, according to scientists, the center of pleasure is blocked, the limbic system, which is responsible for emotions, cannot adequately respond to its chaotic stimulation and is turned off (also with the help of feedback mechanisms), which leads to the emergence of depressive symptoms [7, 8, 9].

The group of examinees with pronounced manifestations of avoidance symptoms often experience difficulties in establishing social contacts, they urgently need solitude and communication. About 9 % of respondents noted difficulties of this kind. These workers had the symptom of avoidance, which manifests itself in the desire to avoid situations that provoke difficult memories, from thoughts and worries about traumatic events. At the same time, the length of stay in the combat zone does not affect this type of behavior; it depends entirely on the adaptive abilities of the individual. In addition to the outlined symptoms, 30-40 % of policemen who have returned from the combat zone are disturbed by obsessive experiences: flashbacks and obsessive thoughts about guilt for the death of a brother. The symptom of "survivor's guilt" is extremely rare, although there is a feeling of resentment for a dead colleague from the service, but the policemen almost always shift the blame for this to the enemy, not to themselves. The indicated symptoms testify to the acuteness and intensity of the impact of the traumatic situation on a person's adaptive capabilities.

Flashbacks are memories that appear in police officers unexpectedly, causing severe stress. According to the results of the traumatic stress test, two poles can be distinguished on the scale of psychological shifts, which relate to the change in the psychological orientation of the individual during the period of readaptation to peaceful conditions. For police officers were with a constructive stress transformation of the personality, an increased awareness of the value of life, both of its and that of others is characteristic. Representatives of this group of interviewees tend to rethink their past. They regret that they used to waste time, treated their girls and wives badly, caused grief to their parents, and drank alcohol. They use the skills acquired in combat operations in their professional activities. They do not have pronounced post-traumatic symptoms, and if there were signs of acute stress disorders, they cope with them themselves [10, 11].

The main and most typical reactions to the stress factors of the combat environment, which were observed in the police officers who participated in the combat operations, are as follows: increased sensitivity to noise 82 %, anxiety 91 %, movement disorders 10 %, depression 76 %, insomnia 26 %, justified and unreasonable fear 76 %, decreased appetite 36 %, headaches 13 %, tremors of the limbs 4 %, speech impairment 3 %, increased aggressive behavior 47 %, memory impairment 13 %. Mental disorders in combat are a common phenomenon, they are an inevitable result of the very nature of combat, and almost everyone who is in a combat zone suffers from mental incapacity to one degree or another.

Being under the influence of psycho-traumatic factors, a police officer can get mental disorders of varying degrees of severity. This, as a rule, leads to a partial or complete loss of fighting capacity [1, 11]. Moreover, the number of victims in this way turns out to be quite large (with long-term exposure to stress factors – up to 60 % of all personnel). This number may vary depending on the time spent under the influence of stress factors and their intensity. The key concepts used in the context of considering the psychological consequences of the impact on the personnel of the stress factors of the combat environment include:

– Psychogenesis – mental illnesses, the occurrence and course of which are caused, firstly, by the influence of stress factors of the combat situation and, secondly, by mental trauma arising as a result of the actions of these factors.

– Combat mental losses are losses of personnel associated with the loss of fighting capacity (full or partial) as a result of mental trauma (disorder) caused by stress factors of the combat environment that injure the psyche.

– Combat mental trauma is a pathological condition of the central nervous system

arising as a result of exposure to combat stress factors, which determines the regulation of the victim's behavior by means of pathophysiological mechanisms.

As a result of psychological trauma, there is an accumulation of changes in the structures of the central nervous system, an increase in specific personal disharmony and readiness for the formation of psychopathological syndromes. The criterion for the transition of a psychological reaction to stress into a psychopathological one, which requires medical (psychiatric) intervention, in the case of a hyperkinetic variant of an acute reaction to stress, is the disorganization of behavior with inappropriate and life-threatening actions, deceptions of perception, sharp psychomotor excitement. The clinical picture is described in these cases as "reactive psychosis". According to the conditions and time of appearance, mental disorders related to the performance of combat tasks are usually divided into the following groups.

In the majority of employees of police units who returned from the war zone, disorders in the functioning of the emotional sphere, which are of a pronounced polymorphic nature, were noted. At the same time, a significant part of the surveyed employees experienced difficulties in defining their feelings and emotions. And, taking into account the presence of emotional coloring of most psychophysiological processes, it is logical to assume their change, which, of course, could be reflected in the state of health of the subjects.

Data obtained through interviews indicate that 76 % of respondents who have visited a military conflict zone feel overtired, nervous and tense. More than 25 % of respondents noted dissatisfaction with their activities. About 65 % of police officers felt the need to "refresh more than usual". For an objective assessment of the destructive mental states of police officers, we turned to the study of the factors of situational anxiety and personal anxiety according to the Integrative Anxiety Test. The results indicate that the police officers have twice as many indicators of personal anxiety (1.925±0.69) as compared to situational anxiety (6.094±1.15).

Constant emotional discomfort (7.31±0.89), depressed mood of police officers, and lack of confidence in one's own abilities to improve the worrying situation have a significant influence on the formation of anxiety. The results of our research and the analysis of the obtained data allow us to draw the following conclusion: negative mental states that arose in men during the performance of tasks dangerous to health and life, upon returning from the combat zone, transformed into typical post-traumatic stress disorders. Vivid manifestations of such disorders are the growth of reactions of uncontrollable excitability (fits of rage, excessive vigilance, sleep problems, etc.) and avoidance reactions (abuse of alcohol and narcotic substances, dulling of emotions, etc.), which dramatically complicate the process of readaptation and, of course, require psychological correction.

Disappointments during the war lead to serious crises associated with a labile sense of self-worth, "fragmentation" of the concept of the individual. At the same time, with the possible processing of disappointment, the narcissistic inflated image of the individual will come closer to reality; in this case, a coherent, stable self can develop from it, with which a sense of self-worth is actually connected.

The sense of meaninglessness, in our opinion, is a consequence of frustrating experiences that arise against the background of combat stress. We established correlations between feelings of senselessness and fear ($r = 0.336$; $p \leq 0.05$), anxiety ($r = 0.416$; $p \leq 0.01$), flashbacks ($r = 0.405$; $p \leq 0.01$), problems with sleep ($r = 0.357$; $p \leq 0.05$), alcohol abuse ($r = 0.362$; $p \leq 0.05$), impaired memory and attention ($r = 0.333$; $p \leq 0.05$) and depression ($r = 0.363$; $p \leq 0.05$). These destructive conditions are common in the fixation of the human psyche on the excessive intensity of a traumatic event, the experience of a real threat to life, and the frustration of worldview values. A person's depression arises as a result of the awareness of the irreversibility of events, the weight of losses, and the destruction of the worldview principles that guided him in peacetime. Such a person feels devastated and loses rational projects for his own future. Trauma changes the personality of a police officer radically.

According to I. Kotenev's questionnaire, we also established that the policemen who conducted combat operations have pronounced problems with exaggerated reaction and hyper vigilance. The reaction of exaggerated response has numerous close correlations with destructive states: blunted emotions, aggressiveness, memory disorders, depression, anxiety, rage attacks, alcohol abuse, and flashbacks, sleep problems, guilt, at the level of statistical significance $p \leq 0,01$. This reaction is also closely related to the parameters of situational anxiety ($r = 0.579$; $p \leq 0.01$) and personal anxiety ($r = 0.465$; $p \leq 0.01$). The performed correlation analysis proves the destructive effect of combat stress on the emotional and value sphere of the personality of police officers. Such policemen have a hard time experiencing a

variety of frustrating reactions: feelings of despair, disappointment, loss of the expediency of their actions. The consequence of traumatic experiences is the formation of psychogenic symptoms.

Psychogenics that arise as a result of receiving a mental injury in a relatively short period of time (practically at the moment of the emergence of a psychological traumatic situation) – an unexpected explosion, a ricochet of a bullet, a light wound, etc. This situation can lead to such a psychological impact that the policeman finds himself in a state of stupor and falls out of the process of performing official and combat tasks. The external symptoms of mental disorders, obtained directly during the performance of tasks or during a long stay in extreme conditions, are different. A police officer who has received a mental injury can fall into complete inhibition; weakly react to the surrounding environment. But the opposite situation is also possible: manifestation of high motor activity, throwing, lamentation, etc. The nervous shock that a person experiences at this moment is so strong that he temporarily loses the ability to critically evaluate events, to think soberly about something. Over time, mental trauma can manifest itself at the somatic level (feeling bad, headaches, stomach upsets, etc.). Symptoms of mental disorders caused by high neuropsychological stress directly during the performance of professional tasks are divided into:

– behavioral reactions – strong tremors, running in search of shelter, a state of "paralysis", apathy, inhibition of movements, tearfulness, lamentations in combination with increased activity, fainting states, irritability and anger, timidity, excessive caution, uncomplicated mumbling, rioting;

– mental reactions – inability to concentrate attention, partial or complete loss of memory, complications with memorizing information and keeping it in memory, sensitivity to noise, violation of logic, speed of thinking and critical perception of the surrounding environment, weakening of the will, insomnia;

– somatic reactions – weakening of vision and hearing, frequent urination, upset stomach, difficulty breathing, impaired blood circulation (anemia of the legs and hands, strong muscle tension, rapid heartbeat, lower back pain, from surgical scars, old wounds). The given list of symptoms is far from exhaustive. In each case of extreme conditions of professional activity, specific manifestations of psychogenies largely depend on their nature, individual psychological and group characteristics of the work of police officers.

The second group includes psychogenies that develop over a relatively long time under the influence of weak, but constantly acting psychotraumatic factors. The accumulation of mental tension occurs gradually, sometimes imperceptibly for the police. In this case, the term "combat exhaustion" is used, which means mental disorders caused by a person's long stay in extreme conditions of official activity. The behavior of a person who has received such a psychogenic disorder changes greatly. She can become withdrawn, gloomy, react rudely to her colleagues. There are frequent cases when police officers without sufficient reasons start shouting at each other, quarreling, and showing signs of aggression. Communication with the help of laments is gradually becoming a norm of behavior. Sudden outbursts of anger and aggression can be accompanied by somatic reactions (headache, feeling of being broken in the whole body, dizziness, nausea, etc.), high motor activity, which is quickly followed by exhaustion and apathy. Sometimes mental disorders of the second group manifest themselves in a slightly different way. Even those police officers who have solid combat experience can suddenly feel strong attacks of fear before performing a new task, become too cautious, prone to "ritual" behavior.

Post-traumatic stress disorders (PTSD) can be singled out as a separate group. The main symptoms of such disorders include: recurring dreams and intrusive memories of psycho-traumatic events, which are sometimes associated with some actions, events, etc.; the desire to avoid thoughts, feelings, actions, situations that may remind of psycho-traumatic circumstances; inability to reproduce in memory events accompanying psychotraumatic situations; loss of interest in previously important forms of life (for example, sports); a feeling of a "shortened future"; inability to empathize with other people, to family life; difficulty falling asleep and sleep disturbances, outbursts of anger and aggression towards other people or objects, memory loss and difficulty concentrating, constant increased vigilance.

Characteristics of a traumatic event include: degree of threat to life; severity of losses; suddenness of the event; isolation from other people at the time of the event; degree of influence of the surrounding environment; availability of protection against a possible repetition of a psychotraumatic event; moral conflicts related to the event; passive or active

role of a person in this situation; direct effects of this event.

Thus, the experience of participating in hostilities shows that tension, often unpreparedness for activities in extreme situations, insufficient time for rest, poor nutrition and material and technical supply, separation from the family are powerful factors that, accumulating, cause negative mental changes (neurotic reactions, aggressiveness, apathy, suicidal thoughts) in a certain part of police officers. It is necessary to prevent such changes, neglecting them can lead to irreversible consequences, cause serious diseases. The study of the prevalence of states of mental maladjustment among personnel depending on the length of stay in the areas of active hostilities on the territory of Ukraine shows a significant increase in the number of such cases during a long continuous stay in such a situation. At the same time, the number of people who did not show symptoms of neuropsychiatric disorders at the time of the examination steadily decreased.

Those who had a high level of education, were older, and most importantly, had a large number of social connections (wife, children, dependent relatives, elderly parents) were most exposed to the psychological influence of the combat situation. Therefore, the psyche of a normal person without special preparation for actions in combat conditions is not able to withstand the influence of combat stress factors. "Modern wars are won not by bold, self-confident leaps and unfurled banners, but by persistently wearing out the enemy, often in a state of extreme exhaustion, failures and even defeats, sometimes choking on blood" [6].

Thus, the experience of police participation in the war with russia proves that a person without special training is not able to withstand the impact of combat stress factors on his psyche. In order to act with maximum efficiency, the police officer must adapt to the psychological impact of the combat situation, which is a necessary condition for the prevention of pathological violations of physiological reactions, cognitive, emotional-volitional, motivational spheres, etc. Effective psychological training of personnel and special psychological-pedagogical work on adapting people to combat conditions helps to reduce the negative consequences of the influence of stress factors in the combat environment.

Conclusions. Thus, the provisions outlined above allow us to make the following generalizations:

1. As a result of the stress factors of the combat situation, the policeman’s psyche is strongly influenced, which leads to a violation of cognitive processes, emotional-volitional, motivational sphere and the manifestation of negative physiological reactions.

2. Reducing the negative factors of the combat situation will be facilitated by effectively organized psychological training, which allows adapting the policeman’s psyche to combat conditions.

3. The main criterion for evaluating the effectiveness of psychological training of personnel can be defined as psychological preparedness to perform assigned tasks. Psychological preparedness for combat activity is a multi-component dynamic psychological formation, the structure of which includes: motivational, emotional-volitional, cognitive, regulatory and behavioral components. The level of psychological preparedness of the personnel is determined by the formation of the specified components; therefore, it is appropriate to determine the degree of formation of the components of the psychological preparedness of the personnel using indicators of the effectiveness of psychological training.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

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ABSTRACT

In this article the psycho-emotional and personal changes of police officers after their return from the zone of armed conflict are analyzed. The results of an empirical study that prove the destructive effect of combat stress on the formation of a complex of the symptoms of increased excitability and avoidance as consequences of traumatization of the police officers are described and analyzed. Their development is due to the fixation of the police on the excessive intensity of the traumatic event, the experience of a real threat to life. the experience of participating in combat shows that tension, often unpreparedness for activities in extreme situations, insufficient time for rest, poor nutrition and material and technical supply, separation from the family are powerful factors that, accumulating, cause negative mental changes in a certain part of police officers. The need to prevent such changes is indicated; neglecting them can lead to irreversible consequences and cause serious diseases. The study of the prevalence of states of mental maladjustment among personnel depending on the length of stay in the areas of active hostilities on the territory of Ukraine indicates a significant increase in the number of such cases with a long continuous stay in such a situation. At the same time, in the course of the study, it was found that the number of people who did not show symptoms of neuropsychiatric disorders at the time of the examination was steadily decreasing. Those who had a high level of education, were older, and most importantly, had a large number of social connections were most exposed to the psychological influence of the combat situation. Therefore, the psyche of a normal person without special preparation for actions in combat conditions is not able to withstand the influence of combat stress factors.

Keywords: *combat stress, psycho-emotional state, post-traumatic stress syndrome.*

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PSYCHOPROPHYLAXIS OF THE PROFESSIONAL TRAINING CRISIS

Олексій Шевяков, Ірина Бурлакова, Вікторія Корнієнко, В'ячеслав Вакулик, Яніна Славська, Ігор Остапенко, Олександр Герасимчук. ПСИХОПРОФІЛАКТИКА КРИЗИ ПРОФЕСІЙНОЇ ПІДГОТОВКИ. У статті визначено основні підходи до психологічного забезпечення процесу попередження кризи професійної підготовки здобувачів вищої освіти. Схарактеризовано чинники кризи професійної підготовки здобувачів ветеринарно-медичних спеціальностей. Розглянуто особливості системної структури психічних явищ та концепції психологічного забезпечення процесу психопрофілактики. Наголошено на необхідності впровадження системного підходу на основі емпіричних даних, що включає дослідження, спрямовані на гармонізацію психологічного стану. Емпіричне дослідження виявило особливості соціального функціонування здобувачів ветеринарних та медичних спеціальностей. Існують відмінності у психологічному самопочутті фахівців таких спеціальностей: для них характерне переважання інтересу до історії медицини, що відображає їхній інтерес до професії, захоплення нею; у період кризи самооцінка та локус контролю досягають значень показників, що свідчать про неадекватну оцінку та невміння використовувати власні сили для досягнення мети. Психологічний

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супровід професійної адаптації передбачає визначення обсягу, якості та форми надання психологічної інформації про організацію, специфіку її діяльності, різноманітні послуги, про колектив, його структуру, традиції, групові норми та соціальні очікування. Проведені досліди дозволяють зробити попередні висновки: професійне становлення студентів супроводжується критичними моментами, найскладнішим з яких є криза професійної підготовки, яка припадає на 3 курс. Надання психопрофілактичної допомоги студентам шляхом застосування запропонованого історико-наукового методу дозволяє запобігти вкрай негативним наслідкам, які можуть деформувати особистість. Відповідно, необхідний подальший розвиток і апробація історико-наукового методу психопрофілактики на ширшому фоні, щоб рекомендувати його використання викладачам і студентам.

Ключові слова: *психопрофілактичний потенціал, психологічний стан, кандидати на ветеринарно-медичні спеціальності, розвиток, методичний підхід, психологічний супровід.*

Relevance of the study. The current camp of professional education at the veterinary-medical gallery, can be characterized as a post-crisis. It is mindful of the global trends in the development of sustainability in today's world, as well as the peculiarities of yoga inspiration in the post-traditional space.

The school of professional education recognized the great material difficulties, the destruction of ideological and valuable guidelines. According to the law of the causal relationship, changes were made in the nature of the disease, the forms of moisture and the hierarchy of the keruyuchi settlements.

Wash away such stressful reasons, it hurts in youth, as I take away the professional training itself in this period. Analysis of the demonstration of knowledge during the course of the year and half the time of examination sessions, pedagogical caution, discussion with the curators and practitioners of the dean's office and the students themselves of the faculty of veterinary medicine, to report on the presence of especially acute psychological moments in different periods of study.

Recent publications review. In our opinion, the process that takes place in the middle of the period of obtaining education, and which we propose to consider as a crisis in professional training, needs special attention. In this regard, the goal of our research is the analysis of the above-mentioned crisis, namely the determination of its nature, factors, genesis, consequences and the search for methods of prevention of its negative impact.

The emergence of new conditions, the shortcomings of old methods deformed by modernity, lack of funds, created serious obstacles for correcting the self-awareness of future veterinary specialists. This turned domestic education into a boundless field of pedagogical, scientific-methodical and organizational experiments. Of course, the results obtained by researchers are not always of high quality, there are also hypertrophied judgments, imperfect conclusions, etc. But as you know, the one who does nothing is not wrong.

Issues related to the mentioned problem are practically not covered in the scientific literature, and therefore indirect and parallel theories and studies served as the main source of information.

So, the main key concepts of our work are identity, identification, psychological crisis, self-awareness, sense of self-worth. Using the projection of the general psychological mechanisms of the above-mentioned phenomena directly onto the situation we are investigating, we relied on the classic works [1-4] and others. During the construction of one's own hypothesis, the works of such well-known researchers [5-7]. It should be noted that the topic of crises during the training period is of interest to many scientists in the field of psychology and pedagogy, but it is considered from the perspective of traditional methods of psychoprophylaxis and does not concern the specifics of veterinary education [8-10].

According to many scientists, for a long time, the problem of health was not among the priority research interests of psychological science [11]. But lately, it is considered not only in the medical field, but also in the psychological, because at the heart of the problem is the individual [9].

Thus, the psychological rehabilitation of a person suffering from depressive disorder is an urgent socio-psychological problem due to the growing prevalence and increase in the number of people with this pathology. According to the WHO, approximately 4-5 % of the world's population suffers from depression, with the risk of developing lifelong depression reaching 10 % in men and up to 20 % in women [10]. According to WHO forecasts, by 2022, depression will rank first among diseases in the world, surpassing today's leaders – infectious and cardiovascular diseases [1]. The medical and social consequences of depression are diverse

and severe [2]. These include: high risk of suicide, impaired adaptive capacity, reduced professional status, family breakdown, disability, loss of social ties and reduced quality of life in general [3]. The need for their comprehensive rehabilitation is due to the fact that mental illness leads to personality changes, social maladaptation and significantly reduces the ability of professionals to social functioning [8].

The conducted research in the field of rehabilitation of specialists reflects different opinions of scientists on this process [5]. The history of rehabilitation shows a certain dynamics of views with a shift of emphasis from occupational rehabilitation to social and psychosocial rehabilitation [4].

When discussing rehabilitation, researchers more often emphasize their personal characteristics, rehabilitation potential, give more importance to the forms and methods of the actual rehabilitation impact much less affect the socio-environmental environment [6]. Meanwhile, this objective factor plays a significant role in rehabilitation and its importance cannot be ignored [7].

The article's objective. Our aim was to find such a means of protection against the negative consequences of the crisis, which would be based on moral values and contribute to the integration of the noble ideas of past generations into the present. We decided to achieve the realization of the idea with the help of the historical and scientific methods.

Discussion. The crisis of professional training (despite all the negativism attributed to this concept) can have not only destructive effects in its dynamics, but also be the source from which a new, professionally and creatively brighter personality will develop. It is generally known that crises accompanying this development are inevitable. University students, like no other, demonstrate at the behavioral level pictures of crises in all their diversity. As one acquires knowledge and expands one's horizons, one's relations with the surrounding world change, including one's attitude to the learning process. It is obvious that a student moves to a new level of learning when the previous one has exhausted itself. This transition is often painful, requires effort, sometimes you have to give up a share of the former, for the sake of acquiring a new, better one. But such growth may not happen. A crisis most often fills a person with contradictions, creates a situation of struggle with oneself, and if external adverse circumstances are added to this, the finale can be deplorable. Even if such a student does not stop his studies, he most likely develops a pessimistic attitude towards the future profession, and all areas of the personality are subjected to pathological pressure, which contributes to the formation of a marginal worldview.

Of course, in this situation, a lot depends on the student himself, in particular on his mental characteristics and previous education. But one cannot underestimate the role of psychologists and teachers in correcting the crisis state of students, forming professional reflection in them, as well as understanding the content of their work through the affirmation of a sense of self-worth. In addition, it is necessary to find the psychological material on the basis of which it would be possible to create a reliable internal defense. In our case, such an education was the information contained in the discipline – the history of veterinary medicine.

It is common knowledge that the quality of professional education is directly related to the quality of professional activities that will be carried out in the future. Based on this judgment, it is logical to conduct a diploma competition, survey and interview with a potential employee in order to find out to what extent he possesses the professional knowledge and characteristics required by the employer. All of the above is true and quite important, but in the light of modern times, in connection with the popularization of psychological science, the so-called "human factor", namely the psychological characteristics of a person, acquire greater importance. Concepts such as sociability, emotional behavior, stress resistance, social adaptation, etc. have become common terms among personnel managers. The task of pedagogues in the conditions of our time is to form such personal qualities in VU students that, together with in-depth knowledge, would serve as a foundation for their professionalism and reliable protection against the destructive effects of crises.

Even E. Erikson, in his work "Young Luther" [2], pointed out that the way out of such crises should be based on the search for ways of professional identity, which a person striving for professional growth can use as a basis.

Trying to analyze the factors at the center of this problem, we noted the following phenomena as priorities. In the so-called post-Soviet period, following political, economic and social changes, changes also took place in the labor market. A number of new professions that did not exist before, or that had a different status, appeared. So, for example, private

veterinarians appeared who, despite the preserved principles of professional activity, faced a lot of new, previously unknown difficulties. Changes have also taken place in the addressing of services. Thus, instead of "yesterday's" collective farms and state farms, the customers of services became farms, joint-stock companies, state and private organizations (firms). The demand for the provision of veterinary services to animals by their owners has changed significantly. The very "image" of a veterinarian has changed in the minds of the average citizen – under the influence of advertising, it has taken on a new Euro-American character, by the way, the attitude to medicine in general has changed in a similar way, less moral emphasis – more technological. Veterinary specialists of meat processing plants, dairies and other enterprises that are similar in technological essence, but different in terms of quality and culture of production, often have different requirements.

There have also been changes in the market of veterinary services. The number of animals in the private sector increased, and on the contrary, it decreased in specialized collective farms. Livestock complexes with thousands of animals were replaced by farms with a herd of no more than a few dozen animals. Agricultural enterprises appeared in the region, the technological capabilities of which are not inferior to the capabilities of similar enterprises in the European Union countries – with computerized farms, a scientific center, and pharmacological support of the highest level. The turnover of airports and railway stations has increased, and the possibilities of moving the population to other countries have expanded. This caused a greater demand for specialists in veterinary and sanitary control, veterinary police, and veterinary customs. Non-traditional areas of livestock-poultry breeding have appeared: quail, ostrich breeding, amateurs have expanded opportunities to acquire rare and exotic animals, from horses to iguanas, boa constrictors and crocodiles.

In addition, there is another side to the issue. Collective farms and state farms were still the main customers for veterinary services. After their liquidation, many veterinary specialists lost a stable salary and their hierarchical position (in the village, a veterinary specialist was part of the elite group: head, agronomist, zootechnician, accountant, etc.). In the late 1980^{s} and 1990^{s}, a referral from production was required for admission to the Agricultural University. These documents were provided to applicants, but the payment of scholarships and subsequent employment was not carried out. As a result, many graduates, having the lowest level of professional motivation, were forced to focus on work outside their specialty even during their studies.

It is natural that such changes in the field of professional activity should have caused changes in the emphasis of professional training. The urgency of the above-mentioned problem prompted us to take a closer look at the situation of experiencing professional training crises by students of universities, and to conduct a corresponding psychological analysis on the basis of the Faculty of Veterinary Medicine of the Dnipropetrovsk Agricultural University.

During the submission of documents to the admissions committee of the Dnipropetrovsk State Agricultural University, many young people, future specialists – doctors of veterinary medicine, come. The reason that prompted them to choose this profession is polyetiological.

Conditionally, applicants can be divided into three groups:

1. Young people, yesterday's schoolchildren who loved zoology and anatomy, who were actively involved in biological profile circles. They love animal and plant life they are full of beautiful youthful romanticism. These young people dream of devoting their lives to treating animals and caring for our smaller brothers. These young people have their own strong idea of what veterinary medicine is and who a veterinarian is.

2. Young people who decided to become a veterinarian because their parents, relatives, friends of their parents, etc. were or are engaged in veterinary medicine. This group includes young people who consider private veterinary practice a good, profitable business and in this way seek to solve financial issues of their future. Applicants who consider the profession of a veterinary doctor to be socially in-demand, or hierarchically suitable for themselves, can also be included here.

3. This group includes young people who found themselves at the University "accidentally". For some, the University happened to be close to home, others play sports and like the university's football team, and still others came for the company of a friend.

It would be possible to single out many more conditional groups, for example middle-level specialists who graduated from technical schools of the same profile, but pursuing certain goals, we consider it possible to limit ourselves to the three most objective groups.

As evidenced by the experience of interviews with students (survey method) and study of pedagogical documentation, curators' conclusions, it is the third year that is the most difficult for most students. Of course, there are young people who during the entire period of their stay at the University (almost 5 years) have stable positive or, on the contrary, negative indicators in their studies. But students who have proven themselves to be active and conscientious, after the end of the first courses, "suddenly" move into the category of underachievers or simply noticeably lose their positions are of great interest. There are those who, after a seemingly usual – "cool" attitude to learning, in practice prove themselves to be tireless workers, and besides, they show research inclinations.

Having such initial results, the dynamics of changes that occur in conditional groups during the gradual acquisition of professional education is of interest. We deliberately abandoned the evaluation characteristics of the groups presented above. The fact is that, as it is not surprising at first glance, a representative of any group can be a good specialist and an excellent student.

Our hypothesis is based on the assumption that everything is to blame for the professional training crisis that occurs in the third year. The unofficial celebration of the so-called "hill" by the student community is quite symbolic. What happens in the middle of training? What is the same "black box" based on which many students change?

First, the third year corresponds to the age of 19-21 years, which in many psychological periodizations is called the beginning of early adulthood. As you know, transitions from one age category to another are not easy in themselves, they are called age crises. In the conditions of our socio-cultural reality, this is the time of role status changes for many young people, including students of our University. From the group of children, many people move to the group of parents, from dependents to the group of those who independently earn money or take the first steps in this direction, etc. Changing the personal role also requires a significant expenditure of mental energy. But the most important thing: the student is a romantic, by the third year of study he gradually loses his youthful idealistic baggage. In the third year, educational and clinical practices begin, during which the imagination that lived before that in the heart and head of the student, as a rule, does not stand the test of reality. Faced with the harsh everyday life of a veterinary medicine doctor, often with an inhumane or commercial attitude to the objects of his activity – animals, a young man or a girl turns away from his once favorite specialty. At the same time, the second conditional group experiences disappointment in not so big profits. In addition, the expenditure of energy and time that a veterinarian devotes to work clearly does not correspond to the reward. And finally, the third conditional group. Anything is possible here. A person who accidentally got into the University shows an unusual interest in veterinary medicine. Others distance themselves even more from any thought of becoming a doctor in the future, waiting only for a diploma of higher education. Deformations arising as a result of collisions with harsh reality lead to the need for adaptation, the evaluation characteristic of which will depend, among other things, on newly chosen landmarks.

In all these dynamics, one can single out the main point – getting used to oneself and one's professional role in the quality that existed before that and changed due to internal and external circumstances. That is, the onset of the crisis of professional training. We need a crisis as a factor of creative growth, but how to ensure the development of this internal conflict, precisely as a healing of the old and the acquisition of a new hierarchically more significant professional worldview? In other words, how to help a student correctly define his professional identity? According to our hypothesis, a person is a moral being, in whom a sense of self-worth occupies one of the most important places and serves as an engine of its development. It is this feeling, in the aspect of its belonging to a professional orientation, that we assume to use for the prevention of the crisis of professional training in its negative content. For this, we consider it necessary to provide third-year students with information that could be used by them to build their personal professional identity, focused on a bright positive, located within their own professional group.

According to our hypothesis, this information sets listeners in an optimistic mood, thereby mitigating the wound inflicted by the above-mentioned crisis. For the objectivity of the evaluation, psychological studies of experimental and control groups were conducted, which were based on operationalized dependent variable levels of self-esteem, subjective control, and optimism. The choice of the proposed methods was due to their obvious validity, availability and informativeness according to literature sources. A psychological analysis of the crisis of professional training among students of the Faculty of Veterinary Medicine of the Ukrainian

State University was carried out, with the aim of making possible the most general recommendations to the management of the University, teachers, and the students themselves, regarding means of psychoprophylaxis of the negative consequences of this crisis. In actual work, such a psycho-prophylactic means is the built-in training course developed by us, which is based on a historical-scientific approach in the structure of the special course "operative surgery of rural animals". The essence of the proposed approach consists in informing students during the academic year (2 semesters) about materials related to the biographies of outstanding domestic scientists and practitioners in the field of veterinary medicine, the activities of veterinarians in the civilian sphere and in culture, about veterinary medicine in fiction, etc. The above-mentioned information is brought to the attention of students every other class (15 classes out of 30), that is, once every two weeks for 10-15 minutes.

Table 1

Indicators of the variability of self-esteem, optimism and the level of subjective control of achievers (relative units/points)

Indicators	Group of acquirers					
	erimental			control		
	M ± m	σ	Cv,%	M ± m	σ	Cv,%
Coefficient self-esteem, relative units	0,67± 0,06	0,19	29,3	0,48± 0,07	0,22	46,2
Optimism, points	65,6± 2,06	6,51	9,9	61,9± 1,86	5,89	9,5
Level of subjective control, points	28,3± 2,06	6,53	23,0	25,7± 1,85	5,85	22,8

During the experiment, the students of one of the academic groups were offered the above-mentioned method, and the second group, which studied in the usual way, served accordingly as a control. At the end of the academic year, research was conducted on the levels of self-esteem, subjective control, and optimism in the experimental and control groups (table 1).

Conclusions. In the process of mastering special knowledge and skills, among other things, psychological readiness for professional activity is formed. Therefore, we used the historical-scientific method of psychoprophylaxis, which, by identifying the acquired knowledge with its, so to speak, "elitist" carriers, would make it possible to connect the mechanisms of positive associations. They should create a situation in which the student, first of all, gets to know himself, his individual characteristics and capabilities, realizes his interests, motives, desires, gets rid of misconceptions about himself, learns to be honest with himself. Secondly, he reexamines his attitude towards himself and takes responsibility for his professional development and development, and more broadly, for his entire life path. Thirdly, he masters the techniques of self-improvement, self-governance and self-control.

Psychological support of professional adaptation during this period of time involves determining the volume, quality and form of providing information about the enterprise, farm, department, specifics of activity, various services, about the team, its structure, traditions, group norms, social expectations regarding the newcomer, etc. As a rule, such information comes to an adapting person in one form or another, in sufficient or excessive amounts, but without any scientific justification. The above experiments conducted by us allow us to draw preliminary conclusions. Indeed, the professional formation of students is accompanied by critical moments, the most difficult of which is the crisis of professional training, which falls on the 3rd year. Providing psychoprophylactic help to students, by applying the proposed historical-scientific method, allows to prevent extremely negative consequences that can deform the personality. Accordingly, further development and testing of the historical-scientific method of psychoprophylaxis against a wider background is needed to recommend its use to teachers and students. At this time, we are processing the operationalized data obtained

during the study of the levels of self-esteem, subjective control and optimism, the analysis of which will allow us to draw more perfect conclusions.

Conflict of Interest and other Ethics Statements
The authors declare no conflict of interest.

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ABSTRACT

The article defines the main approaches to the psychological support of the process of preventing the crisis of professional training in higher education seekers. The factors of the crisis of professional training among applicants of veterinary and medical specialties are characterized. Features of the system structure of mental phenomena and the concept of psychological support of the process of psychoprophylaxis are considered. It is emphasized the need to implement a systematic approach based on empirical data, which includes research aimed at harmonizing the psychological state of drug addicts. Empirical research revealed the peculiarities of the social functioning of applicants for veterinary and medical specialties.

There are differences in the psychological well-being of specialists of such specialties: they are characterized by a predominance of interest in the history of medicine, which reflects their interest in the profession, admiration for it; in the period of crisis, the self-esteem and locus of control indicators of achievers are such as to indicate inadequate assessment and inability to use their own strength to achieve the goal. Psychological support of professional adaptation during this period of time involves determining the volume, quality and form of providing information about the enterprise, farm, department, specifics of activity, various services, about the team, its structure, traditions, group norms, social expectations regarding the newcomer, etc. As a rule, such information comes to an adapting person in one form or another, in sufficient or excessive amounts, but without any scientific justification.

The above experiments conducted by us allow us to draw preliminary conclusions. Indeed, the professional formation of students is accompanied by critical moments, the most difficult of which is the crisis of professional training, which falls on the 3rd year. Providing psychoprophylactic help to students,

by applying the proposed historical-scientific method, allows to prevent extremely negative consequences that can deform the personality. Accordingly, further development and testing of the historical-scientific method of psychoprophylaxis against a wider background is needed to recommend its use to teachers and students.

Keywords: *psychoprophylactic potential, psychological state, candidates for veterinary and medical specialties, development, methodical approach, psychological support.*

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DIDACTIC ASPECTS OF DISTANCE LEARNING IN THE CONDITIONS OF PANDEMIC AND MARTIAL LAW

Олена Галушко, Євгенія Коваленко-Марченкова, Володимир Чистяков. ДИДАКТИЧНІ АСПЕКТИ ДИСТАНЦІЙНОГО НАВЧАННЯ В УМОВАХ ПАНДЕМІЇ ТА ВОЄННОГО СТАНУ. Стаття присвячена актуальним питанням підвищення ефективності навчального процесу у вищих учбових закладах в умовах пандемії та воєнного стану. Розглянуто еволюцію дистанційного навчання. Досліджено особливості дистанційної форми навчання, яка функціонує на основі сучасних психолого-педагогічних та інформаційно-комунікаційних технологій. Проаналізовано особливості організації навчального процесу у вищих учбових закладах в умах пандемії та воєнного стану, зокрема дидактичні аспекти навчального процесу в умовах небезпеки та підвищеного стресу.

Особливу увагу приділено психологічному стану студентів та шляхам зниження стресу та активізації їх уваги на навчальному процесі з урахуванням типів сприйняття інформації (аудіали, візуали, кінестетики, діджитали). Запропоновано шляхи удосконалення дистанційного навчального процесу в умовах пандемії та воєнного стану.

Ключові слова: *дистанційне навчання, пандемія, воєнний стан, психологічний стан, тривожність, засвоєння знань, аудіали, візуали, кінестетики, діджитали*.

Relevance of the study. Education is one of the most important spheres of human activity, as it ensures the formation of the intellectual potential of society, and therefore the possibility of its' sustainable development. The transition to the information society has created new opportunities for the development of education, and the level of development of

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information technologies in the state has become an important factor that determines the level of education and the availability of educational opportunities for all segments of the society.

Distance learning is associated with modern educational technologies, but its principles were laid in the middle of the 19th century, when the so-called commercial "correspondence colleges" appeared in the USA, where educational letters between students and teachers were distributed through the postal service [1]. Today, thanks to the spread of the Internet and digital technologies, distance learning has gone beyond one-way communication and has become a full-fledged online education that allows you to implement all educational programs in an online format. Under appropriate conditions, distance learning can ensure the availability of high-quality higher education to broad segments of the society, regardless of place of residence and working conditions; allows to respond flexibly to the demands of the labor market; to make fuller use of the educational, scientific and human resources potential of universities; saves financial resources.

Fundamental changes in the academic environment during the pandemic affected all areas of students' lives: educational (the need for a quick transition to online learning and adaptation to new methods of monitoring and evaluating knowledge, closing libraries, transforming communication channels with teachers), public (closing dormitories, restrictions communication with friends and colleagues, enforced self-isolation regime, travel ban) and personal (loss of job, worry about financial situation, future education and career) life of students. These circumstances had a negative impact on the emotional condition of students and contributed to an increase in their level of anxiety.

In this context, the problem of self-control and internal motivation of the student becomes especially relevant. Some students, due to personal characteristics and insufficient level of involvement in the educational process, need constant supervision by the lecturer, which is difficult to provide in a distance format. Students with a high level of internal motivation are more successful in mastering educational material in a distance format. Thus, the COVID-19 pandemic has led to a rapid transition to the distance learning format, which has become a serious challenge for the higher education sector due to its surprises. Digitization of higher education is a multifaceted process that affects all aspects of the academic environment and life spheres of modern students. But after the pandemic, the year 2022 brought Ukraine new challenges in the form of an armed conflict, which has an extremely negative impact on the emotional state of teachers and students, on the assimilation of knowledge, and in general on the motivation to study.

Recent publications review. In Ukraine, the problems of distance education were the subject of scientific research by many scientists, such as: O. Anishchenko, O. Volyarska, V. Bykova, N. Muranova, N. Morse, O. Ogienko, K. Osadcha. In particular, among the trends in the development of distance education, Ukrainian scientists single out globalization, integration, internationalization, and informatization as general modern trends spreading throughout the world. They consider the updating of the regulatory and legal provision of distance education, the regulatory and legal policy of providing distance learning and educational services and the practice of ensuring their quality to be purely national trends. Attention is focused on the problem of developing digital competences of lecturers and technical support of universities [2-8]. The issue of the emotional state of students and their motivation for the educational process is also considered in many scientific works, but in our opinion, they require further development in view of the difficult conditions of the pandemic and martial law.

The article's objective is to analyze features of students' learning process in times of pandemic and war and to offer effective didactic approaches, which increase the efficiency of knowledge absorbing.

Discussion. Currently, distance education is undergoing rapid development. Many people around the world consider it as an alternative to full-time education when obtaining a second additional education, when improving their qualifications or when requalifying, and often even choose it as a way to obtain their first basic higher education. In confirmation of this, it should be mentioned that in August, 2005, a significant event took place in the world practice of the application of distance education – for the first time in the world, the number of distance learning students exceeded the number of students studying face-to-face. In particular, the number of students studying in open distance education programs amounted to 100 million people, while the number of "traditional" students at that time was approximately 97 million. Let's note that the opposition of face-to-face education and remote education is not quite

correct, since the distance education is just a technology used in education. Current practice shows that many universities that offer their students the opportunity to study remotely, in case of successful completion of all stages of training, issue full-time diplomas to graduates. Today, in Ukrainian higher education, there is a tendency to reduce the number of classroom hours and increase the role of independent student work, which brings face-to-face education even closer to distance learning and stimulates the widespread use of distance learning technologies in the educational process [2, 3].

Due to the development of info-communication and computer technologies, it became possible to modernize traditional distance learning through the introduction of a distance learning system. Almost all researchers (M. Moore, A. Bates, B. Holmberg, etc.) understand distance learning as a set of technologies that provide asynchronous or synchronous interactive interaction between students and teachers and are based on the principle of student self-learning. That is, distance learning requires a transition from the classical learning paradigm, when the future appears for the student in the form of abstract information applied in unknown real conditions, to a new paradigm that provides a continuous process of intellectual development and professional development of the individual. Research on the growing popularity of distance learning identifies four reasons for this [4-6]:

– No need to leave the place of residence, home, family, friends, work, as well as pay the related monetary expenses for travel, accommodation, etc.;

– This form of education is unique for cities remote from the central regions, where there are practically no other training opportunities. This factor also became crucial in times of pandemic and war, when travel opportunities are limited;

– Bright visualization and pronounced practical orientation of learning process. This is achieved by using the technical capabilities of organizing the presentations and lecture demonstrations. Also, students are given a greater choice in the sequence of studying subjects, a flexible learning pace, direct communication with a specific lecturer to whom they can ask any question;

– High mobility. World experience shows that distance learning is less conservative in relation to newly emerging areas of human activity than face-to-face.

Researchers also highlight the following features of distance learning [4-6]:

1. Flexibility. The student, in general, does not attend regular classes in the form of lectures and seminars. Everyone can study as much as it is necessary for him/her to gain the knowledge.

2. Modularity. The basis of distance learning programs is a modular principle. Each individual discipline or a number of disciplines are mastered to create a holistic view of a particular subject area. This allows students form a curriculum from a set of training courses that meets all needs individually.

3. Parallelism. Learning can be carried out while combining the main professional activity with study, that is, on the job.

4. Asynchrony. In the learning process, the lecturer and student can implement the learning technology independently in time, that is, according to a convenient schedule for each.

5. New information technologies. In distance learning, mainly new information technologies are used (computers, audio and video equipment, systems and means of telecommunications, etc.)

There are two different models of distance learning: American and Western European. The American model considers distance learning as a form of face-to-face learning, in which direct contact between the teacher and students is replaced by face-to-face telecommunications, i.e. education essentially remains traditional. The European distance learning model focuses primarily on independent learning. The required level of education in this case is provided by:

– specially designed educational and methodological kits for self-study of the course;

– organizing a system of psychological and pedagogical support for a student in the form of both group classes (tutorials) and individual consultations;

– a system of rating attestation and centralized monitoring of the quality of education.

Consequently, with distance learning, the ratio of independent and organized work of students in the educational process fundamentally changes. The share of individual work in distance learning is 70-90 % in the total volume of the discipline, while in face-to-face education it is only about 50 % [1, 4].

The COVID-19 pandemic has made a significant impact on education around the world. The Responses to Educational Disruption Survey found, that the pandemic has caused massive

disruption to education systems, with schools and universities closed in many countries. The survey also found that there is a digital divide in access to educational resources, as many students do not have access to computers or Internet connections. To address these challenges, the authors recommend that governments prioritize access to educational resources and materials, and invest in teachers' and lecturers' training to ensure that they can use digital tools effectively. They also suggest that governments provide financial support to students and families coping with the pandemic and develop strategies to help students affected by school and universities closures.

In addition to the recommendations mentioned above, the authors also suggest that governments invest in supporting the mental health and well-being of students, teachers and families affected by the pandemic. This may include providing access to online counseling services and developing strategies to reduce stress and anxiety. In addition, governments should consider investing in innovative teaching and learning approaches, such as virtual classrooms and online learning platforms, to ensure that students can continue to access educational resources. Finally, the authors suggest that governments provide additional support to students who have been disproportionately affected by the pandemic, such as students from low-income families or those with disabilities [4].

Most of models of personality-developing learning technologies basically contain individual educational trajectories. In the context of distance learning, the construction and implementation of individual learning trajectories becomes especially relevant, since the student has maximum freedom of choice (number of courses, time and place of study, intensity of study, etc.), but as a rule, all researchers associate "individualization" with abilities, opportunities, motivation, goals of the student and do not take into account the peculiarities of the learning style. As practice shows, the previous school learning experience, based on the leading and guiding role of the teacher, greatly complicates the student's learning process at the university.

Remote students experience difficulties in adapting to completely new learning conditions, which will be overcome by building individual learning trajectories that take into account the individual characteristics, educational needs and learning styles of each student [5, 6]. In the distance learning system, the lecturer is primarily the organizer of learning. And here it is appropriate to talk about such a form of pedagogical support as tutoring. Unlike a traditional teacher, a tutor assists the student in independent solving the problem and provides support in the performance of research and design work, contributes to professional and personal self-determination. If the lecturer is mainly engaged in the reproduction of educational information, then the tutor provides pedagogical support to the students, taking into account their subjective experience. The process of forming a versatile and creative personality of a student is associated with the problem of finding new effective systems for teaching fundamental disciplines. One of the ways to solve this problem is to use methods of student-centered education [7-9].

Developed pedagogical technologies of student-centered education make adjustments to such learning parameters as target orientation, the nature and content of the interaction of the subjects in the learning process. Development of methodological principles of student-centered education based on the concept types of perception of the world, will increase the effectiveness of distance learning [10].

The concept of types of perception of the world arose as a basic component of NLP (neuro-linguistic programming), and has recently become widespread as an independent direction. Within the framework of this concept, it is customary to distinguish four main types of people who have different channels of perception of the world (i.e., perceive the world around them differently): audials, visuals, kinesthetics and digitals. These types have significant differences in the organization of thinking and memory, which must be taken into account at the learning process [10].

Audials perceive information primarily by ear. Therefore, they are unusually sensitive to a variety of sounds. In order for an audials, to better remember the information, such students need not only to listen carefully to the lecture, but also to retell it on their own. The lecturer has to initiate the audial student to perceive information in a calm voice, correct and clear speech with logical intonations. Also lecturer have to listen carefully to the auditory and give students the opportunity to speak. Any external sounds or comments interrupt audial students from memorization of what they are listening or talking about. Since the audials perceives information by ear, they may ask the lecturer to repeat material that is incomprehensible to them, and in some

cases even more than once.

Visual students are people who perceive most of the information with by the sight. They remember visual images well and usually have a good visual memory. In the process of understanding the material, visuals can write, draw, etc. It is important for a visual to see the interlocutor or educational material clearly. For a good understanding and memorization of the material, the teacher should widely use technical teaching aids: slides with graphs, tables, diagrams, etc.; lecture demonstrations, educational films. There are good storytellers among visual people, they know how to imagine a panorama of events and describe it, which sometimes distracts them from a clear and direct answer to the question.

Kinesthetic students differ in that when perceiving information, they want to physically feel the situation. Movement is very important in their lives, as they learn about the world around them through their senses. The more often the kinesthetician returns to the work he has already done, the better he does it. For effective assimilation of the material, it is desirable to provide kinesthetic students with individual handouts, which is impossible in distance learning conditions. Also, it is desirable for a kinesthetic student to take notes of the lectures in his own hand. Kinesthetics rarely plan their activities, so the teacher should help the kinesthetic student in organizing his learning process.

Digital students are a unique type of people who are focused on the meaning, content, importance and functionality of the received information. The digital channel is a special way of perceiving the world, its representation and understanding. For digital people, what is written or spoken is reality itself. At the same time, they know how to act calmly in difficult situations, to be pragmatic and scrupulous. For the digital student, the lecturer has to recommend working with textbooks, instructions, and teaching aids as much as possible.

Studies have shown that our society is dominated by kinesthetics and visuals, while audials are in the minority. According to various estimates, the share of kinesthetics is 35-40 %, the share of visuals is 30-35 %, the share of digital is 20-25 %, and the share of audials is about 5-10 % [10]. It should be noted that people using the one channel are extremely rare. As a rule, each person combines several types of perception of the world, while one channel is the leading one and is most oftenly used both consciously and unconsciously. The leading type of perception also forms a generalized type of personality. To introduce the proposed concept into the educational process, we recommend testing students to identify generalized types of perception of the world. Similar tests have been developed by psychologists and NLP specialists and can be found in the relevant literature. Having received data on the majority of students of one type or another in a group, the lecturer will be able to choose the most effective methods for this group learning.

Based on the types of perception of the world described above, the following recommendations can be made to reduce the level of anxiety of students in distance learning in a pandemic and hostilities. Visuals are in the most comfortable position, because distance learning allows much more use of high-quality and interesting visual information. To reduce the stress of visuals, lecturer can use screensavers with beautiful, calming landscapes before starting to study. Audials can also comfortably perceive information in distance learning. To reduce the stress of such students, the lecturer can use a calm, confident voice, friendly intonations. Digitals are also able to easily switch to distance learning.

To reduce stress, they need to be captivated by interesting, innovative learning material. Kinesthetic students experience the greatest difficulty in the transition to distance learning in conditions of increased stress, because their main needs (movement and physical contact with the outside world) are limited. Such students are encouraged to do sports more actively (at least at home) and walk more in the open air. The lecturer could help kinestetics students with an open and friendly attitude, as well as with coaching and helping in planning their time.

Conclusions. Orientation of the lecturer to the types of perception of the world by students solves two major problems. First of all, it improves students' understanding and memorization of the learned material and, thus, increases the efficiency of the educational process as a whole. In addition, interaction with students, taking into account their individual characteristics of the perception of the world, disposes students to the lecturer, increases his/her authority and allows more effectively direct the learning process and students' group activities.

The ways of increasing the distance learning process include:

1. Incorporate more interactive activities into online learning. This could include activities such as virtual breakout rooms, online quizzes, and collaborative projects.

2. Utilize positive reinforcement to motivate students. This could include providing

rewards for completing tasks or making progress in their studies.

3. Encourage students to take breaks and practice self-care. This could include setting aside time for physical activity, relaxation techniques, or engaging in hobbies that they enjoy.

4. Provide students with access to mental health resources, such as counseling or therapy.

5. Encourage social connection and communication among students, even if it is online. This could include setting up virtual study groups or having regular check-ins with peers or instructors.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

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ABSTRACT

The article deals with the topical issues of improving the effectiveness of the educational process in higher educational institutions in the conditions of a pandemic and martial law. The evolution of distance learning is considered. Peculiarities of the remote form of education, which functions on the basis of modern psychological and pedagogical and information and communication technologies, have been studied. The peculiarities of the organization of the educational process in higher educational institutions in the context of the pandemic and martial law were analyzed, in particular didactic aspects of the educational process in conditions of danger and increased stress.

Special attention is paid to the psychological state of students and ways of reducing stress and activating their attention on the educational process, taking into account the types of information perception (audio, visual, kinesthetic, digital). Ways to improve the distance learning process in the conditions of a pandemic and martial law are proposed.

Keywords: *distance learning, pandemic, martial law, psychological state, anxiety, learning, audio, visual, kinesthetic, digital.*

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INNOVATIVE METHODS OF TRAINING LAWYERS: THEORETICAL AND LEGAL ASPECTS

Ольга Чепік-Трегубенко. ІННОВАЦІЙНІ МЕТОДИ НАВЧАННЯ ЮРИСТІВ: ТЕОРЕТИКО-ПРАВОВІ АСПЕКТИ. У статті проведено теоретико-правовий аналіз проблематики впровадження інноваційних методів навчання юристів. Наголошено, що трансформація політичних, правових, економічних, соціальних, духовно-культурних складових сучасного конституційного ладу України потребує сучасних підходів до виховання та навчання

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майбутнього покоління. Враховуючи високу роль правників у державотворенні та правотворенні, особливої уваги потребує підготовка висококваліфікованих правників у вітчизняних закладах вищої освіти, спроможних реалізовувати складні фахові та дослідницькі завдання.

Акцентовано, що сучасна система української вищої правничої освіти в нових реаліях потребує активних змін та оновлення змістовного наповнення на всіх рівнях, враховуючи умови навчання під час воєнного стану та в післявоєнний період. Пріоритетним завданням є пошук та впровадження інноваційних методів навчання правників відповідно до нових суспільних потреб та запитів. Взаємозалежним до ефективного впровадження інноваційних технологій навчання є системне підвищення та вдосконалення свого рівня знань та навичок науково-педагогічними працівниками.

Зазначено, що в умовах активного розвитку та інформатизації всіх сфер суспільства, все більшого впровадження інформаційно-комунікаційних технологій у життя людини, що безперечно стосується і освітньої сфери, доступність інформації збільшується з неймовірною швидкістю. Наголошено на перевагах та недоліках цього явища.

Підкреслено, що з метою вдосконалення системи впровадження інноваційних методів та технологій у закладах вищої освіти важливим є забезпечити підготовку кваліфікованих фахівців у сфері розробки інновацій для впровадження в навчальний процес, враховуючи фахову специфіку, на загальнодержавному рівні та на рівні окремих закладів вищої освіти. Окремо слід звернути увагу на механізм поширення інноваційних методів та технологій серед закладів вищої освіти, їх аналіз, надання відгуків щодо їх ефективності – цей напрям потребує окремого дослідження та уваги вчених-правознавців та інших наук.

Ключові слова: *юридична освіта, правники, конституційний лад, інноваційність, інноваційні методи.*

Relevance of the study. The systematic transformation of the political, legal, economic, social, spiritual and cultural components of the modern constitutional system of Ukraine requires the latest and innovative approaches to education and training of the future generation and older people who continue their education or improve their qualifications. Education and upbringing are of fundamental importance worldwide for preparing a person for a whole life in society and specialists for any sphere of life. The higher the complexity of the profession and its system dynamics, the more attention is needed to developing and implementing the most effective training methods. Considering the increased role of lawyers in state-building and law-making, training highly qualified lawyers in domestic institutions of higher education, capable of implementing complex professional and research tasks, requires special attention.

So, the problem of implementing full-scale and effective innovative activity in the training of lawyers in Ukraine has both a theoretical and applied nature.

Recent publications review. Within the pedagogical science framework, innovativeness in the field of education is represented by the works of such researchers as V. Kremen, V. Ilyin, S. Proleev "The phenomenon of innovation: education, society, culture", 2008 [1], I. Dobroskok, V. Kotsur, S. Nikitchyna and others "Innovative pedagogical technologies: theory and practice of use in higher education", 2008 [2], P. Saukh, O. Antonova, O. Berezyuk, S. Vitvytska, O. Vlasenko, O. Vozniuk, and others "Innovations in higher education: problems, experience, prospects", 2011 [3], S. Tolochko "Theoretical and methodological foundations of the formation of scientific and methodological competence of teachers in the system of postgraduate pedagogical education", 2019 [4]; "Innovative learning technologies", 2021 [5], H. Ochkan "Innovative learning technologies", 2016 [6], V. Vykhrusch, S. Humenyuk, O. Vykhrusch-Oleksyuk "Psycho- didactics of the higher school: innovative teaching methods", 2017 [7], H. Bakhtiyarova and others "Innovative learning technologies", 2016 [8], G. Kaletnik, R. Kravets, N. Lazorenko, V. Tymkova, L. Shapovalyuk "System of pre-university training in the countries of Western Europe and innovative methods of learning in universities of Ukraine", 2013 [9], N. Chen "Didactic conditions for the organisation of innovative learning in higher pedagogical educational institutions", 2010 [10], M. Skladanovska "Innovative learning: activation of cognitive activity of students", 2007 [11] and others. Among philosophers, M. Lysenko dealt with the innovativeness of education "Innovative paradigm of higher education of Ukraine under the conditions of transition to the information society", 2013 [12] and others.

Scientific and pedagogical workers of institutions of higher education in conditions of "digitalisation" of jurisprudence and to create an innovative scientific and educational climate in higher education institutions systematically introduce innovative technologies into the educational process, which as a result increases the creative initiative of students of higher education, helps to combine their academic and scientific research work optimally, etc. Thus, the legal aspects of innovative technologies in the training of lawyers are presented in the

results of L. Nalivayko, L. Martseniuk's "Determination of the expediency of using business games in the training of students of higher education institutions, including future police officers", 2021 [13], V. Simonenko "Innovative methods in training of judges", 2014 [14], O. Fathutdinova "Introduction of new technologies in the process of training legal specialists", 2012 [15] and others. However, the lack of an effective internal system for ensuring the quality of education in institutions of higher education, the inadequate level of theoretical knowledge and practical skills of graduates and several other aspects contribute to the need for further research into innovation issues in the higher education system of Ukraine.

The article's objective is a theoretical and legal study of implementing innovative teaching methods in legal institutions of higher education in Ukraine.

Discussion. Increasing the competitiveness of any country in the modern world involves a transition from the extensive use of human resources with a low level of basic professional training to the intensive use of a highly qualified workforce adapted to the conditions of a socially oriented, innovative economy. This requires the formation of a comprehensive system of effective transformation of modern knowledge into new technologies, products and services that find their real consumers on national or global markets; that is, it requires the development of an effective national innovation system [16]. In an age where technological advancements and innovations are at their peak, there are many opportunities for innovative learning and teaching methodologies. Traditional teaching methods were primarily based on the teacher's explanation of the textbook topic, and students were not active participants in the lesson. New teaching methods encourage students to actively participate in the classroom to awaken their curiosity and creativity [17, 18].

The goal of any educational system is training, education and personality development, and its indicator is a positive result, which today in professional education is considered through high-quality training of a specialist [19, p. 40]. The system of higher legal education is no exception, and innovation is an integral part of it.

Innovation in education is considered as an implemented innovation in the content, methods, techniques and forms of educational activity and personality education (such as methods and technologies), in the range and forms of organising the management of the educational system, as well as in the organisational structure of educational institutions, in the means of training and education and approaches to social services in education. This significantly increases the educational process's quality, efficiency and effectiveness [20]. It is important to emphasise that this approach is relevant for every level of education because if a child did not receive proper training in a secondary education institution, then getting a profession already in a higher education institution will be much more difficult due to the lack of quality basic knowledge and skills.

The concept of "innovative activity" in the educational system is the development of new content and new teaching methods. Although innovations in education are a natural phenomenon, dynamic in nature and developmental in results, their introduction allows for resolving contradictions between the traditional system and the need for qualitatively new education [21]. Innovative activity in Ukraine is provided for by the Laws of Ukraine "On Priority Areas of Science and Technology Development" dated July 11, 2001, "On Priority Areas of Innovative Activity in Ukraine" dated September 8, 2011, other laws of Ukraine and several secondary legal acts.

Pedagogical innovation, by the features of innovative processes in education, should include the following theoretical blocks of concepts and principles: the creation of new things in the system of education and pedagogical science, perception of new things by the socio-pedagogical community, application of pedagogical innovations, a method of recommendations for theorists and practitioners regarding knowledge of innovative educational processes in education and their management [19, p. 40].

Furthermore, the introduction and approval of the new in educational practice are conditioned by positive transformations. Therefore, it should become a means of solving the actual tasks of a specific educational institution and withstand experimental verification for the final application of innovations. This should consist of modern modelling, organisation of non-standard lecture-practical, seminar classes; individualisation of teaching aids; office, group and additional training; optional, at the choice of students, deepening of knowledge; problem-oriented learning; scientific and experimental when studying new material; development of a new knowledge evaluation control system; application of computer, multimedia technologies; educational and methodical products of the new generation [22, p. 28].

In the conditions of active development and informatisation of all spheres of society, the

increasing introduction of information and communication technologies into human life, which undoubtedly also applies to the educational sphere, the availability of information is increasing at an incredible speed. This certainly has both advantages and disadvantages. Suppose the benefits are apparent among the drawbacks. In that case, one should single out the inability to find the correct information, the endless information flow, the lack of skills to systematise information, etc. In this connection, the challenge for the whole society, and the educational sphere in particular, to master the techniques and methods of finding and using primary sources, critically analysing national and foreign legislation, etc., becomes apparent. All this requires the active integration of innovative approaches into the training of future lawyers.

There is no doubt that traditional learning is key, but computer technology is a beneficial supplement and sometimes the only way to conduct training sessions. We could observe all this in the conditions of implementation of quarantine restrictions in almost every state of the world, in the conditions of the introduction of martial law in Ukraine from February, 2022.

Introducing new conceptual approaches to obtaining a higher legal education requires a new comprehensive system of receiving and diagnosing students' knowledge. Yes, with help programs for organising video conferences Zoom, which is already traditionally used in higher education institutions for conducting training sessions, teachers and students of higher education can create joint materials (tables, diagrams, etc.) during the course of the lesson, as well as save the developed materials using the "Messageboard" functions in various formats for further use. This approach makes it possible to maximally involve students in collective work and better master the relevant topic.

In addition, today, it is appropriate to use various applications, such as "Kahoot! " – through the application, you can conduct quizzes and testing in an interactive form.

In the context of the implementation of innovative methods, it is essential to turn to foreign experience. The main goal of legal education in Great Britain, the countries of North America, Australia and New Zealand is to train a practising lawyer-advocate who can successfully solve complex practical tasks and represent the client's interests in court soon as possible after receiving a higher education diploma. In this regard, the training of lawyers at law faculties of Anglo-Saxon countries is based on such teaching methods as consideration of theoretical material with the help of court precedents [23].

It is fair to note that studying academic material using court precedents primarily takes place in countries belonging to the Anglo-American legal system. However, we note that the modern legal system of Ukraine is actively modified and incorporates certain features of the general legal system, which is expressed in the introduction of the "model case" institute into the administrative judiciary. Thus, moving away from the absolute theorisation of educational material and more active implementation of the study of various legal cases will contribute to much better preparation of future lawyers for practical activities.

We would like to emphasise that an additional powerful element in the education of students of higher education at the Dnipropetrovsk State University of Internal Affairs is the acquisition of practical skills at the Istina legal clinic, where students can advise citizens on specific legal issues under the guidance of mentor teachers.

On the one hand, it is pretty common to use an already traditional method – the project method. Still, on the other hand, it is a method that is also constantly updated in the conditions of the development of information and communication technologies. Thus, this method allows higher education students to strengthen their theoretical knowledge by researching this or that legal phenomenon to make discoveries at their level.

Conclusions. Education is a driving factor in the state's and society's development, enabling the strategic solution of tasks and ensuring national security. The modern system of Ukrainian higher legal education in new realities needs operational changes and renewal of content at all levels, considering the conditions of education during martial law and in the post-war period. For every democratic legal state, it is essential to create an effective system of legal regulation, improving the quality of rule-making and law enforcement activities. In this regard, the priority task is to find and implement innovative methods of training lawyers for new social needs and requests. Systematic improvement and improvement of the knowledge and skills of scientific and pedagogical workers are interdependent on the practical implementation of innovative learning technologies. Modernity offers a large number of opportunities to ensure this. The main thing is the quality of these services and the lack of formality in improving the teacher's qualifications.

To improve the system of introducing innovative methods and technologies in institutions of higher education, including the legal field, it is essential to ensure the training of

qualified specialists in the field of innovation development for implementation in the educational process, taking into account professional specifics, at the national level and the level of individual institutions of higher education. Furthermore, particular attention should be paid to disseminating innovative methods and technologies among higher education institutions, their analysis, and providing feedback on their effectiveness. This direction requires independent research and the attention of legal scholars and other sciences.

Conflict of Interest and other Ethics Statements
The author declares no conflict of interest.

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ABSTRACT

The article provides a theoretical and legal analysis of the problems of implementing innovative methods of training lawyers. It is emphasised that the transformation of the political, legal, economic, social, spiritual and cultural components of the modern constitutional system of Ukraine requires current approaches to the education and training of the future generation. Furthermore, considering the high role of lawyers in state-building and law-making, training highly qualified lawyers in domestic institutions of higher education, capable of implementing complex professional and research tasks, requires special attention. It is emphasised that the modern system of Ukrainian higher legal education in new realities needs operational changes and renewal of content at all levels, considering the conditions of education during martial law and in the post-war period. The priority task is to find and implement innovative methods of training lawyers for new social needs and requests. Systematic improvement and improvement of the knowledge and skills of scientific and pedagogical workers are interdependent on the practical implementation of innovative learning technologies.

It is noted that in the conditions of active development and informatisation of all spheres of society, the increasing introduction of information and communication technologies into human life, which undoubtedly also applies to the educational sphere, the availability of information is increasing at an incredible speed. The advantages and disadvantages of this phenomenon are emphasised.

It is emphasised that to improve the system of introducing innovative methods and technologies in institutions of higher education, it is essential to ensure the training of qualified specialists in the field of innovation development for implementation in the educational process, taking into account professional specifics, at the national level and the level of individual institutions of higher education. Furthermore, particular attention should be paid to disseminating innovative methods and technologies among higher education institutions, their analysis, and providing feedback on their effectiveness. This direction requires independent research and the attention of legal scholars and other sciences.

Keywords: *legal education, lawyers, constitutional system, innovativeness, innovative methods.*

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THE ROLE OF MOTIVATION IN LEARNING A FOREIGN LANGUAGE BY FUTURE LAW OFFICERS

Ганна Декусар, Карина Лагун. РОЛЬ МОТИВАЦІЇ ПРИ ВИВЧЕННІ ІНОЗЕМНОЇ МОВИ МАЙБУТНІМИ ПРАВООХОРОНЦЯМИ. У роботі визначено, що система освіти МВС України активно змінюється та модернізується, що, безумовно, має враховуватись у методичному контексті на всіх рівнях освіти. Дослідження проблем мотивування курсантів має бути безперервним, необхідно постійно шукати нові технології, способи та засоби для ефективного навчання іноземної мови, які сприятимуть мотивуванню курсантів до іншомовної діяльності і, як наслідок, підвищенню якості іншомовної діяльності.

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Актуальність дослідження обумовлена необхідністю забезпечення іншомовного освітнього процесу в закладах вищої освіти методикою навчання, спрямованою на підвищення мотивації майбутніх правоохоронців.

Визначено той факт, що англійська є мовою усього світу та до її вивчення слід підійти більш поглиблено та вивчати саме її профільно, для сприйняття поліцейським потрібної для нього інформації у своїй роботі. По-перше, англійська мова допомагає досягнути прогресу у міжнародному співробітництві, що є досить важливим, по-друге, поліцейський неодноразово стикається з ситуацією, коли йому слід пояснити порушнику причину зупинки, або ж для швидкої та оперативної допомоги жертві, яка стала заручником певних обставин і звернутись може тільки до поліцейського.

Відповідно до нестабільної економічної ситуації та реформування системи правоохоронних органів, підвищуються вимоги до кваліфікованості співробітників поліції. Впроваджуються нові форми та методи підготовки фахових поліцейських із залученням інформаційних технологій, та нових методів комунікативного підвищення у сфері ведення діалогів безпосередньо самого поліцейського з громадою. Іноземна мова – це значна частина вербального методу ведення переговорів з людьми, яку слід вмотивовано розвивати серед кола поліцейських.

Ключові слова: *мотивація, іноземна мова, соціокультурний простір, правоохоронці, вивчення, сучасні методи навчання.*

Relevance of the study. Motivation has been studied for many decades in different contexts, although there is no consensus on what motivation is, what motivations for learning need to be developed, in what ways and under what conditions it is possible to form a stable, positive motivation to learn. In recent years, under the influence of informatization, globalization, epidemiological and sociocultural factors, the interests and passions of cadets have changed, and accordingly, their goals, motives and desires. Until now, the formation of motivation during foreign language learning was considered under the conditions of modernization of the education system.

In the conditions of the formation of the modern scientific and educational paradigm in the 21st century, the status of a foreign language is changing significantly. Under the influence of social, geopolitical, technological and other processes, the importance of foreign languages in the world is increasing. Such phenomena as globalization, social openness, the development of international connections and relations contribute to the spread of multilingualism or multilingualism. Thanks to such phenomena as informatization and computerization, the importance of foreign languages reaches a completely different level in the multicultural world community [1, p.232].

The significance of mastering a foreign language is changing significantly in the realities of modern, globalized society. The rate of growth of the number of users of the global Internet and its endless filling with new content cannot be ignored both in everyday life and in the field of foreign language education. A foreign language is not only a means of intercultural communication, but also a means of integrating cultural, creative, and scientific achievements into a single multilingual, multicultural, informational global space.

Recent publications review. Considerable attention is paid to issues related to learning a foreign language by future law enforcement officers. In particular, it is worth highlighting the works of: O. Tarnopolskyi, Z. Korneva, T. Kolbina, O. Oleksenko, and O. Izmailova. However, almost no attention was paid to the problems of cadets' motivation when learning a foreign language in the works of domestic scientists.

The article's objective is to determine and characterize the process of motivation of cadets when learning a foreign language, to single out the main elements that spoil motivation and to determine ways to overcome this phenomenon.

Discussion. Let's start with the fact that in the global information space, all communication between citizens mainly takes place in one or more foreign languages. That is why absolutely every person is faced with the need to apply their foreign language communication skills and abilities in the spaces of the World Wide Web and in everyday life. Intercultural communication is an integral part of a huge audience of Internet users around the world. A foreign language becomes not only a means of communication, but also a means of integration and promotion of one's ideas, thoughts, interests, commercial proposals and scientific achievements in a single multicultural and multilingual space [2, p.78].

In today's world, it is impossible to imagine a successful person who does not know at least one foreign language and is not able to integrate it into the sphere of his professional activity. Modern world trend is multilingualism. Mastery of languages, which are means of communication and information exchange with the peoples of other countries, is gaining more

and more importance, the possession of only one foreign language is now indispensable. Therefore, the process of learning a foreign language by cadets of institutions of higher education of the system of the Ministry of Internal Affairs (hereinafter – Higher Education Institutions of the Ministry of Internal Affairs) is quite relevant and relevant.

Multilingualism, as a socio-cultural phenomenon, presents to education the complex task of preparing young people for life in a multinational and multicultural environment, forming the skills to communicate and cooperate with people of different nationalities, races, and confessions. Note that the process of learning a foreign language should be parallel to the study of the culture of the people of the country of the language being studied, their behavioral and communicative norms of communication, values and traditions. In such conditions, the cadet will act not only as a subject of language, but also as a subject of culture, morality and morality. The result of such training should be focused on the upbringing and formation of a multilingual and multicultural citizen of the country, who accepts his belonging to a certain ethnic group and a certain culture, and to the global world space in general [3, p.67].

It is in the process of intercultural education that the future law enforcement officer has the opportunity to better understand the values of the local culture in the process of comparison with other cultures. It is in this kind of process that learning a foreign language is effective and efficient. Foreign language teachers face a new task – to prepare a graduate who will be able to successfully integrate not only into the socio-cultural space, but also into the sphere of his professional activity, in our case it is the sphere of law enforcement. If we talk about a foreign language, first of all, it is necessary to build the educational process in such a way as to instill in the cadet the need for self-organization, self-development, the formation of independence in mastering a foreign language and exercising self-control. Therefore, the problem of motivation arises time of learning a foreign language. In foreign language education, as in other areas, the motivation of cadets directly affects productivity and efficiency in language acquisition and the formation of foreign language communicative competence.

Without stable positive motivation, internal awareness and desire of cadets of the Ministry of Internal Affairs system to learn a foreign language, it is almost impossible to form foreign language communication skills and abilities. In the current socio-economic, geopolitical, technological, and recently epidemiological situation in the world, the problems of sustainable motivation of future law enforcement officers when learning a foreign language become especially relevant. Considering motivation as one of the most important components of the process of mastering a foreign language, which ensures its effectiveness, it should be noted that motivation is the subjective side of the student's world, which is determined by his needs, desires and preferences.

Therefore, it is difficult to cause motivation from the outside. The teacher can only indirectly cause the process of formation of motivation in the cadet, creating a base, taking into account which, the future police officer will have a personal interest in learning. The task of the teacher is to get to know the cadet as best as possible, to stand in his place, and then the teacher will be able to recognize his motives, and even develop and correct them. The teacher needs to imagine all the components of motivational tools, types and subtypes of motivation, and its reserves. Only then, it will be possible to find a balance between the content of the educational process and types of motivation, that is, to form a stable accompanying motivation, on the basis of which the future police officer will progress in mastering a foreign language [4, p.44].

Motivation is studied in different aspects, and therefore researchers consider it as one specific motive and as a certain system of motives, which includes a set of needs, goals, motives, ideals, interests, aspirations in their complex interaction. The motivation to learn a foreign language by future police officers is a subjective process of education and the formation of internal and external motives that stimulates, regulates and organizes the activity of mastering a foreign language, which is aimed at achieving educational, communicative and other goals in accordance with social values, interests, expectations and needs at the current stage of society's development.

The process of learning foreign languages can be seen through the prism of the hierarchy of human needs. The learning process satisfies certain needs, namely:

a) the need to study and research something new and unknown;

b) the need for changes and progress through interaction with the external environment;

c) active activity, demonstration of one's strong qualities and abilities;

d) interaction with other people, exchange of experience and ideas;

e) striving for new knowledge, their systematization, search for new means of their

extraction;

e) increasing one's significance among other people.

The motivation of cadets while learning a foreign language usually manifests itself at three main levels:

1) on the global level (motivation for further life plans and goals);

2) at the level of the situation (when solving a specific communicative task);

3) only at the class level (while performing a certain task).

Thus, even if the learner has a fairly high level of global motivation and is aware of the importance of mastering and learning a foreign language, if he is offered an uninteresting task that does not correspond to his interests and desires, then his motivation will not manifest itself.

The level of motivation of each cadet and its dynamics in the educational process can be influenced by the following factors: 1) related to the organization of the educational process; 2) related to the cadet himself and his individual characteristics; 3) related to sociocultural influence and attitude to the language being studied.

Researchers agree that the motivational sphere of cadets is diverse and has a complex structure. It is influenced by social factors, the nature and peculiarities of the activity itself. In order to effectively influence the motivational sphere of cadets, the teacher should know the types of motivation during foreign language learning and understand their features [5, p. 65].

Firstly, motivation is divided into external and internal. In turn, external motivation, under the influence of social motives determined by the needs of society, is divided into broad social motivation and narrow one. Internal motivation is determined by the nature of the activity itself, and its subtypes include success motivation, communicative and linguistic motivation [6, p. 194]. Both external and internal motivation can be positive or negative, and positive and negative motivation should be distinguished. The positive motivation can include the construction: "if I learn English, I will be able to communicate with foreigners", and the negative: "if I teach English, I will pass the exam and not get into the uniform". Motivation can also be divided into distant (distant, delayed) and close (current).

According to P. Jacobson, the problem of motivation is one of the central and at the same time the most difficult problems of personality research. However, despite different interpretations of the conceptual motivation, most researchers agree that motivation is a broad concept that can be defined as an engine of activity that prompts, directs, organizes human behavior and activity and gives it significance and personal meaning. The main problems with the motivation of cadets when learning a foreign language include: boring presentation of material; sameness of classes and given tasks; misunderstanding of the importance of learning a foreign language and its role in the law enforcement profession; the negative influence of the environment on the process of learning a foreign language. In turn, every foreign language teacher must have basic skills in understanding the process of motivation and use them in their practical work in classes.

Modern Ukrainian researchers of cadet motivation problems when learning a foreign language, in particular T. Pakulova [7], N. Davydova [8], prove that the main criteria for its formation are the presence of cognitive motives and goals, the presence of positive emotions caused by the learning process, the ability and desire to learn, the ability and opportunity to apply the acquired knowledge in practice. Based on the comprehensive consideration of these indicators, the researcher identified four levels of formation of motivation for learning a foreign language: the level of lack of motivation (negative internal motivation for learning embedded in the educational activity of subjects of learning); low (negative external motivation, which is outside the educational activity of the subjects of study); medium (positive external motivation, which is directly outside the educational activity of the subjects of study) and high (positive internal motivation, which is embedded in the educational activity of the subjects of study). It is also worth noting the role of self-motivation in learning a foreign language. If a person can motivate himself, he increases his chance of success in a professional environment. Even if she suffers temporary setbacks, she still continues on her way to the goal.

Let's start with the definition. Self-motivation is encouraging yourself to perform purposeful actions. Basic self-motivation is necessary for each of us to function normally. Next, self-motivation for specific tasks should be noted. Motivating yourself to learn foreign languages is not an easy task. Boring grammar, hard-to-pronounce words, unintelligible audio recordings. Over time, the desire to work becomes less and less, and now the cadet prefers to do other, more interesting things instead of studying a new chapter of the textbook. In the study

of the English language, as in any other activity, there are certain laws. As long as the activity is new to the person, novelty can fuel interest. But time passes, and enthusiasm is replaced by fatigue. The ability to motivate yourself will help to cope with this problem. Steve Jobs used to say: "Take a step, and the road will appear by itself". How to force yourself to take this first step? Modern psychology has developed many ways that allow you to regain motivation and the desire to move on. Let's consider some of them.

The easiest way to motivate yourself is to use emotions. In order not to force yourself to learn English from under a stick, you need to imagine what benefits these lessons will bring in the future. For example, having learned a foreign language, you can afford to communicate abroad on a trip. Young people who like to meet new people can imagine themselves talking freely with an attractive English or German woman. And for girls who dream of a wedding with a foreigner, a magnificent wedding ceremony will serve as a motivating picture. Those who aspire to get a successful career can imagine how they are quickly promoted and how their incomes grow along with it.

You can also use the opposite method – motivation "from unpleasantness". For this, it is necessary to ask the question: "What will happen if I do not devote thirty minutes now to preparing for the English lesson?" Motivation often disappears because the task before a person seems too huge. A complex and large-scale task can be so frightening that a person gives up on this idea before even starting to study. And here irreplaceable equipment will help. It is called "divide the whole into small parts". So that a big business does not seem threatening, it must be divided into several small successive stages. You need to perform small tasks and consistently. For example, on Monday, learn a grammar rule and do several exercises to consolidate it. On Tuesday, you can do listening. Thus, in a month, a significant part of the program will be completed, and the cadet will be able to enjoy the first success.

The "Competition" psychotechnique also helps a lot. For its implementation, it is not even necessary to find like-minded people whose goals partially or completely coincide, because the cadet is constantly in a group of fellow students. And that's why the teacher can use this psychotechnique in classes once or twice a week.

High results in learning a new language can be achieved only by those who regularly work to achieve the set goal. The success of the activity depends on the ability to cheat to see one's goal and the benefits that its achievement brings; from proper organization of one's work; and also from the support of others. In addition, motivation is the cause of activity and orientation of the individual to objects and phenomena of reality, as a result of which activity arises. Achieving a certain goal, in addition to desire, requires an object that was a stimulus for activity, and which would direct the activity of the individual, that is, a necessary motive. The quality of learning a foreign language as a whole depends on what motives pursue the cadet. External motivation has no connection with the content of the educational subject, but depends on external factors. Examples of external motivation include:

1) achievement motive – the cadet's desire to succeed in any activity, in particular in the study of foreign languages. For example, when a student wants to successfully complete an academic year or receive a diploma;

2) the motive of self-affirmation – the cadet's desire to receive approval from peers, teachers, parents and society as a whole. A student seeks to learn a foreign language, as it can increase his status and position in society;

3) the motive of identification – the desire and desire of the cadet to be like his idol, for example, a famous singer, actor or athlete, the desire to speak the same language;

4) motive of affiliation – desire and desire for interaction and communication with other people;

5) the motive of self-development – the individual's desire and desire for self-improvement. A student considers learning a foreign language as a source of new knowledge for intellectual, cultural and spiritual growth.

Intrinsic motivation is the opposite of extrinsic motivation and is directly related to the content of the subject itself, and not to external factors. It is often called procedural or cognitive motivation. Those who study get pleasure from the very process of mastering a foreign language, from intellectual activity. The effect of external motives (prestige, achievement, self-affirmation, etc.) is intended to strengthen internal motivation, but they are not directly related to the content of the subject and the process of educational activity [9, p. 243]. Research in the field of psychology and pedagogy proves that the effectiveness of learning a foreign language or any other subject directly depends on the level of motivation of

the cadets of the Ministry of Internal Affairs. One of the most important and difficult tasks of a teacher is to create conditions and the necessary atmosphere in the educational process for the formation of stable, positive motivation of future law enforcement officers. It is absolutely clear that the stable, positive motivation of the cadets of the Ministry of Internal Affairs system should have a balanced combination of cognitive (internal) and basic social (external) motives, which should be reflected in the educational process at each lesson in the Higher Secondary School of the Ministry of Internal Affairs [10].

Conclusions. Thus, motivation is a subjective process of internal and external motives formation, which stimulates, regulates and organizes the activity of mastering a foreign language by a cadet of the MIA system, which is aimed at achieving educational, communicative and other goals in accordance with social values, interests, expectations and needs at the current stage of society's development.

With regard to the process of learning a foreign language in the conditions of modernization, motivation can be characterized as a motivating and regulatory mechanism of activities for mastering foreign language communicative competence, which ensures the student's involvement in foreign language activities and mastering its means. The action of this mechanism is ensured by a set of motives, where the priority is cognitive motives motivated by the teaching method, which contributes to the activation of personal activity, the development of communicativeness and cognitive interests in the field of a foreign language, which corresponds to social values, interests, expectations and needs at the current stage.

The motive in learning a foreign language in the conditions of modernization of education is characterized as an intention, aspiration, need or final result that prompts the learner to act, determines his choice of means and strategies for the most effective achievement of educational, communicative and other goals in accordance with social values, interests, expectations and needs of the participants in the educational process of learning a foreign language.

Conflict of Interest and other Ethics Statements
The authors declare no conflict of interest.

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ABSTRACT

The work determined that the education system of the Ministry of Internal Affairs of Ukraine is actively changing and modernizing, which, of course, should be taken into account in the methodological context at all levels of education. The study of the problems of motivating cadets should be continuous, it is necessary to constantly look for new technologies, methods and means for effective foreign language learning, which will contribute to the motivation of cadets for foreign language activities and, as a result, to increase the quality of foreign language activities. The relevance of the study is due to the need to ensure the foreign language educational process in institutions of higher education with a teaching method aimed at increasing the motivation of future law enforcement officers.

The fact that English is the language of the whole world and its study should be approached more deeply and studied precisely in its profile, for the police to perceive the information necessary for him in his work, has been determined. Firstly, the English language helps to achieve progress in international cooperation, which is quite important, and secondly, the policeman repeatedly faces a situation when he should explain to the violator the reason for the stop, or for quick and efficient assistance to the victim who has become a hostage of certain circumstances and turn to maybe only to the police.

In accordance with the unstable economic situation and the reform of the law enforcement system, the requirements for the qualifications of police officers are increasing. New forms and methods of training professional police officers with the involvement of information technologies, and new methods of communication improvement in the field of dialogue between the police officer and the community are being introduced. A foreign language is a significant part of the verbal method of negotiating with people, which should be motivated to be developed among police officers.

Keywords: *motivation, foreign language, socio-cultural space, law enforcement officers, study, modern teaching methods.*

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HOW AUTHORITY AND TRUST INFLUENCE THOSE, WHO ARE UNDER LECTURER'S SURVEILLANCE, THE WAYS TO SHAPE UP THE AUTHORITY

Ольга Олійник (Хлинстева). ЯК АВТОРИТЕТ І ДОВІРА ВПЛИВАЮТЬ НА ТИХ, ХТО ПЕРЕБУВАЄ ПІД НАГЛЯДОМ ВИКЛАДАЧА, ШЛЯХИ ФОРМУВАННЯ АВТОРИТЕТУ. У статті розглянуто питання дослідження особливостей формування авторитету викладача та його впливу на результати в процесі навчання студента. Проаналізовано основні чинники утворення авторитету викладача: компетентність, комунікативні навички, харизматичність, довіра. Запропоновані рекомендації, щодо створення довірливих взаємовідносин між викладачем та його підопічними, як невід'ємної частини навчального процесу з метою досягнення більш ефективної комунікації, а в результаті і поліпшення результатів у навчанні.

Крім цього розглядаються причини підриву авторитету особистості, причини через які виникають складності при налагоджуванні умовно правильної атмосфери під час заняття і поза навчальної аудиторії. Важливість комунікативного процесу як в аудиторію так і за межами. Правильна організація коректного спілкування і результати, яких можна досягти, забезпечивши вище-вказане.

Мотивація та стимул. Розглянуті терміни понять, які на наш погляд є дуже важливими поняттями, якими неможна нехтувати. Причини, чому надавати перевагу мотивації перед стимулом правильно. Адже, вони відображають інструменти впливу, а вплив є однією з основних складових частин поняття авторитету. Вибір тих чи інших інструментів впливу обумовлює, опосередковано, рівень довіри та ступінь авторитетності персони. Вимірюваність показників авторитету викладача, яка на наш погляд, хоч і умовна, та достатньо показова. Академічна доброчесність, як один з проявів авторитетності особистості.

Ключові слова: *авторитет викладача, комунікативні навички, довіра, професійна компетентність, харизма.*

Relevance of the study. Chasing after the results and high performance not only of research, but teaching staff as well, result of students, who are making their way to obtain higher education, the requirements for the amount of materials for further professional life of applicants are now growing exponentially. This is quite natural, as progress is moving forward and scientists are constantly working on researching current issues in their fields.

The volume of articles and abstracts published, not even daily, but every hour, if not every minute, is escalating, and it is NOT about the number of such works in all areas, but at least in one of the areas. It is simply impossible to read them all. And we are constantly exposed to all these growing demands for THE QUANTITY and QUALITY WORKS.

Though, eventually it turns into THE QUANTITY AGAINST QUALITY. Whether QUANTITY, QUALITY or both is up to the actors of the educational process. Authority and trust are the major factors, in our opinion, that impact hugely to the performance and willingness to reach the result good both in terms of quality and to achieve the results in quantity. When talking about these factors we imply the level of skills (both soft and hard) as they are an integral part of performance of the owner. For example, So, we rely on the authority of publications, colleagues, reviews of other scholars.

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Recent publications review. Under modern conditions, every teacher has the opportunity to become a bearer of authority. An important role should be played by their own, personal potential of a particular person: way of thinking, personal perception of social requirements and norms, behavior, will, duty, interest, desire and more.

Even in the works of Plato, Aristotle, the doctrine of Confucianism shows the nature of authoritative relations. The first experience of the scientific approach to the essence of authority is found in the works of German scientists G. Hegel, F. Nietzsche, F. Engels, M. Weber, G. Gadamer, M. Scheler, J. Habermas and others [3-5].

Though many scientists have studied the institute of trust (among them: F. Fukuyama, V. Kupreychenko, N. Obosov and many others) we see this issue not studied enough by many reasons and one of them is absence of simple and precise way of calculating it [3].

The article's objective is to study reveal the huge range of aspects that are to be taken into account during professions trainings. These aspects in terms of educational process vary and we can list the whole range of measures to be taken to improve the performance of both the tutor and the students.

Discussion. The topic of research remains relevant due to a wide range of different aspects of such factors as trust and authority, their effects to indices of performance. Psychological climate – is one of the most important points and is to certain extent preconditioned by the authority of the lecturer. Before a person reaches the point where he or she starts their way to professional life, they have some path already covered. And on their way different sort of people occurred. Communication is an integral part of educational process and, thus, the previous experience may have different side-effects, unfortunately more often people may be harmed emotionally. Various kinds of mental blocks have appeared in minds of some of that, or even prejudice towards the whole process of education and their abilities for it.

The thing is that our brain tries to isolate us from harmful and destructive thoughts triggered by notorious experience. The huge and weigh too important is to know how to make such people live through that experience so that they could handle it and unblock themselves. Usually these blocks are tightly linked to such indices of emotional state as self-esteem, self-trust. Authority may have huge range of manifestations and also tools of impact. To be authoritative means to be listened and trusted. To consider someone to be an authoritative person means to be ready to listen to what this person says and to be able to perceive, what it said, because you trust the person. Authority means power to influence or command thought, opinion, or behavior [1]. Though the definition, given in online merriam-webster dictionary, as we see it, is a bit abrupt and, at least in the context of teacher's authority is to be developed.

Let's see each of the elements given in the abovementioned definition of one of the major terms for this article. "Influence or command"? In accordance with the online merriam-webster dictionary, the term "influence" means the power or capacity of causing an effect in indirect or intangible ways [3]. For the verb "to command", the following definition is provided – to direct authoritatively: ORDER [1].

As we see the state of affairs, authoritative person has no need to resort to any type of violence, neither physical or emotional. And the word "commend" itself implies to certain extent a kind of violence, at least emotional. Which is also called negative acknowledgement. What's more it is of weigh too low capacity and the payoff may be unpredictable and notorious for the one, who uses this shade of authority. Nevertheless, a command itself doesn't serve as a word with exclusively bad or good connotation, context and hermeneutics are at play. What I say may differ from what you have heard. It is a matter of perception.

So, one of major effective ways to reduce misunderstandings to minimum is communication. Still before we get down to revealing this point of the article, let us discuss the "comrade" of the verb "to command", we are talking about the verb "to influence" (means the power or capacity of causing an effect in indirect or intangible ways [1]). The only downside of the definition, in our opinion, is word "intangible". Though the statement about the side-effect of the word is RATHER TRICKY!

As it is an integral part of the definition. The thing is that when the attempts for the desired impact to be achieved are too intangible you may simply face the problem of not being understood. So, here is the point that makes us think, that the word "commend" here is not to be understood as a manifestation of violence, but as a leveraging factor.

One of the major upsides related to authority is that for the authoritative person there is no need at all to resort to any forcing anyone to doing anything. If you have to force anyone that shows the level of your authority. Speaking about the measuring. As economists say:

"There always is something to be counted". Which means, that to measure the index of authority we are to define the quantitative variables. The variable could be the following:

– Tasks given to the contrast to the tasks done.

– The quality of performing the tasks (here we can actually observe at once a couple of things, helping us understand:

Attitude to the lecturer via accepting the tasks and recommendations or instructions accompanying the task;

How concise are the instructions and the tasks;

Students' perception;

Students' ability to meet the demands

Students' willingness to perform in accordance with the requirements of the tutor/lecturer or teacher;

Considering all these elements we can conclude, that educational process is a two-way road. "My students are my teachers" – though many can say, that the statement is emotional and belongs mostly to sentiments occurring in the process of collaboration with students you teach, but your students represent your focus group and, if work correctly, we can be given a serious lift to better quality education in total. The focus group asks questions and, if take into account, that each person is representing his or her own perception of the world, his or her own way of thinking, we obtain the whole laboratory with a wide range of tools to be used and a huge scope of data accessible any time.

If an explanation of anything works for one person, it does not mean, that it will work for another one. Person means the personality of a human being: SELF [1] (it is only one of meanings of the word "person", though in our opinion is the most appropriate for our research). As we have already mentioned above, each participant of the group is a representative of his or her perception of life and his or her own way of thinking. We should know our focus group to deal with then successfully and to achieve better performance for both sides of the educational process.

Here I would like to mention the statement of my peers from their article named "CRITICAL AND LOGICAL THINKING FORMATION AS THE EDUCATIONAL COMPETENCE IN THE MODERN TRAINING SYSTEM FOR LAWYERS" and here it the quotation "the disciplines of social and humanitarian profile have a special role in these competencies shaping, as the process of studying shapes the worldview of the individual, including the development of information perception and informed decision making" [2].

So, the reasons, why we've mentioned it are the following. Coincidence in our opinion in terms of importance to consider the perception of the world by those, who we are teaching. As understanding of how your wards think and how they perceive the world may give you the answer on what kind of tools are to be chosen for both sides or both counterparts of the educational process to perform better.

An informed decision making is another point and in terms of the context of our work we interpret this statement in our own way. When talking about an informed decision making we, first of all, would like to remind of point №1. Perception and way of thinking impose some additional effects, that are still to be studied along with the authority. Personalized approach is to be applied, which become possible in the process of online teaching.

A couple of words about online education and the authority of the person responsible for educational process control. When talking about online education we should be critical at maximum, and though as we see the pitfalls of online education and downsides (such as effect of presence which not to be underestimated), we are to mention the upsides (such as opportunity to personalize education for each participant of the group, involved into the process).

Trust of participants of the group, that is under the lecturer's surveillance is a positive effect of acquiring authority and is a way of acknowledgement and proof of the lecturer's authority. Another point that is only to be reviewed within this research is expressed in the following statement: How authority is acquired and why trust is considered to be the proof of a lecturer's authority? The answer to this question lies in term "communication".

Communication is a process by which information is exchanged between individuals through a common system of symbols, signs, or behavior [3]. The big issue is that many consider communication to be exclusively an exchange of information, but the thing is that in our opinion, communication is somewhat more than a simple exchange of data it is also about emotions, personalities of all (involved in this communication) to become authoritative you

ARE to put some personality to the teaching process, you just have to, literally.

Communication is a two-way street and authority is earned via trust. Trust implies agreement that all sided are to stick to what they say and do it. Distrust occurs, when the agreement was violated.

Let's give definition of the term "trust" to lead you through the ideas we are trying to reveal as close as it is possible. As O. Oleynik states in one of her works dedicated "trust", named "WAYS OF DEFINING THE LEVEL OF TRUST: HOW DO SEMIOTICS AND HERMENEUTICS INFLUENCE SUCH NOTIONS AS TRUST AND CONFIDENCE, BELIEF?": "Trust or confidence, to our opinion, is something that cannot be touched or seen, but can be literally felt through the freedom and the way of communication. It actually manifests through the communication; the way it is conducted" [3].

And the final aspect to be revised is the difference between the terms "motivation" and "stimulation". Our interpretation and then judgement about the priorities between these terms ensues from the origin of the terms:

Motivation originates from the word "motive" (which actually gives the answer to the question: Why am I doing it? It is always personalized and also implies, that the person decides him or her-self if do something or not).

Stimulation – is a word from Latin and means a stick with a spike on the top of it. Which definitely implies some kind of violence and forcing to do something.

Now, when having revealed their meaning, the priority given to THE SELF, to INFORMED DECISION MAKING is obvious. As the only way to make a person do something is to motivate, to make him or her willing to do.

Taking into account the above said we can conclude that personality and authority play enormously important role in the process of education. And a lot of variables are to be taken into account, when working on the authority of a lecturer. These variables are the qualities, which can refer to different lines, the way table 1 represents them.

Table 1

Factors influencing the authority

Personality and ethics	*Individual psychological*	*Pedagogical*
Sense of duty and civic responsibility, humanism, sincerity, attentiveness, kindness, conscious attitude to work and discipline, demanding principles, modesty, sociability, objectivity, self-criticism, high moral culture, artistry, general erudition, patience and perseverance.	The breadth and depth of cognitive interests, clarity and critical thinking, ingenious emotional sensitivity and resilience, long-term memory, developed observation of the will, imagination, large volume and switching of attention, temperament culture, objective self-esteem.	High level of professional and pedagogical training, interest in pedagogical activity, love for work and children, pedagogical tact, pedagogical thinking, professional pedagogical ability, desire for scientific and pedagogical creativity, culture and expressiveness of language, sense of humor.

Conclusions. The way a lecturer can operate with these qualities when teaching shows the professionalism in terms of ability of the lecturer to implicate everyone in the group into the educational process, to set the environment, where everyone feels comfortably, when teaching or learning, depending on the counterpart.

Thus, we can also conclude, that nowadays a professional can be considered a professional if he or she develops both hard and soft skills. If one of them lost, the person cannot be considered as a fully-fledged professional in any sphere of life!

Conflict of Interest and other Ethics Statements

The author declares no conflict of interest.

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ABSTRACT

The article considers the study of the peculiarities of the formation of the lecturer's authority and its impact on the results of the student's learning process. The main factors of teacher authority formation are analyzed: competence, communication skills, charisma, and trust. The four above mentioned elements may be split into two categories: qualities (competence, communicative skills, charisma); and trust (which can be referred as a quality of the environment of the educational process), though as the atmosphere is the outcome of lecturer's way of work, thus, at least indirectly, we can refer it as to a quality of lecturer, the ability carry out the process, so that all actors are in total compliance with the lecturer's style of teaching. Recommendations are offered to establish a trusting relationship between the teacher and his wards, as an integral part of the learning process in order to achieve more effective communication and, as a result, improve learning outcomes.

Keywords: *lecturer's authority, communication skills, trust, professional competence, charisma.*

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З М І С Т

ПИТАННЯ ТЕОРІЇ ТА ІСТОРІЇ ДЕРЖАВИ І ПРАВА, КОНСТИТУЦІЙНЕ ПРАВО І ДЕРЖАВНЕ УПРАВЛІННЯ

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