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ISSUES OF THEORY AND HISTORY OF STATE AND LAW, CONSTITUTIONAL LAW AND PUBLIC ADMINISTRATION

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WORLD PRACTICES OF PUBLIC CONTROL ON THE ELECTRONIC DECLARING PROCESS AS AN EFFECTIVE METHOD OF COMBATING CORRUPTION

Ірина Алєксєєнко, Марина Кобець. СВІТОВІ ПРАКТИКИ ГРОМАДСЬКОГО КОНТРОЛЮ ЗА ПРОЦЕСОМ ЕЛЕКТРОННОГО ДЕКЛАРУВАННЯ ЯК ЕФЕКТИВНИЙ МЕТОД БОРОТЬБИ З КОРУПЦІЄЮ. В умовах розгортання глобалізаційних процесів корупція, подолавши державні кордони, стала міжнародним феноменом, який з небезпеки для окремо взятої держави поступово перетворився в глобальну комплексну загрозу для міжнародної спільноти. Сьогодні перед людством з усією очевидністю постало питання про створення міжнародної системи «стримувань і противаг» цього явища, тобто системи протидії корупції.

Але, незважаючи на надзвичайну гостроту даної проблеми, на сьогодні політична воля міжнародної спільноти у протидії корупції, вільна від подвійних стандартів, несистемних та суперечливих заходів, чітко не сформувалася. На сьогодні не існує загальноприйнятого, конвенційно закріпленого визначення корупції. Законодавство, як розвинених країн, так і країн з перехідною економікою, по-різному визначає термін «корупція», наповнюючи його різним за природою і сенсом складовими елементами. Цей факт є наслідком небажання багатьох держав обтяжувати себе міждержавними зобов'язаннями у сфері боротьбі з корупцією, а більшість актів міжнародних організацій, спрямованих на боротьбу з корупційними злочинами, вирішують лише окремі аспекти даної проблеми. Але найголовніше, до цих пір не сформовано механізм реалізації цих міжнародно-правових рішень.

В системі суб'єктів, які забезпечують реалізацію антикорупційної політики в більшості держав, включаючи і Україну, безперечно, одне з місць займають громадські організації та рухи.

Від успішного вирішення проблеми протидії корупції залежить насамперед національна безпека держав, подальше їх позиціонування у світовому співтоваристві.

Останнім часом практично жоден документ не обходиться без згадки про ліквідацію та необхідність рішучої боротьби з корупцією, зокрема і в питанні електронного декларування доходів. Тому в цій статті, з метою врахування міжнародного досвіду при розробці концепцій законодавчих та інших нормативно – правових актів в Україні, що регулюють питання про декларування доходів чиновників, досліджується нормотворча і правозастосовча практика зарубіжних країн у цій сфері.

***Ключові слова**: корупція, антикорупційна політика, міжнародні організації, державна антикорупційна програма, міжнародна спільнота, рівень корупції.*

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Relevance of the study. Corruption has crossed state borders due to the deepening globalization processes and has become an international phenomenon. It has gradually turned from a danger to a single state into a global complex threat to the entire world order. Thus, humanity has clearly faced with the need to create an international system of «checks and balances» to that scourge – an anti-corruption system, in other words.

Aristotle considered the fight against corruption as the basis for ensuring political stability, saying that: «the most important thing in any state system is through laws and the rest of the order to arrange things in such a way that officials could not prey» [1, p. 77].

At the same time, despite the deadly «topicality» of the problem of corruption, we can observe absence of clearly expressed political will of the international community in combating corruption on a global scale, free from double standards and unsystematic and illogical actions. What is more, even a commonly-accepted and conventionally fixed definition of corruption has not been formulated yet. The legislation of both developed countries and countries with economies in transition defines the term «corruption» in different ways. It is filled with different meanings and constituent elements, different in nature and structure [2].

This fact is a consequence of the disinclination of many states to burden themselves with interstate corruption combat liabilities. Most of the acts of international organizations, which are aimed at fighting against corruption crimes, solve only some aspects of the problem.

Public organizations and movements undoubtedly occupy one of the key places in the system of subjects that ensure the implementation of anti-corruption policies in most states. This also applies to Ukraine.

According to the former Executive Director of the United Nations Office on Drugs and Crime, Antonio Maria Costa, «everyone has a responsibility for corruption disrooting: not only governments, but also parliament, business, civil society, the media, every citizen. Corruption affects everyone, so fighting corruption is our shared responsibility» [3].

This is beyond all doubt. However, anti-corruption activities of non-governmental organizations would not be as effective as it is possible without support from governments and international organizations. Article 13 of the United Nations Convention against Corruption (UNCAC), entitled «Participation of society», notes that «each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption» [6]. These measures imply transparency increasing and promoting the involvement of the population in decision-making processes; wide access to information; hosting activities that promote intolerance against corruption (including training programs) [7]. The right of civil society to participate in the fight against corruption was the first time ever identified in a document of such a high level. The Global Program Against Corruption, developed by the United Nations Office on Drugs and Crime, stipulates that anti-corruption measures for civil society include free access to information; raising public awareness; work with the media on anti-corruption education; journalistic investigations; close interaction of civil society institutions and governments, etc [8]. Establishment of the UN Convention against Corruption Coalition in 2006 contributed to the raising the profile of civil society participation in the fight against corruption. It is global network of more than 350 Civil Society Organizations (CSOs) from around the world and is dedicated to supporting the UNCAC. The main goals of the Coalition are «promoting the ratification, implementation and monitoring of the UNCAC); it mobilises civil society action for UNCAC at international, regional and national levels» [9, p. 15]. It should be noted that the UNCAC Coalition engages a wide range of organizations: from those that protect human rights to those that protect the environment, from research centers to law firms.

Recent publications review. It is necessary to point out that the problems of corruption have been in the field of view of Western researchers for a long time. We can highlight among them the next names: Clark W., Scott D., Weili D., Hattington S, Kramer D., Merton R., Grossmann G., Klin G., Blackwell R., Palmer JL, Dell Port D., Viatr E., Rose-Ackerman S. et al. Their researches are based on a historical approach that retrospectively reflects the problem of corruption in the USSR and Western countries in the 60s and 80s. At the same time, the most part of the works of Western scientists do not disclose the content of the revealed patterns, and also there is no analysis of the causes and disclosure of patterns of what is happening. The theoretical basis of this research is the works of such scientist as V.S. Afanasyev,

V.P. Bozhiev, V.N. Butylin, I.I. Veremeenko, N.V. Vitruk, V.I. Eropkin, S.A. Komarov, V.V. Lazarev, E.A. Lukashev, H.V. Maltsev, N.I. Matuzov, M.N. Prudnikov, T.N. Radko, V.P. Salnikov, Yu.A. Tikhomirov et al.

The article's objective. A successful solution to the problem of struggling against corruption affects primarily to the national security of Ukraine. Taking into account the importance of the stage that our country is going through, the solution of this problem can affect further prospects of its position in the world community.

Discussion. In recent years, hardly any document has been completed without mentioning the elimination and the need for a decisive fight against corruption. This also applies to the issue of electronic declaration of income.

In order to take into account the international experience when developing concepts of legislative and other regulatory acts of Ukraine on the issues of declaring information about the main expenses by officials, we study the statutory regulation and law enforcement practice of foreign countries in this area.

In Italy, the tax agency provides for the possibility of conducting a so-called «purchasing power assessment» of a particular individual, however, based on the results of such an assessment, no sanctions should be applied, even in cases where there is an excess of purchasing power over the declared income. However, this assessment does not lead to the application of any sanctions, even in cases of excess of purchasing power over the declared income. As a rule, such a check further serves subsequently for an in-depth study of the income tax return [3].

Federal legislation of Canada provides for the provision of a single document (income declaration) by all able-bodied citizens of the country who receive regular income from their work activities for tax purposes. This approach applies to all jobholders, regardless of whether they are public officials or not [24].

In China, all public officials and persons of equal status submit annual income tax returns to the tax authorities. The declaration contains information on the presence of real estate, bank deposits, and other property of civil servants. Employees of the state body of the PRC fill out a declaration for themselves, as well as for the next of kin (spouse, children). At the same time, the declaration also indicates whether the public officials or their relatives are engaged in commercial activities, whether they live abroad or not [26].

In turn, in accordance with the current legislation of Denmark, only income declaration is applied to public officials. There are no differences in the form of taxation of public servants and those who employed in the private sector in Denmark. Information about other sources of income of citizens comes to the Danish tax service when each specific source of income arises – savings, pension deposits, stocks and bonds, real estate. The acquisition of real estate is recorded by the registration office of the city (village) council, and this information is automatically transferred to the tax service [14].

In Norway, the obligation to submit an income tax return applies to every person living in Norway, including government officials (without any special features). After submitting the tax return, the tax office sends the tax resident the so-called «tax assessments notice» [13].

In Sweden income and expense declaration is not provided by law, but this does not exclude practically total control over all large acquisitions of movable and immovable property made by the Swedes. The system of submitting income returns by absolutely all citizens is clearly debugged. Combined with an effective financial control system that covers the entire banking and payment system of the country, it is highly effective in the realities of the Swedish social and political environment [20].

In Finland, submitting declaration of incomes and expenses is obligatory for the police. Besides, public authorities responsible for the registration of major transactions, including the purchasing of property, are also obliged to inform the Finnish Tax Administration about the costs incurred under the relevant transactions. In case of a discrepancy between the income and expenses of a citizen, the Finnish tax authority sends a letter to the taxpayer asking for clarification and indication of the source of income [23].

In Singapore, public officials submit annual reports on their expenses since 1952. Information about incurring large expenses by public officials that are not comparable with their income may become the basis for inspections carried out by the Corrupt Practices Investigation Bureau [4].

Members of the Parliament of the United Kingdom are obliged to declare their income. At the same time, in the course of inspections carried out in 2009, there were revealed facts of spending budget funds for personal purposes by members of the Parliament. In this regard,

since 2010, UK law contains provisions that oblige the members of the House of Commons (the lower house of the British Parliament) to provide, upon election, an annual detailed report of their income and expenses [20].

In the United States, a civil servant is required to provide the Ethics Office with information about his expenses and income, as well as the income and expenses declaration of his close relatives (children, spouse, parents), namely: information about the sources of origin of the property, its components and value; information about available deposits, received and issued loans, as well as received credits; list of gifts received, the value of which exceeds $ 50; a list of transport, entertainment and other comparable services paid not from personal or budget funds (indicating the source) [6].

Besides, in the United States, has been formed a departmental system for monitoring police officers, which includes: declaring expenses, monitoring the credit card balance of all employees and obtaining information from banks about employees who are debtors for consumer loans.

In Brazil, the prevention of illicit enrichment of public officials is carried out through the annual submission of a financial disclosure statement to the personnel department of the public authority, a second copy of which is sent to the tax authority [5].

An analysis of the German regulatory framework showed that the issues of declaring their expenses by public officials are not regulated in the country's legislation, and therefore there are no relevant law enforcement practices and statistics on expenses of German public officials.

Thereby, based on the results of the analysis of the legislation of a number of foreign countries, it can be concluded that the prevention of illegal enrichment of civil servants is carried out by checking information about income, property and property-related obligation (the similar procedure is currently provided for by Ukrainian legislation) or through the use of strict measures of tax administration and countering the legalization (laundering) of money obtained by illegal means.

It should be noted that in the 1990s, there was not only a process of spreading the practice of declaring assets in countries with economies in transition, but also «soft» (advisory) international standards in this area began to appear. One of the first international documents to provide for the declaration of assets by public officials was the Inter-American Convention against Corruption, which was adopted in March, 1996. The Convention sets out a requirement for States parties to consider measures to create, maintain and strengthen, among other things, also the «systems for registering the income, assets and liabilities of persons who perform public functions in certain posts as specified by law and, where appropriate, for making such registrations public» [6]. The second is The African Union Convention on Preventing and Combating Corruption, adopted in 2003, which obliges member states to «require all or designated public officials to declare their assets at the time of assumption of office during and after their term of office in the public service». The very first European standard in this area is included into the Recommendation No. R (2000) 10 of the Committee of Ministers to Member states on codes of conduct for public officials. Article 14 of this Recommendation contains the issue of declaration, in particular: «the public official who occupies a position in which his or her personal or private interest are likely to be affected by his or her official duties should, as lawfully required, declare upon appointment, at regular intervals thereafter and whenever any changes occur the nature and extent of those interest». It is noteworthy that this recommendation emphasizes only the control function of the declaration, which is associated with conflicts of interest, and not with control of the financial situation, which is also considered an important issue in a number of countries. The conditions applicable to countries wishing to join the European Union usually do not explicitly require the introduction of a declaration system for public officials (there is no EU law or general body of legislation regarding declaration). The EU position, expressed in a broad sense, includes the requirement that «the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights ...» [25]. At the same time, candidates were expected to comply with the requirements of relevant international standards and introduce various procedures to prevent corruption. In addition, certain countries were given specific requirements to implement or strengthen measures for controlling conflicts of interest and verifying the assets of public officials within the general EU anti-corruption requirements.

Thus, even in the absence of a binding regulatory framework and irrefutable evidence of the effectiveness of these systems, the declaring of assets by public officials has become the de facto standard of the European Union in relation to candidates for membership. It should be

noted that all the countries of Central and Eastern Europe that joined the EU in the 21st century introduced such systems, which are more or less effective, long before their actual accession to the EU. The European Commission continues to study the functioning of declaring systems in the countries that are currently candidates for membership. The declaration of assets by public officials has now become part of the global standard embodied in the United Nations Convention against Corruption, adopted in 2003. Article 8, paragraph 5 of the Convention contains a «soft» standard requiring states parties to strive to ensure that «each State Party shall endeavor, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials» [7]. The Convention again addresses the issue of disclosure of information in connection with the return of property, establishes a requirement according to which: «Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention» [7].

This requirement of the UN Convention is nothing more than a recommendation to consider this obligation, but nevertheless, judging by the wording from the Legislative Guide for the Implementation of the United Nations Convention against Corruption, it becomes clear that states are encouraged to consider introducing such declaring systems and to make genuine efforts to identify the compatibility of such systems with their legal systems. Additional recommendations are contained in the Technical Guide to the United Nations Convention Against Corruption, in particular the following: disclosure covers all substantial types of incomes and assets of officials (all or from a certain level of appointment or sector and/or their relatives); disclosure forms allow for year-on-year comparisons of officials' financial position [16].

Ukraine acceded to the Convention against Corruption on December 11, 2003, and on October 18, 2006, the Criminal Convention against Corruption was ratified. Proceeding from the above, Ukraine has undertaken to strengthen cooperation with other states regarding the fight against corruption, create international criminal law standards in this area and create a unified policy aimed at protecting society from this negative phenomenon, including the development of appropriate legislation and the adoption of appropriate preventive measures.

Taking into account the above, the actions of the Constitutional Court of Ukraine became illogical, which is expressed in the fact that on October 27, 2020, it abolished a number of provisions of the law on the prevention of corruption and declared unconstitutional Article 366-1 of the Criminal Code of Ukraine, which provides punishment for declaring false information. This decision is justified by the fact that anti-corruption legislation creates the preconditions for undue influence on the court.

Having recognized as unconstitutional the Articles 48-51 of the Law of Ukraine «On Preventing Corruption» of October 14, 2014, No. 1700, which provide for the control and verification of declarations (Article 48), establishing the timeliness of the submission of declarations (Article 49), are not consistent with the Constitution of Ukraine (unconstitutional), complete verification of declarations (Article 50), monitoring of the lifestyle of subjects of declaration (Article 51), the Constitutional Court abolished the right of the NACP to verify declarations and identify conflicts of interest, recognizing that such powers of the department are not in compliance with the Basic Law.

Conclusions. This decision of one of the leading state bodies evoked a response and brought into question a number of international obligations that Ukraine assumed in relations with international partners, including the EU, since the fight against corruption is one of the key indicators and commitments under the Association Agreement, as well as the macro-financial assistance and visa liberalization program.

By its decision, the Constitutional Court of Ukraine has also blocked the implementation of the results of local elections, depriving the NACP of access to state registers, which are used to check the declarations of candidates for leading positions in the government.

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Abstract

Despite the deadly «topicality» of the problem of corruption, there is still no clearly expressed political will of the international community in combating corruption on a global scale, free from double standards and unsystematic and illogical actions. Currently there is no commonly-accepted and conventionally fixed definition of corruption. The legislation of both developed countries and countries with economies in transition defines the term «corruption» in different ways. It is filled with different meanings and constituent elements, different in nature and structure.

This fact is a consequence of the disinclination of many states to burden themselves with interstate corruption combat liabilities. Most of the acts of international organizations, which are aimed at combating corruption crimes, solve only single aspects of the said problem. Public organizations and movements undoubtedly occupy one of the key places in the system of subjects that ensure the implementation of anti-corruption policies in most states. This also applies to Ukraine.

***Keywords**: corruption, anti-corruption policy, international organizations, state anti-corruption program, global community, corruption index.*

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LEGAL RELATIONS PECULIARITIES AS A SUBJECT OF LEGAL REGULATION IN THE COMPLEX LAW BRANCH

Людмила Добробог. ОСОБЛИВОСТІ ПРАВОВІДНОСИН ЯК ПРЕДМЕТ ПРАВОВОГО РЕГУЛЮВАННЯ В КОМПЛЕКСНІЙ ГАЛУЗІ ПРАВА. Предметом правового регулювання комплексних галузей права є суспільні відносини, що об'єктивно потребують і можуть бути врегульовані за допомогою норм права. Ці відносини характеризуються певними особливостями: а) вони стосуються найважливіших сфер життя суспільства; б) вони об'єктивно потребують впливу права; в) можуть бути усвідомлені суб'єктами правових відносин.

Зважаючи на подібну змістовну інтерпретацію предмета правового регулювання як обов'язкового специфічного критерію системно-структурного виокремлення галузей права у контексті формування предмета екологічного права, слід констатувати, що до недавнього часу лише незначний обсяг екологічних відносин був безпосереднім предметом правового регулювання, однак погіршення стану навколишнього природного середовища, що безпосередньо впливає на стан здоров'я населення, зумовило тенденцію до більшої урегульованості цих відносин, продемонструвавши тим самим визначальний вплив фактичного стану соціально важливих суспільних відносин на становлення правових інтересів, задля реалізації яких висувається правова ідея щодо створення нової комплексної галузі права.

Ключові слова: *правовідносини, комплексна галузь права, екологічне право, правове регулювання.*

Relevance of the study. Recent publications review. In the last two decades the tendency of emergence and development of complex branches of law: military, municipal, sports, space, medical, etc. is intensifying in Ukraine. Therefore, scientists [pp. 1-7, 10, 16] do not ignore the issues of the peculiarities of legal relations as a subject of legal regulation in a complex field of law, in particular in environmental one.

The article's objective: to investigate the theoretical aspects of legal relations of complex branches of law taking environmental law as an example.

Discussion. As it is known, legal regulation has effective regulatory and organizational impact on public relations which is carried out by means of a system of legal means (legal norms, legal relations, individual prescriptions, etc.) in order to regulate them (legal relations), protect and develop in accordance with the economic basis, and social needs [1, p. 289].

Legal regulation is characterized by the following features:

1. This is a type of social regulation, which has an organized and effective nature. The organization of legal regulation is achieved in the process of influencing the formally defined rules of conduct on the entities'activities. Effectiveness is characterized by the degree of the goal achievement, i.e. a certain level of social relations accomplishment.

2. This regulation is carried out by means specially created by the state having systemic character.

In general, the process of legal relations regulation in complex branches of law might conventionally include three stages.

The first stage is the state and legal regulation of legal relations, i.e. the development and adoption of laws and other by-laws in the area that requires appropriate comprehensive regulation. At this stage, the main measures, principles and mechanism for implementing legal policy in the appropriate legal forms should be determined.

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The second stage is the issuance of legal rights and obligations of the subjects of legal relations, which involves the transition from national prescriptions of legal norms to a specific model of practical activities of the authorized subjects of law.

The third stage of the process of state and legal regulation of legal relations of mixed type is the implementation of relevant rules of law, which establish specific directions, methods and models of state policy implementation, specification of powers of subjects, the exercise of these powers in the complex sphere of legal regulation and the fulfillment of state policy in a specific plane of public life [2, p. 7].

Let us note that legal regulation is always characterized by the presence of a clearly defined subject, method and ways.

The subject of legal regulation is public relations, which objectively stand in need of and might be regulated by means of law rules. These relations are characterized by certain features:

1. They affect the most important areas of society life.
2. They objectively stand in need of the influence of law.
3. Can be perceived by subjects.

Until recently, only a small amount of legal relations of mixed type was the subject of legal regulation, but the modernization of practical forms of life of modern developed society stipulated a tendency to a much greater settlement of these relations.

Such a trend could be clearly seen in the example of the gradual improvement of legal regulation of environmental and legal relations as a direct object of a complex law branch, which resulted from the introduction of a fundamentally new approach to the arrangement and interaction of structural elements of the national legal system.

In this context, it should be noted that today the subject of legal regulation in this area is public relations for environmental protection and rational use of natural resources in order to ensure the quality of the environment in the interests of present and future generations.

Environmental protection is a difficult issue that affects society as a whole and each individual citizen. It is about solving a vital problem – protecting and preserving the health of current and future generations of people from the harmful effects of current scientific, technical and industrial activities.

The rational use of natural resources should be the basis of economic activity of any country in modern conditions, which will ensure the protection and reproduction of natural resources. Otherwise, their depletion is possible and, as a consequence, the ecological crisis [3].

Rational use of nature is aimed at creating the conditions of human existence and obtaining material benefits, preventing possible harmful effects of human activities, maintainшгg the reproducibility of natural resources, ensuring environmental safety [4, p. 23].

We can note that experts in the field of environmental law indicate that environmental relations are social relationships governed by norms of environmental law which arise, exist and are terminated in accordance with the requirements and on the grounds provided by the law. They include the following:

a) social relations related to the extraction of substances and energy from the environment. Thus, subsoil use is associated with the extraction of minerals, hunting – with the shooting and capture of wild animals, forest use – with deforestation, etc.;

b) social relations related to the use of useful properties of a natural object. For example, agricultural land use is based on soil fertility;

c) social relations related to the applying into the natural environment of substances or energy that did not previously exist in nature or existed in small quantities. Thus, the use of subsoil is carried out for the disposal of substances and waste, atmospheric air – for emissions of pollutants, reservoirs – for fish breeding, etc. ;

d) social relations arising in connection with the transformation of a natural object. For example, in order to create parks, artificial ponds, construction of roads, etc.;

e) public relations related to the protection of natural objects used and the environment in general. To prevent the negative impact of economic and other activities on the environment it is provided for environmental expertise, environmental monitoring, environmental control; limits on the use of natural resources are determined; environmental requirements for the location of construction, operation of industrial and other facilities; liability for violation of environmental requirements, etc. [5, p. 21].

It should be emphasized that the peculiarity of environmental relations is that they are based on the laws of functioning not only and not so much of society, but, above all, of nature,

which, of course, can not be ignored. The most obvious confirmation is the current state of the environment, which is defined as an ecological crisis. It is possible to oblige a person to plow any amount of virgin land, to dig any number of canals for desert irrigation, but it is not possible to oblige the soil to refrain from wind erosion, and the Aral Sea – from a catastrophic drop in water levels [6].

In this regard, it is necessary to consider the issue of the objects of environmental relations. The concept of objects of ecological relations is urgent for the legal definition of what the ecological and legal regulation is aimed at.

There are different approaches to the classification of objects of ecological relations in the legal literature. For example, V.V. Petrov pointed out that three categories of these objects should be distinguished:

- integrated –which is the environment,
- differentiated – these are its individual components,
- those that are subject to special protection. At the same time, ecological systems are subject to legal protection: natural, which depend on human influence (for example, in reserves); modified, changed under the influence of a human being [7, p. 35-36].

At the same time, the analysis of the current legislation of Ukraine on environmental protection allows to determine in some detail the list of objects of ecological relations:

- environment;
- natural resources;
- territories and objects subject to special protection;
- human health and life.

Thus, in accordance with Art. 5 of the Law of Ukraine «On Environmental Protection», the environment as a set of natural and natural and social conditions and processes, natural resources, both involved in economic circulation and unused in the economy in this period (land, subsoil, water, air, forest and other vegetation, fauna), landscapes and other natural complexes are under protection and regulation of use in Ukraine. Territories and objects of the nature reserve fund of Ukraine and other territories and objects, determined in accordance with the legislation of Ukraine, are subject to special state protection. Public health and human life are also the subject to state protection against the negative impact of adverse environmental conditions [8].

The environment is all living and non-living objects that exist naturally on Earth or in some part of it (for example, the country's environment). This term includes several key components:

1. Complete units of relief that function as natural systems without significant human intervention, including all plants, animals, rocks, etc. and natural phenomena occurring within them.

2. Universal natural resources and physical phenomena that do not have clear boundaries, such as air, water and climate, as well as radiation, voltage and magnetism, which do not originate from human activity» [9].

The natural environment is considered as a defining prerequisite for human life and the functioning of ecosystems, which necessitates its preservation and protection [10, p. 157].

Natural resources are natural components and forces of nature that are used or can be used as means of production and consumer goods to meet the material and spiritual needs of society, improving the quality of life [11].

Natural resources are divided into exhaustible and inexhaustible. The first includes forest, land, water, mineral, faunal, which have the ability to decrease and disappear in the process of their consumption, the second – solar, climatic, geothermal, which do not disappear in the process of their consumption.

Exhaustive natural resources are divided into renewable (soil, plant and faunal, which in the process of use are able to recover) and non-renewable (mineral, the use of which leads to their depletion).

Thus, natural resources are:

1. Land (in the legal sense) is a surface that covers the fertile layer of soil. It gives life to plants, and through them to everything that exist on the planet, is the habitat of the microworld, a universal biological neutralizer of pollution. Land is also the main means of production in agriculture and forestry, the spatial basis for the resettlement of people, the arrangement of industrial facilities, transport routes, recreation areas, health facilities and more.

2. Subsoil is a part of the earth's crust, which is located below the land surface and the bot-

tom of reservoirs and extends to depths available for geological study and development [12].

Regulation of environmental relations in the field of conservation and rational use of subsoil is carried out by the Constitution of Ukraine, the Subsoil Code of Ukraine, the Mining Law of Ukraine, the Law of Ukraine «On State Geological Service» and other regulations of Ukraine.

3. Waters – all waters (surface, groundwater, sea) that are part of the natural parts of the water cycle; groundwater – water below the level of the earth's surface in the strata of rocks of the upper part of the earth's crust in all physical states; surface waters – waters of various water bodies that are on the earth's surface; water object – a natural or artificially created element of the environment in which water is concentrated (sea, river, lake, reservoir, pond, canal, aquifer); water resources – the volume of surface, groundwater and seawater of the territory.

Water use – the use of water (water objects) to meet the needs of the population, industry, agriculture, transport and other sectors of the economy, including the right to water intake, wastewater discharge and other uses of water (water objects) [13].

Water relations are regulated by the Water Code of Ukraine and some other regulations of Ukraine.

4. Atmospheric air is a vital component of the natural environment, which is a natural mixture of gases located outside residential, industrial and other premises [14]. Atmospheric air is one of the main vital elements of the natural environment.

The airspace of Ukraine is a part of the airspace located above the land and water territory of Ukraine, including its territorial waters (territorial sea), and limited by a vertical surface passing along the state border of Ukraine [14].

Relations in the field of preservation, improvement and restoration of atmospheric air, prevention of pollution and its reduction, as well as the impact of chemical compounds on it, physical and biological factors are regulated by the Law of Ukraine «On Atmospheric Air Protection», Air Code of Ukraine and other regulations of Ukraine [14].

5. Flora is a set of all types of plants, as well as fungi and the groups formed by them in a certain area; wild plants – plants that grow naturally in a certain area; natural plant groups – a set of plant species that grow within certain areas and are in close interaction with each other and with environmental conditions, objects of the plant world – wild and other non-agricultural vascular plants, mosses, algae, lichens, and also fungi at all stages of development and the natural groupings formed by them. Natural plant resources are objects of the plant world that are used or can be used by the population for production and other needs [15].

Relations in the field of protection, use and reproduction of flora are regulated by the Constitution of Ukraine, laws of Ukraine «On Environmental Protection», «On Nature Reserves of Ukraine», the Forest Code of Ukraine, the Law «On Flora» and other regulations. Relations in the field of protection, use and reproduction of plants and perennial agricultural plantations are regulated by the relevant legislation of Ukraine [16, p. 155].

6. Fauna – includes a historically formed set of species of animals that live in a particular area and are part of all its biogeocenoses. Fauna, as indicated in the preamble of the Law of Ukraine «On Fauna», is one of the components of the environment, national wealth of Ukraine, a source of spiritual and aesthetic enrichment and education of people, the object of scientific research, as well as an important basis for industrial and medicinal raw materials, food and other material values.

In the interests of present and future generations in Ukraine with the participation of enterprises, institutions, organizations and citizens measures as to protect, scientifically sound, inexhaustible use and reproduction of wildlife are taken [17].

Of course, human life and health are important objects of environmental relations. Thus, in accordance with Art. 50 of the Constitution of Ukraine, everyone has the right to a safe for life and health environment and to compensation for damage caused by violation of this right. The scientific and practical commentary to the Constitution of Ukraine states that «in the most general sense, the environment is safe, which does not negatively affect human health. A more specific definition of this definition is related to the criteria of environmental safety for human life and health. Such criteria are legally established environmental standards. These include, in particular: environmental safety standards (maximum permissible concentrations of pollutants in the environment, maximum permissible levels of acoustic, electromagnetic, radiation and other harmful physical effects on the environment, maximum permissible content of harmful substances in food; maximum permissible emissions and discharges into environmental pollutants, levels of harmful effects of physical and biological factors (Article 33 of the Law of

Ukraine «On Environmental Protection»)» [18].

Methods of legal regulation in the complex law field are the means of primary influence on the behavior of subjects by giving them subjective rights and imposing on them legal obligations and prohibitions.

In general, there are three ways of legal regulation: 1. Permits – giving subjects the right to their own active actions. 2. Prohibitions – the obligation to refrain from committing certain acts. 3. Obligation – imposing on the subjects of the obligation for a certain active behavior.

All the above means are used to regulate environmental as a direct object of an independent complex branch lawin the structure of the national system of legal relations. It is significant that the Basic Law of our state directly provides for environmental rights and responsibilities. Thus, in accordance with Art. 50 of the Constitution of Ukraine, everyone has the right to a safe environment for life and health and to compensation for damage caused by violation of this right [19]. Art. 66 of the Constitution includes such methods of legal regulation as prohibitions and obligations – «everyone is obliged not to harm nature, cultural heritage, to compensate for the damage caused by him» [19].

Note that some scholars point out that environmental law has the same methods of regulation as other branches of law, but there are also methods specific to this area. This is primarily a method of greening. Its use is due to the fact that any use of nature should take into account the laws of nature, obey them. In order for this to happen not spontaneously, but in an orderly manner, it is necessary to green each action related to the impact on the environment [20, p. 22].

However, this cannot be accepted, because in the theory of law the method of legal regulation is understood as a set of means and methods by which law affects public relations; it is a legal criterion that largely depends on the subject. But, unlike the subject, the method can be formed under the influence of the legislator, who, in addition to the means of regulating social relations, which objectively developed, can choose their own means of legal influence on them, combine these tools and techniques [21, p. 170]. The methods include: centralized (imperative) method, in which regulation is carried out on a power and imperative basis, the position of the subjects is characterized by relations of subordination, direct subordination; decentralized (dispositive) method when it comes to relations between equal subjects, formed on the basis of the will of their participants [22, p. 409]. In addition, this content of the method of greening is nothing more than one of the features of environmental relations, which we mentioned above.

Considering the legal regulation of public relations of mixed type, one cannot avoid the question of the types of legal regulation.

In the theory of law there are two types of legal regulation: «1. General permitting is a type of legal regulation that provides for the possibility to perform any actions, except for those which commission is expressly prohibited by law. It is expressed by the formula: «everything is allowed that is not expressly prohibited by law». 2. Special permit is a type of legal regulation that prohibits any activity, but, at the same time, legal norms formulate specific cases of exemption from this prohibition. It is expressed by the formula: «only what is expressly provided by law is allowed» [23, p. 128].

To regulate complex environmental relations, lawmakers use both types of legal regulation. Let's mention at least the general and special nature management.

Conclusion. The subject of legal regulation of complex lawbranches are public relations, which have universal significance and belong to a single area of legal life, but the regulatory tools of some classical branches of law are unable to provide effective legal regulation of relevant areas of public relations, which, in turn, causes the urgent need of citizens to create a more effective legal model as part of the national legal system.

Thus, the legal regulation of public relations in a complex field of law – is carried out by the state through a system of special means of regulatory and organizational influence on legal relations of mixed type, dialectically combining public and private law components, in order to organize, protect and develop in accordance with existing and actualized in modern concrete and historical conditions of social needs.

The subject of legal regulation of complex branches of law is public relations, which objectively need and can be regulated by law. These relations are characterized by certain features: a) they relate to the most important spheres of society; b) they objectively need the influence of law; c) can be understood by the subjects of legal relations. Given this meaningful interpretation of the subject of legal regulation as a mandatory specific criterion of system and structural separation of branches of law in the context of the formation of the subject of envi-

ronmental law, it should be noted that until recently only a small amount of environmental relations was the direct subject of legal regulation. environment that directly affects the health of the population, led to a tendency to greater regulation of these relations, thus demonstrating the decisive influence of the actual state of socially important social relations on the formation of legal interests, for which the legal idea of creating a new complex branch of law. Today, the subject of legal regulation in this area is public relations for environmental protection and rational use of natural resources in order to ensure the quality of the environment in the interests of present and future generations.

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Abstract

The article deals with theoretical study of the selection of specific features of legal relations of complex law branches on the example of environmental law. Today, the subject of legal regulation in this area is public relations for environmental protection and rational use of natural resources in order to ensure the quality of the environment in the interests of present and future generations.

Keywords*: legal relations, complex law branch, ecological law, legal regulation.*

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COUNTER-ADMINISTRATIVE THREATS TO DUAL CITIZENSHIP IN UKRAINE

Євген Курінний. КОНТРАДМІНІСТРАТИВНІ ЗАГРОЗИ ПОДВІЙНОГО ГРОМАДЯНСТВА УКРАЇНИ. Розглянуто питання особливостей контрадміністративних загроз подвійного громадянства в українській державі. Зокрема, наголошується, що за час функціонування українського інституту громадянства накопичено значний практичний досвід, наявні певні помилки та невиправдана безпечність, як з боку держави та її очільників, так і окремих громадян, що вже призвели або можуть призвести до матеріалізації низки явних та прихованих загроз. Однією з таких загроз є подвійне громадянство в Україні.

Зазначається, що наявність у громадянина паспортів різних держав призводить до явного дисбалансу його прав і обов'язків. У такої людини виникає реальний вибір користуватися у тій чи іншій життєвій ситуації додатковою кількістю прав громадянина однієї з країн та одночасно уникати виконання покладених на неї обов'язків громадянина конкретної держави на власний вибір (наприклад, сплата податків або служба в армії).

Загрози національній безпеці, що виникають із набуттям громадянами України громадянства іншої держави, за їх приналежністю до соціальних сфер пропонується поділити на три блоки загроз: адміністративного (владно-управлінського); оборонного та демографічного характеру.

Контрадміністративні загрози подвійного громадянства розглядаються як різновид антисоціальних та антидержавних загроз, що суттєво ускладнюють, а в окремих випадках унеможливлюють належне функціонування інституту громадянства в Україні, перешкоджаючи таким чином повному та своєчасному втіленню у життя окремих груп об'єктивно існуючих суспільних потреб, які мають або повинні мати відповідну правову регламентацію.

Констатується, що проблема подвійного громадянства в Україні, ще довго може не втрачати своєї актуальності, тому серед можливих варіантів відповідних дій, потрібно обрати найбільш дієвий та ефективний. Таким оптимальним підходом є здійснення давно затребуваного часом та суспільством комплексу системних реформ, які не будуть обмежуватись локальними та здебільше декоративними змінами українського соціально-політичного ландшафту. Необхідні насамперед цивілізаційні, світоглядні трансформації серед більшості українців, але вже не у межах чинної та фактично збанкрутілої четвертої пострадянської української республіки.

Relevance of the study. The existence of the institution of citizenship is one of the main features of any modern state. Around the turn of the 18th and 19th centuries, since the spread of capitalist relations in the world and the introduction of the republican form of government in the countries of declared democratic changes (primarily the United States and France), the monarchy began to be supplanted by in contrast to the outdated feudal citizenship and was characterized by the presence of mutually binding ties between a particular state and its citizens.

The final establishment of the modern world institution of citizenship is connected with the end of the Second World War, when a large number of European monarchies ceased to exist, and the remaining ones finally acquired their constitutional restrictive format. Therefore, existing now in such countries as Great Britain, Belgium, the Netherlands and others, citizenship has undergone a corresponding «modernization» and in its democratic essence, little different from the citizenship of the recognized classical republics – France, USA, Germany, etc.

According to Article 5 of the Constitution of our state, Ukraine is a republic. It has been

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29 years since our country gained independence, and 30 years have passed since Ukrainian citizenship. On the one hand, this is a historical moment, and on the other – a fairly long period of time, exceeding the term of one human generation. During the operation of the Ukrainian Institute of Citizenship, considerable practical experience has been accumulated, certain mistakes and unjustified carelessness have been made, both by the state and its leaders and by individual citizens, which have already led or may lead to a number of obvious and hidden threats.

Citizenship of Ukraine is a stable, unlimited legal relationship of a person with the Ukrainian state, based on the legal recognition of this person as a citizen of Ukraine, as a result of which the person and the state acquire mutual rights and obligations to the extent provided by the Constitution and laws of Ukraine.

Signs of citizenship as a certain connection of a person with the state are:

1) legal nature;
2) infinity in space and time;
3) the maximum nature of mutual rights and obligations.

This connection is manifested in its extension to the relevant person of the sovereign power of the state, regardless of its place of residence – in the state or abroad.

The system of constitutional and legal norms governing the issue of citizenship is the main constitutional and legal institution – the institution of citizenship. The sources of this institute are:

1) the Constitution of Ukraine.
2) Law of Ukraine «On Citizenship of Ukraine» of January 18, 2001.
3) current international legal agreements of Ukraine on citizenship.
4) bylaws.

The norms of these acts, based on the recognition of citizenship as a natural human right, enshrine the principles of citizenship and regulate the acquisition and termination of citizenship, the powers of public authorities and other organizations involved in citizenship and their resolution [1, p. 81].

Article 2 of the current Law of Ukraine «On Citizenship» of January 18, 2001 contains seven principles on which Ukrainian legislation on citizenship is based, the first of which is the principle of a single citizenship – citizenship of the state of Ukraine, which excludes citizenship of administrative-territorial units of Ukraine. If a citizen of Ukraine has acquired the citizenship (citizenship) of another state or states, then in legal relations with Ukraine he is recognized only as a citizen of Ukraine. If a foreigner has acquired the citizenship of Ukraine, then in legal relations with Ukraine he is recognized only as a citizen of Ukraine.

These norms are an attempt to detail the constitutional provision that there is a single citizenship in Ukraine (Article 4 of the Basic Law of Ukraine) and serve as an example of failed lawmaking (Articles 2 and 3 of Article 2 of the Law of Ukraine «On Citizenship»), because they actually legalize the acquisition of multiple citizenship in Ukraine.

Unfortunately, the practice of the existence of the Ukrainian state only confirms the above thesis. Even in the absence of official statistics, using mostly empirical approaches, it can be argued that more than one hundred thousand Ukrainian citizens have, in addition to a Ukrainian passport, a document confirming their citizenship of another state (especially in areas of compact ethnic minorities) in Zakarpattya, Bukovina, temporarily occupied territories of Donetsk and Luhansk regions).

This state of affairs poses real threats to Ukraine's national security, in particular, it negatively affects the organization of the work of various public administrations, the country's government apparatus in general, and the institution of public (public) service directly related to them.

These key areas form the basis of the administrative system of our state, the proper functioning of which depends primarily on the optimal administrative and legal support. Therefore, all risks and threats to this system are anti- or counter-administrative in nature and require appropriate legal response, a key place in which should play administrative and legal tools, as the main legal means of forming and direct implementation of public policy in this direction.

Recent publications review. The issue of threats of multiple citizenship in Ukraine in the disturbed context has not been studied by domestic scholars, so consideration of the problem of counter-administrative threats of dual citizenship in our country in terms of demand for systemic change is the main **objective** of this work. The theoretical basis of this work can be considered as original ideas and scientific developments of such recognized masters of

Ukrainian administrative and legal science as V. B. Averyanov, Yu. P. Bytyak, I. P. Holosnichenko, R. A. Kalyuzhny, T. O. Kolomoyets, V. K. Kolpakov.

Discussion. First, it should be noted that the constitutional provision on a single citizenship in Ukraine is designed to ensure a single legal status for all citizens, the same legal relationship of every citizen with the state, everyone understands their belonging to Ukraine. Recognition of a single citizenship in our country is aimed at eliminating the basis of political and legal conflicts that exist in states where the constitutions define the institution of dual citizenship. This institution creates contradictions, legislative inconsistencies due to the different rights and freedoms that dual citizens can actually enjoy at the place of residence and to which they are entitled in accordance with the procedure in force in their ethnic homeland, of which they are also recognized. Also, a single citizenship in Ukraine is a necessary condition for the stability of the political and social situation in the country, reduces the likelihood of interethnic confrontation [2, p.32].

Having a passport of different countries leads to a clear imbalance of his/her rights and responsibilities. Such a person has a real choice to enjoy in one or another life situation an additional number of rights of a citizen of one of the countries and at the same time to avoid fulfilling the duties of a citizen of a particular state of his choice (for example, paying taxes or serving in the army).

These circumstances provoke inequality between citizens who have single or multiple citizenship. This is especially noticeable when a person has the citizenship of clearly «different» countries – the United States and Ukraine, EU member states and Ukraine, and so on. In such a situation, a person will always be faced with the question of choice, and in most cases this choice will clearly not be in favor of our state. In other words, Ukrainian citizenship will have a purely nominal meaning and will be mentioned only in exceptional cases, which have a predominantly conjectural basis.

The desire of some Ukrainians to have a different citizenship (especially a more successful and authoritative state in the world) is not always justified, especially from the standpoint of morality. However, for the sake of objectivity, it should be noted that this step is often prompted by the low level of social organization of Ukrainian society and the state, which significantly complicates the possibility of proper self-realization. Thus, in terms of human development, Ukraine is below the average level of Europe and Central Asia and this indicator has not improved in 10 years. This is stated in the World Bank report.

Ukrainian youth do not have the opportunity to grow into productive adults. A newborn child in our country can only get 63% of the productivity of an adult with a sufficient level of education. The World Bank notes that this figure is higher among countries with similar levels of economic growth, but at the same time it is lower than in Europe and Central Asia. To solve this problem, large investments are needed in education, health care and social protection. For example, in Poland a child can expect to achieve 75% productivity, and in Tajikistan – 50%.

The Human Development Index is an indicator for assessing human development in different countries around the world. For its formation the following criteria are taken into account: a) long and healthy life, b) access to knowledge; c) a decent standard of living. Healthy living is measured by the average life expectancy in the country, education – the number of years spent on education by people under 25 years. And the standard of living is calculated by gross national income per capita in dollars.

In 1990, Ukraine had an Index value of 0.705, and in 2018 the figure rose to 0.750. However, this is still below the average level in Europe and Central Asia. During the 29 years of independence, life expectancy in Ukraine increased by 2.3 years, and the average number of years of study increased by 2.6 years [3].

The spread of multiple citizenship is also facilitated by the employment of Ukrainians, the number of such people fluctuates annually in the range of 7-9 million, over time, some workers move their families abroad, which leads to a significant reduction in the working population in Ukraine. According to the national government, about 4 million Ukrainians (almost 10 percent of the population) have emigrated from Ukraine in the last 10 years alone [4].

The problem of dual citizenship in today's Ukraine should be seen as global, with artificially created «favorable» foundations – the permanence of systemic crises, the absence of civil society and the rule of law, Ukraine's almost chronic failure and its secondary role in the international arena. In addition, the state is not yet very responsive to the challenges. Instead of reducing and eliminating the determinants that lead to the spread of illegal dual citizenship, some albeit unsuccessful steps are being taken to ensure its effective legal consolidation, which in

the conditions of actual Russian aggression is an almost suicidal measure that will only increase relevant threats to Ukraine's national security.

Threats to national security that arise with the acquisition of citizenship of another state by citizens of Ukraine, according to their belonging to the social area, can be divided into the following three blocks:

1. Administrative (power-administrative) nature, these are the counter-administrative threats related to the functioning of the components of the state-government apparatus – representatives of various branches of government, implementing their own, defined by law public (state) – official powers.

2. Defense character – a kind of threats associated with the service in the Armed Forces of Ukraine and the direct provision of defense capabilities, state security and inviolability of state borders of Ukraine.

3. Demographic nature (concerning the threats of irreversible changes in the age structure of the population and its qualitative characteristics associated with the trends of brain drain abroad and the emigration of able-bodied, mostly young Ukrainian citizens).

The proposed threat groups are closely related to each other and have corresponding hierarchical links (for example, lowering their level in the first block should facilitate similar processes in the second and third). That is counter-administrative threats in comparison with other varieties can be considered as fundamental and it is to neutralize them in the first place should be directed by the authorities. This is explained both by the significant volumes of this group and the importance of the content of social relations that make it up.

Counter-administrative threats of dual citizenship can be defined as a type of anti-social and anti-state threats that significantly complicate, and in some cases prevent the proper functioning of the institution of citizenship in Ukraine, thus preventing the full and timely implementation of certain groups of objectively existing social needs must have appropriate legal regulations.

The existing practice of poly-citizenship among Ukrainians, in accordance with the subjects of their carriers, allows to classify them according to the following types: a) establishment group (domestic high-ranking officials, people's deputies, representatives of business elites, etc.); b) local-ethnic category (residents of the respective national minorities who live compactly within certain administrative-territorial entities, primarily in western Ukraine); c) the category of individuals (ordinary, ordinary citizens who have acquired the citizenship of another state using a variety of motivational grounds); and d) a group of residents of the occupied territories (collaborators and persons who were actually imposed Russian citizenship without disclaiming the Ukrainian one).

The modern Ukrainian state by the characteristics and results of its activities has the characteristics of an atypical state formation (the main feature of which is incomplete, improper performance of its functions in comparison with the developed and successful countries of the world). This fact makes Ukraine uncompetitive both among the vast majority of other European states and neighboring countries, regardless of their location.

These factors make conditions that undoubtedly complicate the solution of the important issue of dual citizenship in Ukraine. Therefore, in order to get the desired result, it is necessary to take into account the above and not try to solve this political and legal problem in one or two organizational and legal steps.

The main feature of the legal support of counter-administrative threats to the institution of citizenship in Ukraine is that the decisive role in them is given to administrative and legal tools, characterized by both a significant amount of its arsenal and functional universality. In particular, it consists of all kinds of legal norms – substantive and procedural, regulatory and protective. Under favorable circumstances, able to timely and fully ensure the implementation of various measures aimed at neutralizing the above threats.

In our opinion, there are two main approaches to counteracting the counter-administrative threats of dual citizenship: repressive-coercive and organizational-stimulating.

The first, for the most part, can be used in the implementation of tactical (current) measures given its ancillary nature (primarily in relation to high-ranking officials and other representatives of the domestic establishment who have the citizenship of other countries). The second is used mainly to address long-term, strategic goals and objectives in this area of public relations. The optimal and effective option is the integrated use of these approaches, because it is this mixed format that will be able to ensure the onset of the expected positive solution to the problem of dual citizenship in Ukraine.

Conclusion. Based on the above, it can be stated that among the features that must be taken into account when solving this important and difficult issue, we should take into account the atypical of the current Ukrainian state, the permanence of systemic crises that characterize our present, the presence of a dangerous hostile northeastern neighbor. In the continuation and intensification of political, socio-economic destabilization in our country, as well as potential resistance from a large part of the domestic establishment which is primarily concerned with the realization of their own private or corporate interests rather than objectively existing social needs.

Therefore, the problem of dual citizenship in Ukraine may not lose its relevance for a long time and pose a real counter-administrative threat to our society and state. To eliminate the grounds for this statement, it is necessary to choose the most effective and efficient among the possible options for appropriate action. In our opinion, such an optimal approach is the implementation of a long-demanded system of systemic reforms, which will not be limited to local and, for the most part, decorative changes in the Ukrainian socio-political landscape. First of all, the majority of Ukrainians must undergo civilizational and ideological transformations, , but no longer within the framework of the current and in fact bankrupt fourth post-Soviet Ukrainian republic. Such a radical measure will not only help address the relevant threats of dual citizenship in Ukraine, but also help to finally get rid of our fluctuations and uncertainties in the time and space of existence in which we will finally live and not exist as now.

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Abstract

The article deals with a topical issue – the peculiarities of counter-administrative threats of dual citizenship in our country. The essence of the principle of single citizenship in Ukraine and the content of the main groups of threats to national security from multiple citizenship, as well as the circumstances that contribute to its spread have been revealed. The original definition of the relevant counter-administrative threats and the best option for counteracting them in the conditions of modern Ukraine have been offered.

Keywords: *institution of citizenship, dual citizenship, counter-administrative threats, atypical state, national security, administrative and legal tools.*

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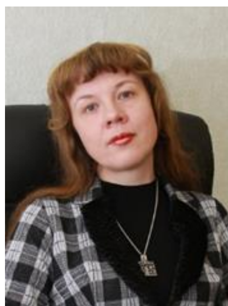

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DISCIPLINARY RESPONSIBILITY ISSUES IN COVID-19 PANDEMIC ENVIRONMENT

Ірина Шопіна, Сергій Тарасов. ПРОБЛЕМИ ДИСЦИПЛІНАРНОЇ ВІДПОВІДАЛЬНОСТІ В УМОВАХ ПАНДЕМІЇ COVID-19. У статті визначено особливості дисциплінарної відповідальності в умовах пандемії коронавірусу COVID-19. Запропоновано поняття дисциплінарної відповідальності за порушення трудової дисципліни як правовідносин, в яких відбувається поєднання двох моделей поведінки суб'єктів правовідносин: а) правомірної, яка втілюється у бажаних для суспільства, держави, підприємства (установи, організації) діях, що тягнуть за собою заохочення; б) неправомірної, яка є порушенням правових приписів, якими визначено обов'язки, заборони та межі повноважень вказаних суб'єктів, що тягне за собою застосування особливої міри адміністративного примусу – дисциплінарного стягнення.

Підставою дисциплінарної відповідальності запропоновано вважати службове правопорушення і охарактеризовано його сутність.

До особливостей трудових відносин в умовах пандемії коронавірусу COVID-19 віднесено наступні: а) наявність правових прогалин у регулюванні трудових відносин в аспекті забезпечення самоізоляції працівників, які мали контакт з пацієнтом з підтвердженим випадком COVID-19; б) наявність проблем, пов'язаних із приховуванням працівниками факту коронавірусної хвороби у них або у членів їх сімей, з якими вони постійно мешкають; в) правову невизначеність щодо ухилення працівників у разі наявності достовірної інформації щодо можливості зараження COVID-19 від медичного огляду і тестування, якщо працівник виконує функції, які передбачають контакти з іншими особами; г) проблеми у розумінні правомірності відмови працівника, діяльність якого передбачає активні соціальні контакти, від проведення вакцинації. ґ) проблеми правового регулювання поведінки осіб, які відмовляються користуватися засобами індивідуальної гігієни під час виконання своїх трудових обов'язків, пов'язаних з контактами з іншими особами.

З'ясовано, що за своїм змістом умисне поставлення інших осіб під час виконання особою трудових обов'язків під загрозу зараження коронавірусною хворобою COVID-19 є неналежним виконанням їх службових обов'язків і може тягнути за собою дисциплінарну відповідальність. Такий дисциплінарний проступок має ознаки винності та небезпечності і є свідомим порушенням встановлених обмежень.

Ключові слова: *трудові правовідносини, трудова дисципліна, службова дисципліна, дисциплінарна відповідальність, дисциплінарні статути, пандемія COVID-19.*

Relevance of the study. Significant changes in the labor market have exacerbated during the economic crisis caused by the COVID-19 pandemic, requires a revision of the content of disciplinary responsibility. This could happen due to changes in the structure of labor and also because of production decline in most types of economic activity, which in its turn caused an increase in the unemployment rate. According to the State Statistics Service of Ukraine, the profit of large and medium-sized enterprises for January-September 2020 amounted to 411.8 billion, or 90.5% compared to January-September 2019, losses were incurred in the amount of

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UAH 318.5 billion (or 283,9%). The share of unprofitable enterprises for the same period amounted to 34.8% (for January-September 2019 – 22.7%) [1]. Some studies say that in certain types of economic activity the decrease in the number of employed people can reach 1224.5 thousand people [2].

In this conditions enterprises, institutions and organizations are forced to rapidly change the traditional forms of labor organization. According to a study by the sociological group «Rating», as of March 2020, 29% of interviewed have been working remotely [3]. Significant changes in the organization of work affect the understanding of the essence of disciplinary offenses and disciplinary responsibility. This determines the relevance of the topic of this article.

Recent publications review. The issue of the essence of disciplinary responsibility was considered in the studies of the following scientists: A. Andrushko, I. Borodin, V. Venediktov, S. Venediktov, M. Inshin, V. Kostyuk, O. Luk'yanchikov, K. Melnik, S. Prilipko, V. Sereda, V. Shcherbina, O. Yaroshenko and others. The problems of applying disciplinary measures for certain categories of workers and civil servants have been investigated by many national scientists, such as: V. Zaborovskiy, T. Vilchik, I. Kartuzova, Y. Kartuzova, T. Kovalenko, O. Chumak and others. Meanwhile, it should be noted that disciplinary responsibility in the context of the transformation of the work organization system due to the COVID-19 coronavirus pandemic has not yet been sufficiently covered. In scientific works devoted to the impact of the COVID-19 pandemic on the sphere of legal relations [4-5] insufficient attention was paid to the essence of disciplinary responsibility in the new conditions. Thus, it can be concluded that at the present it is necessary to conduct scientific research in the sphere of COVID-19 influence on labor relations, as well as on the understanding of disciplinary responsibility.

The article's objective is to determine the specifics of disciplinary responsibility in the context of the pandemic COVID-19.

Discussion. Quite often there is a situation when the employees during performance of their professional duties commit violations of labor discipline. Despite the presence or absence of grounds for bringing a person to criminal, administrative or civil liability, there still remains the possibility for bringing the offender to disciplinary responsibility in labor relations.

However, unlike the codified law that applies in cases of criminal, civil and administrative faults, the situation in the area of disciplinary responsibility is not so straightforward. The Institute of Disciplinary Responsibility, as part of Ukraine's labor legislation, contains all weaknesses associated with the eclectic nature of the labor law rules which were adopted at different times, for different purposes and are characterized by an extremely high degree of inconsistency. It should be reminded that the Criminal Procedure Code of Ukraine was adopted in 2012, the Civil Procedural Code of Ukraine – in 2004 (with last amendments in October 3, 2017), the Criminal Code of Ukraine – in 2001 and the Civil Code of Ukraine – in 2003 . There are peculiarities of the socio-political situation in Ukraine, the development of other legislative branches and international obligations of Ukraine mostly taken into account in these legal acts.

Instead, the Labor Code of Ukraine remains valid for almost 50 years, since 1971. Of course, this Labor Code has been amended many times, but in fact it became a stale document by its structure and incapable of combining required norms, that would allow the adequate responses to the current challenges. Changes to the Chapter X «Labor Discipline» of the mentioned Labor Code of Ukraine were last introduced more than 15 years ago (in 2003) and the overwhelming majority of the articles of this chapter are set out in the wording of 1971-1992 [6].

It is clear that the obsolete legal regulation has negative affect on the disciplinary practice. Therefore, we should try to find out the essence of disciplinary responsibility.

First, the Labor Code of Ukraine does not allow getting a full content idea of the «discipline» category (or «labor discipline»). Article 140 says that labor discipline in institutions and organizations is ensured by the creation of the necessary organizational and economic conditions for the high-performance work, a conscious attitude to the work, methods of persuasion, education and encouragement for conscientious work. An atmosphere of intolerance to violations of labor discipline and strict social demands on workers with dishonest performing their labor duties are created in the labor collectives. Regarding individual unscrupulous workers, disciplinary and public actions are applied in necessary cases [6].

However, as it can be seen from the analysis of the above mentioned statements, they determine the conditions for labor discipline achievement, but not the discipline itself.

At first glance, the idea of its content might be taken from the analysis of Article 119 of the Labor Code of Ukraine, which states that «employees are obliged to work honestly and in good faith, to comply with the instructions of the owner or his authorized body timely and

accurately, to obey the labor and technological discipline instructions and labor protection requirements, and to take good care of the owner's property». However, from the formal logic point of view, the analysis of this definition only allows us to compile a list of phenomena that are equally mentioned along with the category of «labor discipline», but not covered by its content.

Thus, in order to find out the essence of labor discipline, we should refer to the theoretical sources.

V. Prokopenko offers the following definition of the mentioned concept: «Labor discipline is a settlement of relations among participants in the labor process that determines the exact fulfillment of their labor functions by law» [7]. This definition generates a number of questions, in particular, on the nature of the labor process.

The «labor process» is originally an economic category; in economic sciences it is understood as technically determined and well-organized process of human application of mental and physical effort to obtain a useful result. In another words it's the process of transformation of available resources into the necessary (socially useful) values and benefits [8]. As the analysis of the above definition shows the labor process encompasses, first of all an individual (independent) work which in its turn raises the question: among whom these relations are formed? What kind of relationships are raised applying human efforts? In our opinion, this combination in one definition of legal and economic categories makes it difficult to understand.

It should be also mentioned that in the economic science there were attempts to define the labor process through the prism of managerial relations: so, labor management processes is understood as the time spent to accomplish formal functions required for organization and improvement of employees activity. This is the time management, assistance delivery, morale building activities, briefing activities, labor team building, logistic support, informal work assessment, feedback, informal distance learning and other actions which motivate people and encourage creative approach [9].

It sounds reasonable and valuable in the context of economic science. At the same time it should be noted that from the viewpoint of law it combines a great number of non-legal categories, such as assistance delivery, informal work assessment and informal distance learning.

Similarly, an attempt to find out the essence of the labor function, which is closely related with labor discipline concept, discovers a few elements that are not regulated and should not be regulated by law.

According to V. Glossman, labor function is an organic combination of objective and subjective factors which are formed from business proficiency. Objective factors comprise established by the state standards that regulate the professional and qualification profile for production. And subjective factors include a set of knowledge, skills, experience and qualification training for particular profession or specific position, as well as employee competences [10].

As a benchmark for further development this definition is quite applicable, but in this research it is referred to disciplinary responsibility, which is brought to employees in case of violation of their labor discipline. Should an officer with authority to apply disciplinary sanctions always find out what kind of knowledge, skills, experience, qualifications, cognitive and emotional qualities a certain employee has in order to make any disciplinary record? In our opinion, this would completely degrade the institute of disciplinary responsibility, the value of which also include the ability for quick restoration of social justice in the field of labor relations, bringing the person who committed the offense to the specified form of legal responsibility. We believe that the decision-making process to bring an employee to disciplinary responsibility should be simple enough (it prevents possible mistakes), transparent (it prevents possible abuses) and rapid (it allows using the preventive functions of disciplinary responsibility at full extend as a means of reducing the crime level in a certain area of social relations).

Other scientific sources give us variety of labor discipline definitions; their analysis also indicates the presence of unlawful elements. For example, labor discipline is defined as a set of legal norms regulating internal labor routine and establishing the labor rights and obligations of the parties to the employment contract, as well as encouragement the success and responsibility for intentional non-fulfillment of labor duties. The main content of labor discipline is not only the implementation of legal norms in the labor field, but also conscious and creative attitude to work, ensuring high efficiency, time management, the desire for cooperation and mutual respect [11].

The first part of this definition contains purely legal elements; instead, any attempt to interpret the meaning of labor discipline entails the usage of explanation elements from other

sciences (social, psychology, sociology, etc.). But in our case we it is required to apply a certain definition in disciplinary practice. Is it possible to impose a disciplinary penalty on employee who has done his job but without any creativity or mutual respect? In our opinion, this kind of situation leads to the sphere of ethical norms, which should be distinguished from legal ones.

Another problem in determining the category of «discipline» concerns its excessively narrow understanding. Such an approach can be found in the Disciplinary Statute of the Armed Forces of Ukraine [12]. This Disciplinary Statute defines the military discipline as strong observation by servicemen of rules and regulations established by the military charters and other legislation of Ukraine. As can be easily seen, this definition covers only one narrow aspect of huge, complex system of obligations and prohibitions.

But there is some contradiction with the term «observation» in that definition, which in the theory of law is traditionally understood as a form of implementation of prohibitive legal norms, when subjects of public relations are prohibited from committing unlawful actions in a certain area [13], as a passive form of legalization, which consists in refraining from actions that are under a legal prohibition [14]. In this case the new question arises: why the legislator did not consider that, in addition to refraining from prohibited acts, servicemen of the Armed Forces of Ukraine still have to perform their duties?

As it is well known, there are following forms of law implementation in the theory of law that are based on the subject manner: observation, execution, usage and application. Observation is a form of realization of prohibitive legal norms, which consists of passive behavior of subjects, refraining from prohibited acts. Execution – a form of implementation of binding legal norms, which consists of the active behavior of subjects carried out regardless of their own desire. Usage is a form of implementation of authoritative legal rules, which consists of active or passive behavior of subjects, carried out with their own will [15].

The application of the rules of law is a form and method of its implementation. This is the power of the competent state bodies and officials, which is individual and carried out on the legal facts basis and according with the specific legal norms requirements [16, c. 289]. Considering the concept of military discipline as an absence of violation of certain prohibitions, in our opinion, would negatively effect on any sphere of professional activity. For example, it might reduce creative activity and as the result to cause the organizational stagnation.

In order to find the best theoretical and methodological approach that will significantly help in analyzing the disciplinary responsibility for violations of labor discipline, it is recommended to count on authors who use the legal components in their research. It gives another definition for labor discipline, which is defined as the fulfillment by employees of their functions and duties, observance of the established requirements, rules and responsibility for their implementation [17].

The use of the elements of «function» and «responsibilities» allows objectively estimate the essence of labor discipline as a system-forming concept of disciplinary liability institute. At the same time, it is not recommended to the use in the labor discipline definition inter-related by form and content categories. In our opinion, since the legal categories are mentioned, it is advisable to follow the theory of law and use developed approaches to the essence of legal norm as a universal rule of conduct. It is well known that, depending on the behavior within the legal norm, the regulatory norms are divided into obligations, authorizing and prohibiting. So it is proposed to use mentioned above classification in order to define the labor discipline.

Thus, based on the mentioned above, it is possible to state the essence of labor discipline as the fulfillment by employees of his duties, the observance of prohibitions and the use of powers within the legal functions, as well as the system of disciplinary measures for violating these requirements.

The next step is to find out the essence of the disciplinary responsibility. In the legalistic encyclopedia [18, p. 431], disciplinary responsibility is defined as type of legal responsibility, when employees stand trial for their disciplinary misconduct and go through the disciplinary sanctions provided for by labor legislation.

There are many definitions of disciplinary responsibility in scientific literature, such as: it's a special legal status of disciplinary relations actors, which takes place when disciplinary offense has been committed [19]; it's an application of disciplinary measures for alleged violations of civil service regulations that are not subjected to criminal liability [20] and it is the application of individual moral influential measures such as disciplinary penalties [21].

However, there is a need to consider a wider understanding of legal responsibility, and, accordingly, disciplinary liability as an integral part of it. O. Seagal believes that disciplinary

responsibility is the awareness of a person's need to voluntarily and properly perform his duties and to exercise his rights within the limits of his competence, and in the case of a disciplinary offense, a confession of disciplinary action [22].

This definition corresponds to the essence of a two-dimensional understanding of legal responsibility, which is divided into prospective (positive) and retrospective (negative). Positive legal liability is defined as the proper management of one's area of responsibility in the eyes of the society, state, group of people and individual person [23]. In addition, the positive aspect of legal responsibility involves encouraging behavior that is useful for society and the state; it is so-called morally conscious attitude to performance of obligations.

Retrospective legal responsibility is a specific legal relationship between the state and the offender as a result of state-legal coercion, which is characterized by conviction of the offender with the subsequent punishment in personal, property or organizational manner [24]. Sometimes it is also called a negative (preventive) aspect of legal responsibility, which is defined as a factor ensuring punishment for an offense.

Thus, based on the mentioned above we can define the disciplinary responsibility for violations of labor discipline as a legal relationship in which there is a combination of two models of behavior: a) legitimate, which includes encouraging actions approved by society, state and particular institution; b) unlawful – violation of legal requirements, which determines duties, prohibitions and authority limitations, with the following application of a special administrative measures – disciplinary punishment.

The basis for disciplinary responsibility is an administrative offense – failure to perform or improper performance of official duties. It can also be a disciplinary offense – a violation of the obligations imposed on persons holding a certain position, violation of the established restrictions, and the use of unauthorized authority.

In our opinion, the use of the term «service offense», which is close by content to the category of «disciplinary offenses», is only possible in case of clear distinction between categories of service offenses and criminal and administrative offenses, as well as its delineation from the category of «disciplinary offenses».

The peculiarities of labor relations in the context of the COVID-19 pandemic include the following:

a) legal gaps in the regulation of labor relations in the aspect of ensuring self-isolation of workers who had contact with COVID-19 confirmed patients. As of September 2020, more than 10 thousand employees were in self-isolation, and the amount of compensation for lost earnings from the Social Insurance Fund of Ukraine during this time exceeded 13 million hryvnyas [25]. At the same time, the main reason for issuing a temporary disability certificate with an indication of the reason for incapacity for work «isolation from COVID-19» is currently a report by the employee himself or by a third party. Due to the virtual absence of epidemiological investigations, as stipulated by Article 36 of the Law of Ukraine «On Protection of Population against Infectious Diseases» [26], there is a situation of legal uncertainty regarding the false reporting by an employee of information about contact with an infected person;

b) concealment by employees the facts of coronavirus disease (personal or family members). Presence of infected people inside institutions or organizations endanger spread of COVID-19 among other persons. Labor legislation does not directly oblige the employee to inform the employer about the certain diseases. Moreover, Article 39-1 of the Fundamentals of Ukrainian Legislation on Health Care enshrines the right for secrecy about one's health. In fact, the patient has the right for secrecy about his health, the fact of applying for medical assistance, diagnosis process, as well as information concerning medical examination results. It is forbidden for employer to demand from his employee any information about patient diagnosis and treatment [27]. However, such an employee may not only endanger the health of others, in certain cases of infection with the Coronavirus Disease COVID-19 can even cause the death of coworkers belonging to the so-called risk group. So, in our opinion, there is a so-called abuse of the right, when the employee's behavior is permitted by law and poses a threat to the life and health of other employees;

c) legal uncertainty regarding the evasion of workers in the presence of reliable information about the possibility of infection with COVID-19 from medical examination and testing, if the employee performs functions that involve contact with other persons. On the one hand, as already indicated above, this behavior is quite legitimate. On the other hand, it does not allow other persons to implement their rights for safe working conditions, which are enshrined by Part 1 Article 6 of the Fundamentals of Ukrainian Legislation on Health Care;

d) problems in understanding the legality of the refusal from vaccination of those employees, whose activity involves active social contacts. On the one hand, according to Article 10 of the Fundamentals of Ukrainian Legislation on Healthcare, the preventive medical examinations and vaccinations is not a right, but an obligation of citizens of Ukraine. The Cabinet of Ministers of Ukraine statistic, dated January 10, 2020, informs about 19767 deaths and 1155026 COVID-19 infected in Ukraine [28]. However, 40% of surveyed by the Rating group citizens in November 2020 stated that they would not accept COVID-19 vaccination, even if it is free of charge [29]. Again, compulsory vaccination would be a violation of human rights. However, workers who refuse to be vaccinated pose a threat to the epidemiological well-being, life and health of those of their colleagues who, due to medical contraindications, cannot be vaccinated;

It is beyond argument that ensuring the employee's right for safe and healthy working conditions in the context of the COVID-19 is complex group of actions that must include a number of pedagogical, psychological, economic and medical solutions. However, general direction of such events, in our opinion, should be determined within the limits of legislation. The role of employment and labor law in such conditions is to create legal effect and boundaries for the misconduct of employees, in order to prevent and reduce the risk of any contacts with affected personnel.

Conclusions. For the foregoing reasons, it can be concluded that actions of deliberately placing coworkers at risk of contracting COVID-19 constitutes inappropriate performance of their duties and may result in disciplinary liability. Such a disciplinary offense has signs danger and constitutes a willful violation of established restrictions. At the same time, taking into account the peculiarities of modern labor and medical legislation, bringing such persons to disciplinary responsibility seems to be quite difficult due to gaps in both labor and medical legislation. However, World Health Organization predicts the recurrence of such pandemics [33], that is why appropriate guarantees for safe working conditions for health require a solution at the legal level.

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Abstract

The article contains an analysis of the essence of labor discipline. The theoretical approaches to its understanding are considered. The article substantiates expediency to use in the concept of labor discipline definition purely legal categories. It is also emphasized on negative attributes and contradictions in the Labor Code of Ukraine and the Disciplinary Statute of the Armed Forces of Ukraine. The article proposes the author's definition of labor discipline.

It is proposed to consider a service offense as the basis for disciplinary liability. At the same time the essence of disciplinary liability is characterized.

The peculiarities of labor relations in the context of the COVID-19 pandemic include the following: a) legal gaps in the regulation of labor relations in the aspect of ensuring self-isolation of workers who had contact with COVID-19 confirmed patients; b) concealment by employees the facts of coronavirus disease (personal or family members); c) legal uncertainty regarding the evasion of workers in the presence of reliable information about the possibility of infection with COVID-19 from medical examination and testing; d) problems in understanding the legality of the refusal from vaccination of those employees, whose activity involves active social contacts.

It has been found that deliberately placing others at risk of contracting COVID-19 while a person is on duty constitutes improper performance of their duties and may lead to disciplinary liability. Such a disciplinary offense carries signs of guilt and danger and constitutes a deliberate violation of established restrictions.

Keyword: *labor legal relations, labor discipline, service discipline, disciplinary responsibility, Disciplinary Statute, COVID-19 pandemic.*

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THE EVOLUTION OF THE COMMON FOREIGN AND SECURITY POLICY OF THE EUROPEAN UNION

Людмила Адашис, Поліна Тростянська. ЕВОЛЮЦІЯ СПІЛЬНОЇ ЗОВНІШНЬОЇ ПОЛІТИКИ І ПОЛІТИКИ БЕЗПЕКИ ЄВРОПЕЙСЬКОГО СОЮЗУ. У статті проаналізовані етапи становлення спільної зовнішньої політики та політики безпеки Європейського Союзу. Розглянуто основні події та рішення світових лідерів, що вплинули на формування загального уявлення світового співтовариства про спільну зовнішню політику та політику безпеки. В роботі акцентується увага на постійному прагненні європейської спільноти дійти згоди щодо створення єдиного дієвого механізму спільної зовнішньої політики та політики безпеки країн ЄС. Хоча, на початкових етапах інтеграції, країнам «європейської шістки» не вдавалося започаткувати інтеграцію в оборонній та політичній сферах. Інтеграція продовжувала розвиватись в інших сферах, а європейські країни та їх лідери робили нові кроки для зближення в регулюванні спільної безпекової політики. Особливо варті уваги: План Плевена щодо створення «європейської армії», прагнення утворити Європейське оборонне співтовариство та Європейське політичне співтовариство, План Фуше, Західноєвропейський союз, Маастрихтський договір, Амстердамський договір, Лісабонський договір та їх вплив на політику безпеки ЄС, створення Європейського оборонного фонду та сучасний План Макрона. Висвітлено позитивні та негативні наслідки кожного кроку еволюції та становлення спільної зовнішньої політики та політики безпеки Європейського Союзу, а також реакцію країн-членів ЄС та інших провідних країн світу на них. Проаналізовані сучасні глобальні події, що мають значний вплив на механізм реалізації політики безпеки ЄС. Досліджено думки вчених та практиків, європейських та світових лідерів та громадян у питанні реалізації спільної зовнішньої та безпекової політики. Доведено, що Україні як лідеру Східного партнерства, необхідно поліпшити свій статус, використати безпекову проблематику для вироблення спільних рішень щодо тіснішого військового партнерства між нею та країнами ЄС. А також здобути можливість бути залученою до спільних консультацій під час вироблення оборонної і безпекової політики ЄС в цілому.

Ключові слова: *право Європейського Союзу, спільна зовнішня політика, політика безпеки, політична інтеграція, Оборонний союз ЄС, Європейський Союз, План Плевена, План Макрона, Європейський оборонний фонд.*

Relevance of the study. The way of building the European Union has many interesting and contradictory moments in history. But to be able to withstand the variability of destiny, you need to understand the connection between the past, present and future. The eminent French historian Marc Bloch spoke of the «solidarity of epochs» and this solidarity is so effective that it allows the lines of communication to work in both directions. And a misunderstanding of the present is an inevitable consequence of ignorance of the past. But a person can be just unable to understand the past, if he does not fully understand the present [5, p. 27]. Therefore, the history of the EU's Common Foreign and Security Policy is of general interest and has a significant impact on its current state.

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The common foreign and security policy of the European Union has been successfully studied by scientists such as I. Bilas, S. Vidnyansky, H. Vovchuk, N. Koval, V.V. Kopiyka, I. Kochin, Luuk van Middelaar, S. Fomenko, I. Yakovlyuk and others.

The article's objective is to consider the basis, stages and features of the formation of a common foreign and security policy of the European Union. Investigate modern European co-operation in the field of defense, its positive and negative manifestations and obstacles to formation.

Discussion. The middle of the last century was a decisive milestone and the beginning of building a sustainable union of European countries, which over time is only strengthened for closer cooperation. The success of the idea of forming a European Coal and Steel Community (hereinafter – ECSC) pushed France to a new integration initiative – a military-political one. So in October 1950, the Prime Minister of France Rene Pleven (who was inspired by J. Monnet determination to create a European federation) speaking at the National Assembly suggested a project of creation a «European army» led by a joint command which was proposed to form using the ECSC governing bodies as a model. The quintessence of his proposal was the formation of military structures that would include military contingents to be allocated by member states to the European army as structural units. The latter were to be created on a supranational basis, which made it impossible for the existence of an independent German military machine [6, p. 71]. And already in September 1951, at a meeting of foreign ministers in Washington, Pleven's Plan was approved by the United States, Britain and France and formed the basis of the 1952 Treaty of Paris establishing the «European Defense Community» (hereinafter – EDC).

On May 27, 1952, the countries of the European Six signed the Treaty establishing the European Defense Community, and on September 10, 1952, the foreign ministers of the ECSC member states instructed the ECSC Joint Assembly (the prototype of the future European Parliament) to draft Treaty establishing the European Political Community (hereinafter – EPC), which completed its work on the project on March 10, 1953.

However, neither the EDC nor the EPC has become a reality. The decisive role here was played by France, whose parliament, after lengthy discussions on August 30, 1954, refused to ratify the EDC Treaty. And this made the signing of the EPC Treaty inappropriate. And J. Monnet, expressing his personal political protest against this, even left the post of President of the Supreme Board of the ECSC.

So, strange as it may sound, all of France's efforts were thwarted by the French themselves.

Thus, in the early 1950s, the countries of the European Six failed to initiate integration in the defense and political spheres, although integration continued to develop in other areas, primarily in the economic sphere.

It is worth noting that the process of defense and political integration has been complicated by many circumstances. On the one hand, American-led NATO has been more effective in the Cold War in defending the West. On the other hand, the provisions of the political community provided for the possibility of participation in this process not only of the six member states but also of any other country of the Council of Europe. Finally, another real obstacle to political integration is the colonial nature of France, Great Britain and Belgium. Without solving the problem with their overseas territories, these states could not fully participate in the European integration process in the political sphere [14, p. 61].

Regular discussions on expanding integration into the political sphere began almost immediately after the ratification of the Treaties of Rome. Initially, during a press conference on September 5, 1960, Charles de Gaulle proposed a mechanism for regular cooperation between the countries of Western Europe in the political, economic, military, and cultural spheres. And in 1961, France's proposals were discussed at the first meeting of heads of state and government in the history of the EEC in Paris, where it was decided to establish a special commission to develop details of such cooperation. The «Fouche Plan» proposed by France (in honor of the French Ambassador to Denmark Christian Fouche, who headed the special commission) provided for the creation of a political alliance aimed at coordinating foreign and defense policy with intergovernmental cooperation like classical international organizations. This project was rejected due to the negative reaction of Belgium and the Netherlands. The «Fouche-2 Plan» also failed, despite its even lesser supranationality and lack of even indirect links to cooperation with NATO. The reason for this was the reluctance of the same Belgium and the Netherlands to move to political integration without participation of Great Britain.

Therefore, in April 1962, the mandate of the Fouche Commission was suspended [10, p. 157]. Nevertheless, the community was grateful for this catastrophe, and the name «Fouche» angered the Commission for many years in a row [12, p. 262].

A new impetus to the cooperation of member states in the field of foreign policy was received in 1970, when the report of Etienne Davignon, a Belgian diplomat, who was called a specialist in «tasks on the squaring of the circle» [12, p. 53]. On October 23, 1970, this report was adopted by the Council in Luxembourg. According to researchers, this document was significant and important in the aspect of European political cooperation. Its main task was to introduce regular meetings of foreign ministers and strengthen political cooperation through specially formed working groups on potentially common issues [11, p. 50].

Equally important documents were the Copenhagen Report of 1973 (which introduced meetings of foreign ministers four times a year and introduced a telex system between the member states of the Core-network) and the London Report of 1981. The latter indicated the need of connecting the European Commission to European political cooperation, and «further European integration and the development and definition of common policies in accordance with the Treaties will be more productive with better coordination of foreign policy actions and will expand the range of legal instruments available to the Ten…» [11, p. 50].

In February 1984, France adopted a memorandum insisting on intensifying the activities of the Western European Union (hereinafter – WEU). The document was supported by Belgium and Germany, pointing out that the WEU is in fact the only purely European organization competent in defense matters. Therefore, the development of WEU should contribute to European integration as a whole. Although, according to researchers, from its inception in 1954 until 1994, the WEU was in a lethargic state, which was due to a number of political and economic reasons, as well as significant competition for leadership from NATO [8, p. 42]. To implement this memorandum, on October 26, 1987 in The Hague, the WEU Council adopted the «Platform on European Security Interests», which recognized the European identity in the field of security and defense on the basis of solidarity provided by the Brussels Treaty establishing the WEU and the North Atlantic Treaty establishing NATO. It should be noted here that the adoption of the relevant «Platform» was a logical continuation of the legislative consolidation of cooperation between member countries on foreign policy issues in the Single European Act of 1986.

A clearer normative definition of the Common Foreign and Security Policy (hereinafter – CFSP) took place only in 1992, by signing the Maastricht Treaty and consolidating it as a second pillar. Its task was to strengthen the unity and independence of Europe, which should contribute to the preservation of peace, security and progress on the continent and in the world. Among the most important goals of the CFSP were: protection of common values, vital interests, independence and integrity of the EU, in accordance with the principles of the United Nations Charter; strengthening the security of the EU and its members; maintaining peace and strengthening international security; support for international cooperation; developing and strengthening democracy, as well as legitimate governments and respect for human rights and fundamental freedoms.

Following the signing of the Amsterdam Treaty in 1997 and the introduction into the institutional system of the High Representative for the Common Foreign and Security Policy (Javier Solana was the first to hold the post in 1999 being at the same time the Secretary General of the Council of the EU), the main focus is on the functioning of the EU as a military and defense support of the Union. In a few years, the European Union has managed to go a long way from a purely economic union to a defense community, to gain the authority to conduct peacekeeping operations with civilian and military components on its own. To achieve this, the EU has received the appropriate legal framework and institutional mechanisms, without the need for the assistance of the WEU. As a result, already in the Nice Treaty in 2001, the provisions related to the common foreign and security policy and the provisions on the activities of the WEU as a defense component of the Union were removed. For good, the WEU ceased to exist after the signing and entry into force of the Lisbon Treaty and the adoption of a decision by the Permanent Council of the WEU on March 31, 2010 [8, p. 45].

The architectural changes introduced by the Lisbon Treaty to the Common Foreign and Security Policy have become a logical continuation of its development and a response to the challenges of globalization.

At the time of concluding the Lisbon Treaty, the EU's foreign policy consisted of many uncoordinated areas, a large number of institutions and complex legal regulators. The reorganization of

all types of foreign policies, the integration of the foreign affairs system and its significant merging, the introduction of the term «foreign activity» instead of «external relations or policy», which covers all external areas: economic, political and security, proved the EU's attitude to international activities as to a single holistic direction [13, p. 235]. And presented on June 28, 2016 by the EU High Representative for Foreign Affairs and Security Policy Federica Mogherini of the European Union's Global Strategy on Foreign and Security Policy «Common vision, common approach: a strong Europe», stressed that one «soft» force is no longer enough and it is necessary to increase the efficiency of the EU in the field of security and defense. At the same time, the main priorities were: defense, counter-terrorism, cybersecurity, energy and strategic communications. For effective follow-up in the field of security and defense and timely response to external crises, the European Union must have the full range of strategic capacity and resources. Therefore, the collective commitment to the EU defense budget must be fully met. In turn, the defense industry will stimulate economic growth of states [2]. This prompted the establishment in 2017 of the European Defense Fund (hereinafter – EDF), which aims to promote defense cooperation between companies and between EU countries in order to stimulate innovation and development of state-of-the-art defense technologies and products. The fund will coordinate, complement and strengthen national defense investments. The European Commission has already begun to strengthen the European defense sector in the current budget cycle, ending in 2020. For the first time in the history of the EU, the EU has undertaken to support European defense cooperation with a budget of 590 million euros, of which 90 million euros for research in 2017 -2019 and 500 million euros – for the development of equipment and technology for the period 2019-2020. For the next budget period 2021-2027 it is planned to increase spending on this EDF to 13 billion euros [4].

Perhaps precisely in order to rehabilitate France, for its insufficiently active position in recent years, in the eyes of Europeans and to assume a leading role in the European Union, the current President of France, E. Macron, insists on strengthening political and defense cooperation. His EU Reform Program, which is grouped into six priorities, has become very eloquent. The main priority of «Common Security» should be embodied in the deployment of rapid reaction forces in the EU, the creation of a common defense budget and a common doctrine of action and better integration of the armed forces of member states. Macron insists on accelerating the implementation of the European Defense Fund and the Permanent Structured Cooperation (hereinafter – PESCO) and proposes the creation of a European Intelligence Academy and a European Civil Defense Force (to combat natural disasters). But the reaction to the Macron's Plan of the international community was different.

German Chancellor Angela Merkel agreed with Macron that Europe should move towards creating its own armed forces. She believes that such an idea does not go against the Alliance, and the European army can be a good addition to NATO. However, US President Donald Trump took the statements as an insult and accused Europe of underfunding NATO.

The lack of clear use of the concepts and terms of the EU's common army allows leaders from different political backgrounds to operate them on their own. Thus, Russian President Putin supported Macron's idea, noting that such a proposal reflects «a generally positive process». Such position of the Russian leader is not surprising, but is quite expected. Putin will support any idea that will help realize his desire to separate Europe from the United States and dismantle the North Atlantic Alliance from within [7].

Despite the Macron's Plan is being very ambitious, it is unfortunate that it emphasizes its lack of attention to the further development of the Eastern Dimension of EU cooperation, while directly highlighting the need for partnership with Africa. This position requires balancing the development of cooperation with the Eastern Partnership countries by other players, and within the framework of EU reform plans. And Macron's idea of creating a joint European rapid reaction force and further strengthening EU defense cooperation could collide with existing EU battlegroups, some of which Ukraine has been and is being involved in. Also, special attention is needed to whether Ukraine participation in the reformed rapid reaction force will be possible, given the cooperation between Ukraine and the EU after the Russian aggression [9].

The global events of recent months in connection with the Covid-19 pandemic have suspended European discussions on this issue, as the EU is devoting all its forces to combating its consequences. However, Putin's destructive policies are, unfortunately, systematic. We should not forget the fact that by sending humanitarian aid to some EU countries now, Russia wants to undermine European unity, so to speak, from within. According to the press, the Italians are offered a reward of 200 euros for filming videos of «gratitude to Russia and Putin» for humanitarian aid, and a video is spread on social networks where a man changes the EU flag to

the Russian flag, and then shows inscription «Thank you Russia. Thank you Putin!» [1].

Conclusions. Based on the above, it can be concluded that despite all the difficulties, the desire of most European leaders and European citizens is to remain in a friendly family of the European Union and build a Common Foreign and Security Policy.

As EU High Representative Joseph Borrell said in his annual report to the European Parliament in January 2020, «in the geopolitical world, the European Union has no choice but to strengthen its capacity to protect itself and become a more reliable security provider. The beating hearts of the CFSP today are 17 missions and operations deployed in various regions outside our borders. I must welcome the enthusiasm and commitment of thousands of men and women serving under the banner of the European Union... I welcome the political support for the creation of the proposed extra-budgetary European Peace Fund, designed to help our partners take care of their own security by building their own capabilities. Accepting a greater role in the world requires the development of what is called strategic autonomy, but this does not mean that the European Union is abandoning its partnership. On the contrary, it will make the European Union a stronger world partner. It will also benefit NATO, as a stronger EU and a stronger NATO go side by side»[3].

The current position of the European Union requires balancing the development of cooperation not only between the EU countries, but also with the countries of the Eastern Partnership, and within the framework of EU reform plans. Macron's proposal to create a joint European rapid reaction force and further strengthen defense cooperation, although of keen interest, could enter into a collision with existing EU battlegroups.

In turn, Ukraine should strengthen cooperation with the EU in these areas. As a leader of the Eastern Partnership, Ukraine needs to improve its status, use security issues to work out joint decisions on a closer military partnership between it and the EU and also, to seek the opportunity to involve Ukraine in joint consultations in the development of defense and security policy of the EU as a whole.

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Abstract

In the article the stages of formation of the common foreign and security policy of the European Union have been analyzed. The main events and decisions of world leaders that influenced the formation of the general idea of the world community about the common foreign and security policy are considered. The paper focuses on the constant desire of the European community to agree on the creation of a single effective mechanism for a common foreign and security policy of the EU. Although, in the initial stages the countries of the European six failed to initiate integration in the defense and political spheres integration continued to develop in other areas. Later European countries and their leaders took new steps to converge in the regulation of the common security policy. The positive and negative consequences of each step of the evolution and formation of the common foreign and security policy of the European Union, as well as the reaction of EU member states and other leading countries to them are highlighted. The current global events that have a significant impact on the mechanism of implementation of EU security policy are analyzed. The opinions of scientists and practitioners, European and world leaders on the implementation of common foreign and security policy are studied. It has been proved that Ukraine, as the leader of the Eastern Partnership, needs to improve its status, use security issues to work out joint decisions on a closer military partnership between it and the EU countries.

Keywords: *EU law, common foreign policy, security policy, political integration, EU Defense Union, Europian Union, Pleven Plan, Macron's Plan, Europian, European Defense Fund.*

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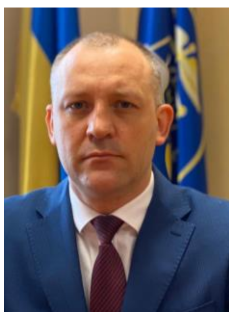

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SOCIAL SECURITY AS AN OBJECT OF PUBLIC ADMINISTRATION IN UKRAINE AND OVER THE WORLD

Юрій Павлютін. СОЦІАЛЬНА БЕЗПЕКА ЯК ОБ'ЄКТ ПУБЛІЧНОГО АДМІНІСТРУВАННЯ В УКРАЇНІ ТА СВІТІ. На підставі аналізу чинного законодавства, що регулює управлінські відносини в секторі безпеки та оборони держави, у статті проаналізовано місце та роль соціальної безпеки в системі забезпечення національної безпеки та сформульовано ряд науково обґрунтованих пропозицій щодо подальших розвідок у цій сфері.

Звернуто увагу на те, що кризовий стан робить взаємодію суспільства й особистості напруженою й конфліктною, невизначеною за своїми наслідками, під впливом кризи відбувається деформація свідомості та поведінки людини. На підставі викладеного у статті проаналізовано зміст Цілей сталого розвитку України на період до 2030 року. Підкреслено нерозривний зв'язок Цілей сталого розвитку України на період до 2030 року із Стратегією національної безпеки 2020 року в аспекті, що розглядається.

Наголошено на тому, що характерною особливістю організаційно-правового механізму забезпечення національної безпеки України в соціальній сфері як об'єкта публічного адміністрування, є втрата категорією «соціальна безпека» цілісності чітко визначених сфер суспільних відносин, оскільки інтереси особи і форми державного управління не завжди співпадають, а організаційний механізм забезпечення соціальної безпеки знаходиться в стані постійної трансформації, відображаючи при цьому переважно негативні наслідки безсистемного підходу щодо створення ефективної моделі протидії викликам та загрозам.

На підставі проведеного аналізу доктринальних положень забезпечення національної безпеки та концептуальних засад забезпечення економічної безпеки підтримано позицію, згідно з якою соціальна безпека відображає стан розвитку держави, за якого держава здатна забезпечити гідний і якісний рівень життя населення незалежно від віку, статі, рівня доходів, сприяти розвитку людського капіталу як найважливішої складової економічного потенціалу країни.

Ключові слова: *соціальна безпека, національна безпека, сектор безпеки і оборони, публічне адміністрування у сфері національної безпеки.*

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Relevance of the study. Social security is an object of interdisciplinary relationships and is therefore considered in terms of the human studies, while the greatest attention to this institution is paid by sociology and philosophy, and to a lesser extent – by economics and law. This is due to the fact that during the years of independence the development vectors of Ukraine have been associated with uncertainty and unpredictability, often followed by permanent reform with no goal achieved, as a result of real challenges and threats to Ukraine's national security.

Recent publications review. The general theoretical basis for consideration of the issue is the scientific papers of O. Bandurka, O. Dolzhenkov, Yu. Dubko, O. Komissarov, O. Kopan, M. Kornienko, V. Krutov, S. Kudinov, S. Kuznichenko, V. Laptiy, M. Lytvyn, V. Olefir, A. Podoliaky, M. Saakyan, O. Khytry and others. Sufficient attention has also been paid to the practical problems of ensuring national security and various aspects of its provision by certain state bodies. However, the issues of considering social security as an object of public administration, determining its origins and problems of implementation in the modern public administration practice remain unexplored by the modern legal science.

The paper's objective, taking into account the relevance and significance of the problem, is to present the results of the analysis of the place and role of social security in the national security system and to develop scientifically grounded propositions concerning further research in this area.

Discussion. As S. Dombrovska and A. Pomaza-Ponomarenko rightly point out, modern Ukrainian society is characterized by a contradictory reformation process. The systemic crisis that has affected our society demonstrates particularly stable and acute negative processes: social polarization, criminalization of social relations, violation of the ecological balance between man and nature, deep economic crisis. Distrust for state authorities and social institutions is growing within society. Personality is often being detached from socio-political processes and is faced with significant limitations in opportunities for self-improvement and self-realization. The state of crisis makes the interaction between society and an individual tense and conflictual, uncertain in its consequences. In terms of crisis, the deformation of consciousness and human behavior takes place. The development of the individual and society in the transition period either opens up new opportunities or results in degradation. Therefore, the concept of «social security» becomes especially relevant as one of the main conditions for the individual well-being and stable development of the state [1].

Analysis of the Constitution of Ukraine and other laws proves that the term and concept of «social security» is completely absent in Ukrainian legislation. The terms «social development», «social security», «social interests», «social value» and «social protection» are widely used instead (Articles 3, 44, 46, 47, 116 of the Constitution of Ukraine).

The Roadmap and priorities for the implementation of the Sustainable Development Strategy «Ukraine – 2030» imply the achievement of 17 sustainable development Goals of Ukraine for the period till 2030 within the framework of these vectors of development. Among them: overcoming poverty; ensuring a healthy lifestyle and promoting well-being for all the age groups; promoting a peaceful and open for sustainable development society; ensuring access to justice for everyone and creating effective, accountable and participatory institutions at all the levels [2].

However, the concept of «social security» is defined in a separate subordinate legislation. Thus, in particular, according to the Guidelines for calculating the level of economic security of Ukraine, provided by by the Ministry of Economic Development and Trade of Ukraine, social security is a state of state development when it is able to ensure a relevant and quality standard of living regardless of age, sex, income and promote development of human capital as the most important component of the economic potential of the country [3].

According to O. Koval, such a definition of social security can hardly be considered comprehensive and unambiguous, since it has two fundamental shortcomings: narrowness and vagueness. Firstly, social security is not limited exclusively to the living standards of the population, but is fundamentally broader. Secondly, there is some doubt about the use of the phrase «promote development» as insufficiently meaningful and devoid of specific content [4].

Moreover, taking into account the name and content of the Guidelines for calculating the level of economic security of Ukraine, social security is covered by the scope of economic security and is its structural element. Thus, to clarify the concept of «social security» it is necessary to analyze the legislation, as well as to conduct theoretical research on the essence of this category.

According to V. Skurativskyi, O. Lyndyuk, social security is a state of human and social life, characterized by a developed, stable social system of social conditions of the individual, his social security, resistance to factors that increase social risk [5].

In such a situation, social protection is viewed as a social security function, providing sustainability or stability to challenges and threats, and is the main task of social security effectiveness mechanism in various spheres of public relations.

R. Pidlypna, paraphrasing the definition of national security contained in as in force for the time being Law of Ukraine «On the Fundamentals of National Security», introduces the following definition: social security is the protection of vital interests of man, citizen, society, ensuring social progress and economic development, timely detection, prevention and neutralization of real and potential threats to national interests in the social sphere, in particular in the field of social policy and pensions, migration policy, health care, education, cultural development, etc. [6]. Further on, in the same paper, the author synthesizes the approaches of various scholars who studied social security, and offers the following definition: social security is the protection of vital interests of person, citizen, society, timely detection, prevention and neutralization of threats to national interests in social sphere, ensuring a proper standard of living, expanded reproduction, human development and social progress [6]. It is therefore obvious that such a definition has not lost its relevance with the entry into force of the Law of Ukraine «On National Security of Ukraine».

Therefore, the generalized definition in this interpretation makes it necessary to clarify the concept of «social sphere» and its constituent elements.

D. Zerkalov, O. Arlamov also provide a similar classical definition of social security as a set of measures aimed at protecting the state and human interests in the social sphere, the development of social structure and social relations, life support and socialization, lifestyle according to the needs of progress, present and future generations [7].

The Big Economic Dictionary defines social sphere as the one where material goods are not directly created. Here belong: arts, culture, sports, science, education, health care [8, p. 1012].

V. Kutsenko, S. Levochkin consider the social sphere as an important component of ensuring the livelihood of society, which includes a set of educational, medical and cultural institutions that provide relevant services to citizens [9, p. 25].

Analysis of the legislation of Ukraine shows that the concept of social sphere has not received its legal definition, although it is often used in regulations, in particular, those by the Cabinet of Ministers of Ukraine «On creating a single information environment of social sphere and establishing information exchange between central executive bodies» [10].

According to A. Khaletska, the social sphere can include education, retraining and advanced training, health and labor, culture, sports, labor market and relevant motivation, social insurance, pension system, public-private partnership, etc. [11]. S. Dombrovska to the social security objects includes the labor market and income, social protection and insurance, education, sports, general culture, health care, ecology, demographic features [1].

Thus, both theoretical inconsistency and non-systematized legal mechanism, as well as no definitions of important concepts, no clear list of objects related to the social sphere can be observed. Such disorder of legal and organizational regulation determines the current situation, which affects the real state of social security of Ukraine and therefore destabilizes the state of social relations and can lead to internal social conflicts of unpredictable scale.

A. Priyatelchuk and O. Ishchenko argue that the state of social security in the unity of demographic, economic and socio-cultural aspects consists in a social stability, which can be viewed as a goal or a state of social security [12]. B. Makarenko believes that the issues of effective social security development are a combination of the social policy strategy and national security [13].

The analysis of the provisions of the sustainable development Goals of Ukraine for the period till 2030 as guidelines for developing draft forecast and program documents, draft regulations to ensure a balanced economic, social and environmental dimensions of sustainable development of Ukraine proves their inseparable connection with the National Security Strategy (of 2020 edition), including the social security aspect. Thus, in the article 5 of the National Security Strategy of Ukraine «Human Security – Country Security» social development, development, first of all, of human capital is defined as a priority of national interests of Ukraine and its national security, whereas the fulfillment of the social function is recognized as one of the necessary state functions (article 50) [14].

It should also be considered that the current National Security Strategy is based on the «sustainability» principle – the ability of society and the state to quickly adapt to the security environment changes and maintain sustainable functioning, in particular by minimizing external and internal vulnerabilities [14]. Accordingly, the prevailing idea is that war or armed conflict weakens state economy, whereas economic crises create the conditions for social tensions

in the country, followed by a political crisis that leads to various forms of protests and revolutions with social consequences that are difficult to predict.

Social challenges and threats are determined by the probability of social conflict or crisis. According to A. Balanda, the main feature of the state of social determinants of national security is the level of social tension in the country, which reflects the degree of psychophysiological adaptation, and in many cases, maladaptation of various population categories to the decrease of living standards and social cataclysms. It is manifested in a sharp increase in social dissatisfaction, distrust of the authorities, conflict in society, anxiety, as well as economic and psychological depression, deteriorating demographic situation, etc. [15, p. 29].

E. Luttwak, in his study of military strategy and geopolitics «Coup d'etat: a practical guide» argues: «There is a limit to economic survival below which the population – or the most part of it – will simply starve to death if it does not switch to a purely subsistence economy; but long before the country reaches this limit, a political survival limit will be reached, below which the overthrow of our government is inevitable … The «political survival limit», however, is quite flexible and depends on psychological, historical and social factors as well as on effective system of state security and state propaganda machine» [16, pp. 169-170]. Thus, social mechanisms for the protection of the population play a significant role in the «stability» of socio-economic, political and legal relations in society, which contributes to the national security of the state.

Social protection in the mechanism of public administration is not only about providing support to those who need it. It also implies ensuring a healthy social climate in the country, development without shocks, revolutions and civil wars. Nowadays, social values are more or less inherent in all the industrialized countries, which, apparently, is a significant achievement of global civilization [17, p. 85].

The experience of the United States in social security due to the global economic crisis of 1929-1933, called the Great Depression, prompted the US public administration to develop a social protection system that still exists despite its consistent transformation. In the United States, social security is currently handled by a specially created federal body, the Social Security Administration [18] that operates under the Social Security Act of 1935, adopted to prevent a social explosion after the Great Depression, which was signed in 1935 by President F. Roosevelt as a part of the «New Deal» policy [19].

Launched more than eighty years ago, the US social security system is still a single integrated institutional system of organizational and legal support for the public relations regulation, its important feature is stability, characteristic of any social system that contributes to an effective sustainable development of state and nation.

In his philosophical study, I. Chaika comes to the conclusion that an important feature of social system is its integrity. The social system is integral, when the significance of interaction between its elements and subsystems is regulated by relevant institutional norms and based on the goal formed as a result of information interaction between system elements, exceeds the intensity of interaction of elements and subsystems with the external environment (structural and component integrity). The existence of a social system with its own identity is possible due to the basics of socio-systemic integrity – the ethno cultural core, which determines the genetic integrity of the social system.

An important essential feature of an integral social system (namely its component and structural integrity) is stability, which can be defined as an ability of the system to maintain balance and return to it in case of any deviation. Social system is stable if each of its subsystems is stable: social, economic, political, spiritual, and each of its structural levels accordingly: information-symbolic, institutional, level of material interaction [20, pp. 11-12].

Nowadays the main task is: to transform the political language in the social security of the state as a practical confirmation that the state in its social policy practically realizes the interests of the majority, not a separate socio-economic group, and to increase the role of political dialogue that includes the dialogue on economic choice.

In order to ensure successful transformation, a decent and strong sense of responsibility for the public well-being in the sphere of state administration is needed. In fact, it is a socio-political task, as a condition for a stable social security model in the structure of general national security system.

The culture of democracy obviously has its roots in the transitional societies that have so long denied it. However, something still needs to be grown from this root. This refers to the development of an effective social security in the context of social policy and national security strategy of the state [13].

Conclusions. The analysis of current organizational and legal mechanism of national security of Ukraine in the social sphere as an object of public administration has proved that its characteristic feature is the loss by the category of social security integrity of clearly defined areas of public relations, since the individual interests and forms of state administration do not always coincide, and the social security organizational mechanism is in a state of constant transformation, while in most cases reflecting the negative consequences of a haphazard approach to creating an effective model for countering challenges and threats. Therefore, social security should become one of the main conceptual directions of national security, followed by the development of a methodology for organizing its actual implementation in the public relations regulation.

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Abstract

Based on the analysis of current legislation governing administrative relations in the security and defense sector, the article analyzes the place and role of social security in the national security system and formulates a number of scientifically sound proposals for further intelligence in this area. It is emphasized that a characteristic feature of the organizational and legal mechanism of national security of Ukraine in the social sphere as an object of public administration is the loss of the category of social security integrity of clearly defined areas of public relations, as the interests of individuals and forms of government do not always coincide. The mechanism of social security is in a state of constant transformation, reflecting in most cases the negative consequences of a non-systemic approach to creating an effective model for countering challenges and threats.

***Keywords**: social security, National security, security and defense sector, public administration in the field of national security.*

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NEW REFERENDUM LEGISLATION AND THE ISSUE OF INVIOLABILITY OF CONSTITUTIONAL ORDER PRINCIPLES OF UKRAINE

Андрій Самотуга. НОВЕ ЗАКОНОДАВСТВО ПРО РЕФЕРЕНДУМ ТА ПИТАННЯ НЕПОРУШНОСТІ ЗАСАД КОНСТИТУЦІЙНОГО ЛАДУ УКРАЇНИ. Незважаючи на історично визнаний демократичний характер такої форми прямого народного волевиявлення, як референдум, його реалізація в сучасних умовах інколи вбачається вельми суперечливою, навіть загрозливою як демократичним традиціям, так і основам конституційного ладу самих демократичних держав.

Аналізована проблема донедавна здебільшого розглядалася в аспектах теорії, генезису, нормативно-правового та організаційного забезпечення реалізації цієї форми прямої демократії. Втім поза увагою дослідників залишаються питання співвідношення референдумів з проблемами правового захисту конституції, зокрема, та основ конституційного ладу, взагалі.

Поряд з існуючими перевагами поставлено за мету необхідність виявлення й теоретико-методологічного обґрунтування політико-правових ризиків формування нового референдного законодавства України та його можливий негативний вплив на непохитність основ конституційного ладу держави.

Проаналізовано ретроспективу окремих фактів проведення референдумів, внаслідок яких були звужені, а в деяких випадках на певний час ліквідовані демократичні свободи та піддані ревізії міжнародні механізми їх захисту.

Звернуто увагу на дискусійні положення проєкту закону України «Про народовладдя через всеукраїнський референдум» у частині внесення змін до Конституції України стосовно норм про засади конституційного ладу.

На підставі викладеного зроблено, зокрема, такі висновки: 1) через застосування референдуму як форми прямої демократії не завжди відбувається її зміцнення, а інколи навпаки – прямування держав до авторитаризму й навіть до тоталітаризму; 2) через зловживання референдним правом відбувається підміна представницької, парламентської демократії, дискредитація інституту парламентаризму і, врешті-решт, інституту прямої демократії взагалі; 3) через зловживання інформаційним правом відбувається деструктивна діяльність ЗМІ у маніпуляції суспільною думкою виборців.

***Ключові слова**: референдум, демократія, зловживання, конституційний лад, законопроект, внесення змін.*

Relevance of the study. One of the features of a democratic state, which defines Ukraine in Art. 3 of its Constitution, is the attribution of the people to a single source of power. According to the Constitution, this power is executed by the people, in particular, directly through elections and referendums. The issue of legal regulation of such a form of direct democracy as a referendum has already become quite complex and sometimes contradictory in all the years of independent Ukraine, despite the fact that the Basic Law quite clearly regulates this democratic institution (Chapter III), and its organization and order to be determined exclusively by the laws of Ukraine (paragraph 20 of Article 92) [1].

Recently, in the context of a substituting in Ukraine's political class through such a form of direct democracy as elections, issues of another form – referendums – have also accompanied recent election campaigns. Therefore, despite the historically recognized democratic nature of such a popular will, its implementation in today conditions is seen by many experts as very contradictory, and even more threatening to both democratic traditions and the foundations of the constitutional order of the democratic nations themselves.

Recent publications review. The issue of referendums as a form of direct democracy has been the subject of research by many foreign and domestic legal scholars, mainly in the

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field of constitutional law and the theory of state and law, in particular: Yu. Klyuchkovskyy, I. Koliushko, V. Maklakov, R. Marandyan, M. Onishchuk, O. Plakhotnik, V. Pohorilko, B. Puchalska, T. Ryabchenko, V. Fedorenko, V. Shapoval, A. Yanchuk. This issue is actively discussed by experts in the field of political science: S. Derevyanko, D. Kenny, A. Quinn, I. Khavruk and others.

The raised problem was mostly considered in the aspects of theory, genesis, regulatory and organizational support of realization of this form of direct democracy. However, researchers do not pay attention to the ratio of referendums with the problems of legal protection of the constitution, in particular, and the constitutional order foundations in general.

The article's objective is, along with the existing advantages, the need to identify and theoretically and methodologically substantiate the political and legal risks of forming new referendum legislation of Ukraine and its possible negative impact on the steadfastness of the constitutional order of the state. The implementation of this goal determines the making of proposals to minimize or even avoid such dangers and risks.

Discussion. Recently, after a pause of more than 20 years when the only all-Ukrainian referendum was held so far since independence in March 2000 (the results of which were not enshrined in law), excluding the referendum of December 1, 1991 to confirm the Act of Independence, in the domestic society and politicum the topic concerning this, unfortunately, contradictory form of direct popular will is beginning to gain momentum. Thus, the fifth President of Ukraine during his speech on December 1, 2017 at the celebrations on the occasion of the Day of Prosecutors stated that the Ukrainian people will support the issue of Ukraine's accession to NATO and membership in the European Union in a referendum. However, fortunately, such measures were limited to the legislator's wisdom and foresight, when the Law of Ukraine of 07.02.2019 amended the Constitution of Ukraine concerning the strategic course of the state to become a full member of Ukraine in the European Union and the North Atlantic Treaty Organization [1].

Today, however, a wave of referendums has swept Europe itself, according to The Economist, noting that it is not a very useful process. In the 1970s, an average of three referendums were held on the continent each year. Now there are an average of eight. And this is regardless Switzerland and Liechtenstein, which have a long tradition of direct democracy. From one hand, fans of direct democracy argue that referendums offer a way to engage voters; support for mainstream parties has tanked in the rich world; referendums on issues can get people interested in politics. But, on the other hand, increasingly, referendums are being used as a more troublesome political tool. Some, including the one in Hungary, have been called to challenge or subvert EU policies. For example, in 2015 Alexis Tsipras, Greece's prime minister, called a referendum with only eight days' notice on the Greek bail-out conditions. Elsewhere, populist single-issue groups are using referendums as a way of challenging EU-wide treaties [2].

Thus, in this publication there is even an additional goal – to find out the possibility of the influence of this citizens' political right on the principles of both the territorial integrity of an individual country and the unity of voluntary democratic state associations, which is now the European Union.

For example, it is appropriate to refer to the tragic events in interwar Europe of the last century, namely the referendums held in Nazi Germany: 1933 – Extraordinary parliamentary elections simultaneously with the referendum on Germany's exit from the League of Nations (95.1% of the vote «pro»); 1936 – referendum on the occupation of the demilitarized Rhineland (98.8% «pro»); 1938 – Referendum in Austria on the Anschluss with Germany (99.73% «pro»). However, voter turnout is not provided here. Hence the analogies with the current referendums after the annexation of Crimea and the occupation of Donetsk and Luhansk oblasts – low turnout and «high» percentages of support for separatist referendum organizers in violation of Ukrainian law, which states that referendums to alter Ukraine's territory are exclusively national ones [1]. Since then, in post-war West Germany, the occupying power of the allies of the anti-Hitler coalition has banned any referendums for several years. And today the Constitution of Germany of 1949 contains a rule on a national referendum only on the division of federal lands [3].

In 1945 British Prime-Minister Clement Attlee denounced the referendum as «alien to all our traditions» and an «instrument of Nazism». Harold Wilson, the Prime-Minister (1964—1970 and 1974—1976), who would hold Britain's first national referendum in 1975, had previously dismissed the idea as «contrary to our traditions» and «not a way in which we can do business», scoffing that a referendum would probably abolish the income tax. His Conservative opponent, Margaret Thatcher, called the referendum «a device of dictators and demagogues»

that would be dangerous to minorities and destructive of parliamentary sovereignty [4].

It is also worth mentioning the only referendum in the history of the USSR, held in 1991 – the last year of this superpower existence. The wording of the main question of the bulletin caused a great deal of controversy from the outset, and it seemed confusing whether it was about preserving the USSR or about a new federation of «equal sovereign republics».

It was the Soviet Union collapse that was a direct consequence of the Ukrainian referendum of December 1, 1991, in which more than 90% of those who took part in it voted for independence. This vote annulled the results of a previous referendum held in March 1991, in which more than 70% voted in favor of further participation in the Union on the basis of far-reaching reforms. The life or death of the USSR depended on its citizens vote [5, pp. 428-429].

The beginning of the new millennium has been marked by events such as the referendums on the European Union Constitution under the laws of some member states on the mandatory conduct of ratification referendums.

A French referendum was held on 29 May 2005 to determine whether France should ratify the proposed EU Constitution. As a result, the Constitution was rejected by a majority of votes (55%) with a turnout of 69%.

A similar referendum was the first in more than 200 years in the history of the Netherlands (the previous one was held in 1801) and in no way bound the government, that is, even though the proposal for a Constitution was rejected by a majority of voters, it could be ratified by the General States of the country. However, even before the vote, the government stated that it would act under the voters' decision with more than 30% turnout. The results of the voting showed that 61.6% of voters rejected the Constitution with 63.3% turnout. Since then, a draft such as the EU Constitution has been postponed indefinitely by EU officials.

In the current decade, for example, the first referendum on Scottish independence took place on September 18, 2014. According to the final results, 44.7% of voters supported the independence.

And on June 26, 2016, in a referendum, the British voted (51.89% «pro») to leave the European Union (Brexit). Most Scots, on the other hand, prefer to leave the United Kingdom by staying in the EU. Therefore, according to the agreements with the official bodies of the European Union, the procedure for Britain's withdrawal from the EU was calculated by 2019.

Moreover, as experts say the UK proved to be particularly vulnerable to such a risk: blurring of delineation of constitutionality of a matter under consideration and, more crucially, the weak regulation of referendums under the UK's uncodified constitution, arguably led to partisan capture and can be linked to widespread manipulation of the electorate by campaign of misinformation [6, pp.82-83].

The role of the media in this was also controversial. So, it is highly likely that the media have decisively influenced the public perception of EU-related matters. Hence, it can be suggested that British media have been successful in infecting the British public with Euroscepticism of an aggressive variety. A contributing factor was the UK politicians' tacit acquiescence to the hostility in the UK media's style of reporting on Europe. Another was the unavailability of any competing coverage of European matters on European level. The British people were never informed about what the EU is and what it does. Instead, they were fed a diet of sustained one-sided Euro-bashing [6].

September 2017, Spain. Its richest region of Catalonia declares its independence in a referendum. And before it was held, the Spanish Minister of Economy promised to give greater economic independence to Catalonia in exchange for refusing a referendum. Today, this separatist conflict has been resolved after the flight of Catalan leader Carles Puigdemont to Belgium, who later surrendered to Spanish justice.

The example of the Catalans was picked up by the northern regions of Italy, Lombardy (center – Milan) and Veneto (Venice), which in a referendum in October 2017 called for greater economic independence.

Thus, we have clear examples of referendums on separation from states or joining / non-joining unions of states. In this regard, the British journalist and publicist E. Lucas writes that issues related to national self-determination are quite complex, so it is not always advisable to hold referendums on them. After all, plebiscites lead to divisions, while consensus is needed. A referendum can answer one question but raise others at the same time. In addition, it is not necessary to choose between full independence and the status quo: many linguistic, cultural and religious conflicts are resolved through autonomy under a liberal and democratic political system. Finally, the author emphasizes that foreign intervention in such cases is useless. If the

local separatist movement has overt or covert support for an external force (in particular, financial-corruption, information-propaganda), it becomes a threat to national security rather than an authentic manifestation of regional identity [7].

Another type of ratification referendum is the accession of new member states.

Thus, the referendum on the approval of the Association Agreement between the European Union and Ukraine or the Consultative referendum of the Netherlands on the association of Ukraine and the EU took place in the Netherlands on April 6, 2016. The referendum was advisory and corrective in nature, and was announced by the Dutch Election Commission after 420,000 signatures for such a referendum were declared valid. On April 6, 2016, 61% of voters who took part in the referendum voted against the agreement. After an allegedly euroskeptic vote in 2016 that rejected an E.U. treaty with Ukraine, the government abolished the referendum process, supposedly on the basis that referendums give rise to populism [8].

From the above we can conclude that all these referendums were not only a positive experience of involving civil society in political life but also found widespread alienation from politics and dissatisfaction with the ruling class. Support for the old political parties is declining, while populists and Eurosceptics are gaining momentum. Moreover, experts believe that governments, which voters consider as an elite detached from reality, find it very difficult to resist calls to put controversial issues to a referendum.

The EU is often the target of such referendums. And it's not just, for example, in the UK. According to opinion polls, more than half of Italians and French also want a referendum on their countries' EU membership. Some referendums are held by the current government to reduce pressure from populist opponents. That's how it all started in the UK. And populists who want to sever ties with the EU or fight against European decisions that they do not like are seeking to hold others. For example, the Hungarian government is thus opposing the European Commission's decision to admit refugees. Eurosceptics also managed to hold a referendum on an agreement between the EU and Ukraine.

This «referendum fever» has made a number of problems. After all, it has complicated the process of adopting international agreements. Treaties are usually signed by governments or presidents and ratified by parliaments. And if we add a national referendum to this process, decision-making will be very difficult. Thus, it is almost impossible to predict how the 28 countries will adopt the EU agreements. That is, a minority in small countries can create serious problems for the entire European Union. For example, only 32% of Dutch people took part in a referendum on an agreement with Ukraine. But their decision could undermine the entire European project.

Opponents of referendums also argue that if the executive branch has the power to decide in which cases referendums should be held, it can use them as a political tool in the interests of the ruling party rather than in the interests of democracy. They also argue that due to lower voter turnout in referendums than in national elections, the argument that referendums increase the legitimacy of political decisions is not justified.

Despite the fact that in the modern world there are supposedly effective mechanisms for the exercise of democracy through the adoption of relevant acts and the establishment and operation of international human rights institutions (UN, Council of Europe, etc.), the world community, however, does not yet have reliable guarantees (including legal ones) from the aggressive actions of its individual members, who use hybrid methods of their influence on countries that they consider «areas of their national interests». In particular, the National Security Strategy of the Russian Federation of 31.12.2015 states that the government pursues an open, rational and pragmatic foreign policy that eliminates costly confrontation (including a new arms race) [9]. That is, in addition to the classic military, it is about political, economic, humanitarian and informational destabilizing effects (including through interference into elections and referenda) primarily on post-Soviet countries. Russia's participation in almost all presidential elections in Ukraine (except for 2014) was particularly active due to the support through affiliated media of openly pro-Russian candidates, and discrediting of patriotic and pro-Western ones.

One of the means of legitimizing the justification by the Russian Federation of the annexation of the Autonomy Republic of Crimea (hereinafter – ARC) and the occupation of part of the territories of Donetsk and Luhansk regions was the use as a successor to the USSR of the means already tested in the past – organization and holding of referendums and elections with a predetermined result – confirmation by voters of their «aspirations» to integrate into their «historical homeland». At the same time, there is an abuse of even international law (which in the

modern legal lexicon is defined as «lawfare» – «law» and «warfare») [10].

The coup d'etat in the ARC, according to Ukrainian researchers, took place in the best traditions of Bolshevism: seizure of the Crimean TV and Radio Company with disconnection of Ukrainian TV channels, blocking of transport communications with mainland Ukraine, seizure of airfields, mass transition of Ukrainian officers – mostly residents of the ARC – to the side of the RF Armed Forces, adoption by the Sevastopol City Council and the ARC Parliament of a declaration of state sovereignty, which was to be confirmed in an all-Crimean referendum. On March 16, 2014, taking advantage of the confusion of the world community, the creators of the «Crimean Spring» changed not only the procedure but also the wording of the question, put to a «referendum», which was determined by two: «Are you in favor of the reunification of Crimea with Russia as a subject of the Russian Federation? Are you for the restoration of the Constitution of the Republic of Crimea of 1992* and for the status of Crimea as a part of Ukraine?» [11, p. 406]. As we can see, the questions are purely manipulative with a predetermined answer. Moreover, modern world standards of suffrage and referendum law provide for the submission to a referendum of only one question with alternative answers – «yes» or «no».

The problem, in our opinion, is that the issues of legal regulation of initiating and conducting such referendums are almost non-existent at the international level and are exclusively subject to national legislation, which is not perfect and stable in this area. Therefore, no matter how high the support of Ukrainians for the ideas of joining NATO and the EU, the decision will be made outside of Ukraine, moreover, under the conditions of implementation of a number of not very popular measures, such as pension, housing and communal services, heath care, judicial and law enforcement, defense, anticorruption and many other reforms.

After the Constitutional Court of Ukraine declared the Law of Ukraine «On All-Ukrainian Referendum» of November 6, 2012 to be unconstitutional on April 26, 2018, a kind of legislative vacuum was made, which must be filled with the already new law on referendum, the adoption of which is long overdue.

Thus, the subject of the all-Ukrainian referendum was the already invalid law recognized any issues except those whose resolution is not allowed by the referendum under the Constitution of Ukraine, and the laws of Ukraine, and that several questions on one issue can be put to an all-Ukrainian referendum [12]. In fact, then the authorities were given the freedom to «push» through the referendum any issues with a favorable result of the vote, but in practice it was not implemented, which was prevented with mass protests in late 2013 – early 2014, caused by other events, but also closely related to the government's disregard for the ideas of democracy – the refusal to sign the Association Agreement between Ukraine and the EU, despite the rather strong European integration aspirations and expectations in society.

Today, the draft law «On People's Power through an All-Ukrainian Referendum» has been under consideration by the Verkhovna Rada for more than six months. It was initiated by the President Volodymyr Zelenskyy, who has promised to establish people's power in Ukraine since the beginning of his term. According to opposition people's deputies, Ukraine needs such a law, but the procedure should be written so that it helps democracy, not destroys it. After all, we know how dictators like to use referendums. In the hands of leaders prone to authoritarianism, a referendum can be dangerous for democracy.

Interesting in this regard is the study of some Ukrainian scholars conducted in 2013. Their analysis dealt with constitutional referenda which contributed to the «presidentialization» (expansion of powers and increasing the influence of the president as head of state on all branches of government against the background of weakening the role of parliament and reducing government accountability) in post-soviet countries with the system of presidential and semi-presidential government. The most characteristic features of the «presidentialization» process based on the results of referendums are: extension of the term of office of the president (Russia, Uzbekistan, and Tajikistan); lifelong consolidation of presidential powers (Kazakhstan, Turkmenistan); opportunity for the incumbent president to run for the presidency for an unlimited number of times (Belarus); exclusion from the constitution of a provision prohibiting

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* In 1995 the Verkhovna Rada of Ukraine has abolished the Constitution of the Autonomous Republic of Crimea due to the non-fulfillment by the Verkhovna Rada of the Autonomous Republic of Crimea of the resolutions of the Verkhovna Rada of Ukraine on bringing the Constitution and laws of the Autonomous Republic of Crimea into conformity with the Constitution and laws of Ukraine throughout its territory and protection of the state sovereignty of Ukraine.

one person from holding the presidency more than twice in a row (Azerbaijan); increasing the president's powers (Kyrgyzstan), including to establish additional reasons for dissolving parliament (Ukraine) [13, pp. 74-75].

Other provisions of the analyzed bill concerning, in particular, amendments to the Constitution of Ukraine also provoke some discussion.

Currently, the text of the draft law «On People's Power through an All-Ukrainian Referendum» adopted in June 2020 states that the subject of an all-Ukrainian referendum may be the following issues:

approval of the law on amendments to the sections of the Constitution: I (General Principles), III (Elections. Referendum), XIII (Amendments to the Constitution of Ukraine);

of national importance;

on changing the territory of Ukraine;

to terminate law of Ukraine or its individual provisions.

The text of the bill also states that the following issues cannot be the subject of an all-Ukrainian referendum:

contrary to the provisions of the Constitution of Ukraine, universally recognized principles and rules of international law, enshrined primarily in the Universal Declaration of Human Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms, protocols thereto;

aimed at eliminating the independence of Ukraine, violating the state sovereignty and territorial integrity of Ukraine, making a threat to the national security of Ukraine, inciting interethnic, racial and religious hatred;

on bills concerning taxes, budget, amnesty;

referred by the Constitution of Ukraine and laws of Ukraine to the jurisdiction of law enforcement agencies, prosecutors or courts [14].

So, as follows from the above, if, for example, the subject of an all-Ukrainian referendum *can be* (italic hereinafter – A. S.) Amendments to the Constitution of Ukraine, namely to chapter 1 «General principles» (meaning the principles of the constitutional order), it then – it turns out that *may not be* the same most of the provisions of Section I: e.g., Art. 1. «Ukraine is a sovereign and independent, democratic, social, legal state»; Article 3. «A human, his/her life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value» and others basic values of the constitutionality of the Ukrainian state, such as the status of the state language, state symbols, political, economic and ideological diversity, separation of state powers, recognition of local self-government, republican form of government, integrity and inviolability of Ukraine's territory within its existing border. That is, holding referendums on these issues means questioning the very centuries-old idea of national statehood of Ukraine.

Thus, this bill, in order to fill, as already mentioned, the legislative gap regarding the referendum democracy in Ukraine, does not put an end to its final perfection. On the contrary, it raises a number of issues that are the subject of separate publications. It is known from history that the referendum as a form of direct democracy was abused by completely undemocratic politicians and statesmen, which led to the destruction of democratic institutions both within their states and to world-class tragedies. Just as the all-Ukrainian referendum was able to confirm the independence of the state (December 1, 1991), but will also be able to question its continued existence, including and through local referendums, for which bill work has also intensified.

If we connect the influence (mostly negative) of referenda on the constitutional order foundations, then, although the Constitution of Ukraine uses the concept of «constitutional order» (and only in the context of inadmissibility of its forcible alteration or overthrow, and the exclusive people's right to determine it alter), but the term itself is not defined by it. Moreover, according to experts, the main contradiction in the system of constitutional order is that the Constitution of Ukraine, on the one hand, enshrines a fairly high level of constitutional human rights, on the other – defined in it the system of public authority cannot ensure and guarantee the majority of these rights. The consequence of this may be not only a constitutional crisis, but also the complete alienation of citizens from the government or its individual institutions, which, on the one hand, threatens to destroy the foundations of the constitutional order and statehood, and, on the other hand, the ability to generate a backlash, «launching» the constitutional institution of «people's defense» of the constitutional order. The basis for its legal use is a real and large-scale threat to the stability of government and its institutions, human and civil

rights and freedoms, when other means are no longer available. The events of the Revolution of Dignity are therefore strong evidence [15, pp. 38-39]. This, we believe, also applies to voting rights, the violation of which has triggered the previous – the Orange Revolution.

Therefore, it is not a coincidence that today such a form of direct democracy as a referendum is almost rarely used in most democracies, except for local referendums. We believe that this will not be a violation of the principles of democracy, because the sustainable and progressive development of the state and society occurs through the development of other institutions and legal traditions.

In this regard, it is worth noting the views of some foreign authors who note that criticism of referendums in legal and political science literature is not new.

The first core criticism is that referendums are subject to elite control and manipulation, and essentially become tools to enable elite governance masked in the cloak of direct democracy.

Secondly, the majoritarian nature of referendums creates a concern that they facilitate abusive majority rule. This is highly suspect, it is said, in the context of minority rights, which need to be protected from such assaults.

Thirdly, referendums are said to be bad for democratic deliberation, as their binary, winner-take-all, and majoritarian nature gives little incentive to deliberate and compromise.

Fourthly, and relatedly, there is a concern that referendums and direct democracy can and will erode or supplant the processes and procedures of representative democracy, and may decrease satisfaction with electoral politics.

Fifthly, there is a fear that voters cannot grapple with the complexity of issues that they may vote on in referendums. Voters have an incentive to be rationally ignorant in respect of referendums, as the likelihood of any one vote determining the issue is exceptionally small.

Sixthly, in the aftermath of Brexit, concerns about voters being misled by disinformation and falsehoods have been widespread. At best, voters can be sold a broad and vague idea with no understanding of how they will be executed in practice.

Finally, there is particular fear of increasing use of referendums in countries with «no history of direct democracy», where they are ad hoc tools for determine single constitutional issues. Such uses hold particular dangers [16].

Conclusions. Based on a study of the impact of referendums on the fundamentals of the constitutional order of the state, we found out and proposed the following:

1) a referendum in the hands of populist rulers leads to the fact that through a referendum (using administrative resources and falsifications) states and societies go to authoritarianism and even to totalitarianism;

2) due to the abuse of the referendum, representative, parliamentary democracy is being substituted, and the institution of parliamentarism is being discredited due to a decrease in voters' interest in the parliamentary elections. If the work of the deputies is unsatisfactory, it is necessary to dissolve the parliament and hold early elections. Improving the quality of the parliamentary corps is possible through improving the institution of political parties;

3) as a result of abuse of the right to referendum, unprofessionalism, amateurism of voters, and hence, reduction of their positive constitutional and legal responsibility;

4) the danger of referendums in states with a short history and weak traditions of direct democracy is obvious: cases of absenteeism with another extreme – hyperbolized perception and absolutization of elections and referendums as a panacea and a means of overcoming the constitutional crisis;

5) there is an excessive interference of the media (belonging to the oligarchs) in manipulating of voters' opinions;

6) there is a high probability of socio-political and territorial separation of the state due to referendums on such sensitive issues as language, religion, foreign policy, etc., which should be the prerogative of the legislator alone, and the dispute should be resolved by the judiciary;

7) it is inadmissible for us to amend Chapter I the Constitution in any way, including through a referendum, but only by adopting a new constitution;

8) the legislation on the local referendum also needs careful elaboration, namely the definition of an exhaustive list of issues on which it is not allowed to be held, aimed at violating the sovereignty, national security and territorial integrity of Ukraine.

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Abstract

The article deals with some problems of realization and political-legal consequences of such form of direct democracy as referendum. Along with the existing advantages, the article's objective is to identify and theoretically and methodologically substantiate the political and legal risks of the formation of new referendum legislation of Ukraine and its possible negative impact on the steadfastness of the constitutional order of the state.

The author has analyzed a retrospective of some facts of referendums, as a result of which democratic freedoms were narrowed and in some cases liquidated and international mechanisms for their protection were revised.

The attention has been paid to the debatable provisions of the draft law of Ukraine «On People's Power through an All-Ukrainian Referendum» in terms of amending the Constitution of Ukraine regarding the rules on the constitutional order foundations.

***Keywords**: referendum, democracy, abuse, constitutional order, draft law, amendments.*

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PROBLEMS OF IMPLEMENTING THE RIGHTS TO HOUSING AND HEALTH PROTECTION OF INTERNALLY DISPLACED PERSONS IN UKRAINE: THEORETICAL AND PRACTICAL ASPECTS

Наталія Ісаєва. ПРОБЛЕМИ РЕАЛІЗАЦІЇ ПРАВА НА ЖИТЛО ТА ПРАВА НА ОХОРОНУ ЗДОРОВ'Я ВНУТРІШНЬО ПЕРЕМІЩЕНИМИ ОСОБАМИ В УКРАЇНІ: ТЕОРЕТИЧНІ ТА ПРАКТИЧНІ АСПЕКТИ. Досліджено проблеми забезпечення державою таких соціально-економічних прав і свобод внутрішньо переміщених осіб, як право на житло та право на охорону здоров'я та сформульовано пропозицій щодо оновлення чинного законодавства в цій сфері. Визначено, що постійний збір та обробка даних про потреби внутрішньо переміщених осіб впливають на ефективність національного законодавства в практичній його реалізації щодо соціально-економічних прав і свобод внутрішньо переміщених осіб та гарантій їх реалізації. В Україні відсутній Єдиний державний реєстр державної, комунальної та приватної нерухомості, в якій можуть бути розміщені внутрішньо переміщені особи. Акцентовано на необхідності запровадження та ведення Єдиного державного реєстру державної, комунальної та приватної нерухомості, в якій можуть бути розміщені внутрішньо переміщені особи. Такий реєстр надав би можливість державі оперативно та повноцінно вирішувати потреби на житло внутрішньо переміщених осіб, пропонуючи таким особам різні варіанти в різних областях та місцевостях, оскільки такі особи мають право на вибір та свободу пересування, а таким особам надати змогу реалізувати своє конституційне право на житло обираючи для себе відповідний варіант.

Наголошено на низькому рівні забезпечення медичними послугами внутрішньо переміщених осіб. Визначено причини цього та надано рекомендації щодо виправлення такої ситуації у сфері охорони здоров'я. Так, для отримання медичних послуг внутрішньо переміщеними особами уряду необхідно належним чином фінансувати цю сферу, з урахуванням потреб внутрішньо переміщених осіб.

***Ключові слова**: внутрішньо переміщені особи, право на житло, право на здоров'я, медичні послуги, реєстр, житло, кредит.*

Relevance of the study. The problem of socio-economic and cultural rights and freedoms of internally displaced persons and guarantees of their implementation is one of the most

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urgent and disputable in current legal science. Since 2014, it has been crucial for Ukraine to develop new legislation and update existing one with a view to effectively ensuring the socio-economic and cultural rights of internally displaced persons. Revision of historical development may result in the reform of national legislation to resolve the existing problems with regard to implementation of socio-economic and cultural rights and freedoms of the displaced.

The pressing issue for Ukraine is this state's inability to fully ensure implementation of socio-economic and cultural rights and freedoms of internally displaced persons. The absence of proper mechanism, legal nihilism, and conflicts of law are the main indicators of the stated problem.

Recent publications review. The necessity of scientific research on the stated problem has emerged due to exacerbation of the issues that deal with exercising the socio-economic and cultural rights of internally displaced persons. Among foreign and domestic scholars whose sphere of research involves socio-economic and cultural rights of internally displaced persons are: V. Airapetov, O. Amosha, M. Andrusishin, I. Annitova, V. Antoniuk, I. Basova, S. Belikova, N. Beresovska, I. Bezzub, O. Bogatyryova, K. Bodvig, V. Goshovsky, I. Grytsai, O. Ishenko, T. Zhvaniya, O. Kaitanskyi, M. Kravchenko, L. Kysil, Y. Koller, I. Lagutina, O. Laptinova, L. Logachyova, B. Mykhailovskyi, F. Macdonald, N. Maksymovska, M. Mendzhul, L. Nalivaiko, O. Novikova, O. Pervomaiskyi, N. Prokusheva, O. Rogach, O. Ryndzak, M. Savchyna, U. Sadova, K. Stepanenko, O. Khandii, I. Khomishina, G. Khrystova, G. Chanysheva, L. Shamileva and others.

Discussion. At present, Ukraine is facing up to the reality of not only a political but also a social crisis. Although some positive outcomes of certain reforms concerning internally displaced persons have been discerned, still there is no full realization of these persons' socio-economic and cultural rights and freedoms.

The realization of socio-economic and cultural rights and freedoms of internally displaced persons is grounded, first and foremost, in regulating their status.

The constitutional socio-economic rights include: the right to work (art. 43 of the Constitution of Ukraine); the right to rest (art. 45 of the Constitution of Ukraine); the right to strike (art. 43 of the Constitution of Ukraine); property rights (private) (art. 41 of the Constitution of Ukraine); the right to entrepreneurial activity (art. 42 of the Constitution of Ukraine); the right to health protection (art. 49 of the Constitution of Ukraine); the right to social protection (art. 46 of the Constitution of Ukraine); the right to housing (art. 47 of the Constitution of Ukraine); the right to an adequate standard of living (art. 48 of the Constitution of Ukraine); the right to a safe environment (art. 50 of the Constitution of Ukraine).

This **article's objective** is to study the problems of state-regulated provision of such socio-economic rights and freedoms of internally displaced persons as their right to housing and their right to health protection and to make proposals for updating current legislation in this field.

It is a generally recognized and fully grounded assumption that the social purpose of rights and freedoms of citizens in a genuinely democratic society is, firstly, to ensure satisfaction of individual needs and interests, namely, creating favorable opportunities for individual maintenance of certain social benefits, and, secondly, to provide opportunities for direct and active participation of citizens in all spheres of public life [1, pp. 152-153].

As internally displaced persons remain inside the country, in compliance with the guiding principles of international law they are eligible for state protection and support. Basic human rights are universally applied for internally displaced persons, hence the scope of rights for internally displaced persons should be determined by general norms – international law norms that protect human rights. The measures taken to ensure effective compliance with such norms refer to the sphere of human rights protection [2, p. 13].

In order to protect socio-economic and cultural rights and freedoms of internally displaced persons, an effective legislative system to ensure realization of power by all branches of government and eliminate conflicts of law should be enforced. This requires regular data collection about internally displaced persons, in particular data by their number, place of residence, conditions or special needs and vulnerabilities, as well as further categorization of such data by age, gender and other demographic indicators.

These indicators are necessary for effectively addressing the needs of internally displaced persons by developing and implementing legislation and policies aimed at their special needs. It is essential to update such data with a view to registering changes in the needs of internally displaced persons. Data collection should be started from the moment of displacement and continue till essential decisions are made [3, p. 8]. It is regular data collection and data

processing of the needs of internally displaced persons that influence effective national legislation with regard to the realization of socio-economic and cultural rights and freedoms of internally displaced persons and the guarantee of their implementation.

Currently, the specialized Law of Ukraine «On Ensuring the Rights and Freedoms of Internally Displaced Persons» is in force in Ukraine; it ensures a guaranteed observance of the rights, freedoms, and legal interests of internally displaced persons.

Today, it is possible to single out such socio-economic problems of internally displaced persons as: provision of housing, obstacles to the organization of entrepreneurial activity, provision of social benefits and pensions, and provision of quality medical services.

As paragraph 1 of Article 14 of the Guiding Principles underlines, «Every internally displaced person has the right to freedom of movement and freedom to choose his or her place of residence» [4].

In accordance with Art. 3 of the Constitution of Ukraine, establishment and maintenance of human rights and freedoms is the main duty of the state. In order to provide the needs of citizens for housing the state is obliged to perform a whole range of actions: develop the construction industry, implement the program of building regularized housing, provide fair distribution of housing, safeguard the housing fund, and the like; then arise legal relations – the state – the person, the citizen. The right to housing is the human right to have shelter and to be protected by the state in the part of housing interests [5, p. 194].

The state, regional, and district programs are run to provide internally displaced persons with housing. Every region of Ukraine implements different programs. Some of them are budget funded – these national programs address housing provision of internally displaced persons, while others are funded by local budgets, being initiated by local authorities that take responsibility for their further funding.

The following specialized state programs on providing internally displaced persons with housing are in action: 1) the program «Affordable housing», in accordance with the Resolution of the Cabinet of Ministers of Ukraine of August 10, 2018 № 819 «Some issues of providing citizens with affordable housing»; 2) the program of monetary compensation for purchasing housing by the internally displaced persons who defended Ukraine's sovereignty in accordance with the Resolution of the Cabinet of Ministers of Ukraine of April 18, 2018 № 280 «The issue for providing housing for internally displaced persons that defended independence, sovereignty, and territorial integrity of Ukraine»; 3) «Own house» in pursuance of the Resolution of the Cabinet of Ministers of Ukraine of October 5, 1998 № 1597 «On the statement of rules granting long-term credits for individual housing construction in the rural area»; 4) «Social housing» is enforced by the Law of Ukraine «On housing funding for social purposes», in accordance with the resolution of the Cabinet of Ministers of Ukraine of July 23, 2008 № 682 «Some issues of implementing the Law of Ukraine «On social housing» and the resolution of the Cabinet of Ministers of Ukraine of February 7, 2007 № 155 «On the statement of the Procedure for calculating payment for social housing»; 5) «Temporary housing» is implemented in accordance with the Housing Code of the Ukrainian SSR; the resolution of March 31, № 422 «On the statement of the Procedure for formation of housing funds for temporary residence and the Order of provision and use of housing from housing funds for temporary residence»; the resolution of the Cabinet of Ministers of Ukraine of June 26, 2019 № 582 «On the statement of the Order of provision of housing funds for temporary residence of internally displaced persons»; the order of the State Housing and Communal Services of May 14, 2004 № 98 «On the statement of forms concerning inhabited housing from housing funds for temporary residence»; 6) the lending program at 3 percent, in compliance with the resolution of the Cabinet of Ministers of Ukraine of November 27, 2019 № 980 «On the statement of Order of spending funds, provided in the state budget for the provision of privileged long-term state loan to internally displaced persons, participants in the anti-terrorist operation (ATO and/or participants in the Joint Forces Operation (JFO) for purchasing housing».

According to the press-service of the Ministry of Regional Development, in 2016 the state budget provided UAH 40 million for implementing the program «State privileged crediting for individual rural developers to build (reconstruct) and purchase housing» («Own house»). Local budgets funded 63,8 million to implement this program. According to the data provided by the public organization «Donbas SOS», the program is designed for the ATO participants and internally displaced persons that live in a rural area or settle there for permanent residence [6]. It is worth noting that the resolution of the Cabinet of Ministers of Ukraine «On the statement of Order providing long-term credits for individual developers of rural housing»

has been enacted since 1998, but only in 2020 the government introduced changes in this specified normative-legal act to attract IDPs for living in rural areas.

These programs can be divided by purpose: formation of housing funds for further transfer of ownership to internally displaced persons, formation of housing funds for further transfer of use to internally displaced persons (purchasing flats on the secondary market and provision for temporary use; social housing; temporary housing). To illustrate the point, specified procedures to regulate provision of housing to the displaced are developed for every category mentioned above.

The Donetsk region serves as an example of formation of housing funds and provision of such real estate objects. In accordance with the Procedure and conditions for providing state budget subvention to local budgets as measures to support the territories that were affected as a result of an armed conflict in eastern Ukraine, approved by the resolution of the Cabinet of Ministers of Ukraine of October 4, 2017 № 769, in 2017-2019 the region's government authorities purchased 224 flats, namely: 183 flats in the city of Mariupol, 18 flats in the town of Pokrovsk, 2 flats in the town of Lyman, 10 flats in the city of Slovyansk, 11 flats in the Velykonovoselkivskyi district, all providing temporary housing for internally displaced persons [7].

From this research, Ukraine lacks the Unified registry of state, communal, and private property with which internally displaced persons can be provided. Every region accumulates such information separately, which, in turn, deprives the state of fully providing the housing needs of internally displaced persons, holding upgraded real-time information, and exercising the right to housing by internally displaced persons.

Formation and maintenance of the Unified registry of state, communal, and private property for housing provision of internally displaced persons would be able to timely and effectively address their housing needs, offering such persons different options in different regions and localities, as such persons have the right to choose and freedom of movement, as well as an opportunity to realize their constitutional right to housing by choosing an adequate option.

Highlighting the right to housing in Art. 47 of the Constitution of Ukraine, the legislator has created the constitutional basis for sustainable use of housing which is of allowing (the ability to satisfy the need for housing, as well as its provision by the state in cases provided by law on preferential or free terms), binding (government state and local authorities are to create all necessary conditions to implement, secure, and protect the right to housing) and prohibitive (prohibition to deprive of or violate the human right to housing) nature [8, pp. 21-29].

Rural construction and encouragement to relocate from urban to rural areas should be accompanied not only by allocation of funds for individual construction on credit to internally displaced persons but also by assuring their access to healthcare facilities, which is in accordance with paragraph 2 Article 7, Articles 18 and 19 of the Guiding Principles.

The Constitution of Ukraine (articles 3 and 49) states that life and health are values and a primary, initial prerequisite for every human life activity. Hence, from the numerous rights provided by the Basic Law one can distinguish the human right to health protection as the right that guarantees each person's physical wellbeing and conditions provision of all other human rights.

The right to health protection is regulated by: the Constitution of Ukraine; the Law of Ukraine «On ensuring the rights and freedoms of internally displaced persons»; the Law of Ukraine «Fundamentals of Ukraine's Legislation on Health Protection»; the resolution of the Cabinet of Ministers of Ukraine of August 17, 1998 № 1303 «On the procedures for free and preferential provision of medicines with doctors' prescriptions in cases of outpatient treatment of specific population groups and with regard to certain categories of diseases» and the like.

The decision of the European Court of Human Rights in the case «Cyprus vs. Turkey» stipulates that special complaints, submitted by the Government-applicant with regard to the obstacles to medical care access, are the elements to be considered in the contextual analysis of housing conditions of the population of concern from the perspective of their influences on the right of each person to respect his or her private and family life.

Currently, the program «Large-scale construction» is in progress in Ukraine; its aim, among others, is improvement of a rural infrastructure. Although the state uses credits to encourage people for individual construction in rural areas and internally displaced persons acquire credits to migrate from urban to rural areas, the problems concerning provision of medical, social, and educational services remain unresolved. As a result, the state is unable to fully provide internally displaced persons that obtain credits within this program with constitutional-

ly guaranteed socio-economic and cultural rights. Thus, the right to safe living conditions and health of internally displaced persons, enshrined not only by article 9 of the specialized Law but also the Constitution of Ukraine, is violated.

Every citizen of Ukraine has the right to health protection, which involves a standard of living, including food, clothing, housing, health care and social care and provision that are vital to maintaining human health [9].

Guarantees of equal human rights are fundamental to the development of a democratic state. It is inherent to the constitutional principle of equality of human rights and freedoms to ensure their legal equilibrium, balancing the needs and interests of specified persons, social groups and the whole society, developing mechanisms to prevent potential conflicts of interests and resolve them in case they arise [10, pp. 30-35].

The difficulty of treating seriously ill patients is that many of them have no required medical documentation which remained on the occupied territory. The mentally ill persons, leaving the anti-terrorist operation zone, are often in an acute psycho-emotional state but they refuse hospitalization in a psychiatric institution. Without their consent, in compliance with current legislation, hospitalization is impossible [11, p. 23].

The Social Insurance Fund of Ukraine provides insured persons, including those accidentally injured at work and diagnosed with occupational diseases, with medical and social services in compliance with the Law of Ukraine «On Compulsory State Social Insurance».

According to the joint operational reporting data given by the working bodies to the Fund management, during a nine-month period in 2020 rehabilitation departments of sanatoriums gave rehabilitation services to 6688 insured persons and members of their families, including 32 internally displaced persons. In 2020, during a nine-month period, health care institutions provided treatment and medical rehabilitation for 5350 persons who were injured at work and suffered from occupational diseases, among the former there were 182 internally displaced persons. 10179 persons acquired medicines and medical devices, including 405 internally displaced persons. During the three quarters of 2020, 732 persons with disabilities resulting from occupational injuries received sanatorium treatment, among them 21 internally displaced persons. During the reporting period, in accordance with the concluded agreements, 2742 persons injured at work were provided with technical and other rehabilitation means (prosthetic-orthopedic devices and others), among them 100 internally displaced persons. 136 persons injured at work were provided with special means of transportation (wheelchairs), including 11 internally displaced persons. Among persons with occupational disabilities, 658 persons received payment for special medical care, 2145 persons obtained payment for regular third-party care, 2632 persons received payment for household services, among them are, correspondingly, 140, 263 and 278 internally displaced persons. Also, 99 injured persons received financing for additional cost of food, including 17 internally displaced persons. 90 injured persons were provided with dentures, eye prostheses, glasses, contact lenses, and hearing aids, among them were 3 internally displaced persons. Besides, 3069 persons with disabilities were compensated for petrol costs, repair and technical services of cars and transport maintenance, including 97 internally displaced persons. The total number of internally displaced persons provided with medical and social services in accordance with the resolution of the Fund Management of 12.12.2018 № 27 «On the statement of Procedures for insurance payment, financing costs of medical and social aid costs, provided at work and for occupational diseases of internally displaced persons» amounts during the reporting period to 939 persons [12].

Such statistics of medical services provided for internally displaced persons reveals: firstly, lack of knowledge about the ability to obtain certain free/preferential medical and social services as healthcare protection; secondly, complexity (bureaucratization) of the procedures for providing internally displaced persons with medical and social services; thirdly, underfunding on behalf of the state; fourthly, doctors and medical staff fail to propose such services, their provision directly depends on dated requirements from internally displaced persons that somehow became aware of prosthetic opportunities, obtaining medicines, and the like.

The health of nation is at the core of every state's wellbeing, economic development, independence and sovereignty, as only healthy people are able to defend their territorial integrity. Healthy highly intellectual youth is a prerequisite for each state's development and its competitiveness on the international arena.

From this research, it can be concluded that all human rights are interdependent, for only their interconnected realization can be effective. The right to health protection is linked with almost all other rights and freedoms enshrined in the Constitution of Ukraine. Some of them

derive from the right to health protection. They determine a degree of securing another right and some of them guarantee another right. Therefore, violation of one right leads to violation of integrity of human rights [13, p. 91]. Thus, all socio-economic and cultural rights of internally displaced persons are closely interconnected.

Conclusion. To sum up:

1. In order to provide the constitutional right to housing it is necessary to introduce the Unified registry of state, communal and private property with a view to registering internally displaced persons. Administration of this registry can be entrusted to the Ministry of Social Policy of Ukraine as the administrator of the Unified Registry of internally displaced persons which will contain up-to-date data concerning the needs of internally displaced persons.

2. Access to the data provided by the Unified registry of state, communal and private property to register internally displaced persons should be available to all social protection and local government bodies. Besides, the internally displaced persons that are such property registered residents should be given priority to purchase this property.

3. With a view to providing internally displaced persons with health protection and provision of medical and social services the government should properly finance such services, meeting the required needs of internally displaced persons.

4. Information campaigns concerning possibilities to obtain medical services and simplify procedural points, including a list of required documentation, should be conducted, as these very issues make it impossible, especially for elderly persons, to effectively implement their right to health protection and acquisition of medical services.

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Abstract

The article studies the problems of state provision of such socio-economic rights and freedoms of internally displaced persons as the right to housing and the right to health protections and proposes updating of current legislation in this area. It is found that Ukraine lacks the Unified registry of state, communal and private property to register internally displaced persons. Special emphasis is laid on the necessity for such registry's provision and maintenance. The low level of medical services provision of internally displaced persons is revealed. The cause of displacement is identified and recommendations concerning improvement of the current healthcare situation are given.

Keywords*: internally displaced persons, right to housing, right to health protection, medical services, registry, housing, credit.*

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GENERAL CHARACTERISTICS OF CIVIL SERVICE SYSTEMS

Станіслав Любич. **ЗАГАЛЬНА ХАРАКТЕРИСТИКА СИСТЕМ ДЕРЖАВНОЇ СЛУЖБИ.** Стаття присвячена висвітленню загальних рис різних систем організації державної служби. Актуальність дослідження обумовлюється тим, що участь України в глобалізаційних та євроінтеграційних процесах відображає необхідність вивчення досвіду держав, що складають західну правову традицію, акцент якої має бути зосереджено на системах організації державної служби, виходячи з завдань держави в демократичних суспільствах та перманентному реформуванню сфери публічного адміністрування в Україні.

Зазначається, що в умовах епохи постмодерну виникає необхідність переосмислення класичних моделей організації державної служби, аналіз сучасних систем такої організації та формулювання узагальнених висновків, їх систематизації. Мета статті полягає у систематизації і узагальненні різних систем організації державної служби: класичних, змішаних та сучасних, що наявні в європейському політичному просторі.

Зосереджено увагу на виокремленні таких трьох класичних систем організації державної служби, що іманентні державам європейської спільноти: кар’єрній, посадовій та змішаній. Вказується на превалюванні в цих державах кар’єрної моделі, однак при цьому держави не орієнтуються на характеристики такої моделі, використовуючи контамінацію окремих рис кожної з названих систем. Виокремлюються такі ознаки кар’єристської системи державної служби як неухильне виконання статутних вимог як умова кар’єрного зростання службовця; неурахування досвіду роботи в недержавній сфері; особливості оплати праці та пенсійного забезпечення державного службовця; регламентування відносин субординації; нормативне закріплення правил поведінки державного службовця тощо.

Визначальною рисою модернізаційної моделі державної служби є керівництво суто суспільними інтересами та запитами.

Значимість основних положень і висновків дослідження визначається можливістю їх використання в публічному адмініструванні в Україні.

***Ключові слова**: державна служба, змішана модель державної служби, кар’єристська система державної служби, класична модель державної служби, системи державної служби.*

Relevance of the study. The process of transformation and constant updating of public service models taking place within the European community in recent years affirms that the fundamental public service systems are affected by globalization processes, become modernized and do not always meet the key features of classical models, leading to new, hybrid, modernization manifestations of the public service model formation [1, p. 107].

The constant search for the optimal model of public service encourages the European community to analyze the genesis and functioning of models of public service organization. The main meaningful lines of public service implementation are reflected in the model of civil service, which is interpreted as an ordered set of conditions and characteristics of public service, which reveals its functional features. Today, a number of mixed and classical models of public service are being introduced within the European community. Systematization of the presented models will promote the development of public service in Ukraine, in accordance with the best practices of the European Community [2, p.141].

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Recent publications review. Scientists have to date studied and systematized such characteristics as: the essence, general principles, common and distinctive features of the basic models of public service. In this context, it is worth mentioning the following scientists L. Prokopenko, O. Obolenskyi, N. Lypovska, Yu. Kovbasyuk, S. Dubenko, H. Deyneha, M. Bagmet and others. Among foreign researchers should be mentioned the following D. Bossart, J. Ziller, A. Kless, J. Peno.

Despite the sufficient number of papers on the presented issues, we note that in time there will be an analysis of classical models of public service, and the process of their systematization. The main stage in creating conditions for a new public service in Ukraine is the introduction of systematic knowledge about the formation and use of public service models in the European political space.

The article's objective is to systematize and generalize various systems of civil service organization: classical, mixed and modern, available in the European political space.

Discussion. The use of one of the three classic models (career, job and mixed) is typical for European political society. The vast majority of European Union politicians build their political systems on the basis of career characteristics. Currently, these are the following states: France, Germany, Spain and Denmark.

Representatives of the job model are Sweden and the Netherlands. The mixed model of public service organization, which in turn operates in the Italian political environment, is becoming widespread. Describing the new generation of the EU, we pay attention to the representatives of the career model: Bulgaria, Cyprus, Slovakia, Slovenia and Romania, which are characterized by a tendency to mixed models, there are also Latvia, Lithuania, Poland, Malta, Hungary, Czech Republic, Estonia aspiring to the job models.

It is worth noting that the representatives of all states of the European community do not intend to use one or another model of political organization as an example. Each model complements the other, or uses elements of other public service systems.

Representatives of the central public service bodies in France and representatives of local self-government serve on the basis of job principles this applies to the contract or agreement conclusion. Public figures in Sweden and the Netherlands, primarily the police and the diplomatic service, are elected according to the human resources model. Certain categories of public servants who do not quite correspond to the structure of the organization of a model, it is not typical to refer themselves to a mixed model, because the existence of some positions is prescribed in the legislative field as an exception [3, p. 77].

The specific features of the career model are the principle of public administration, which gives staff individual opportunities, the representatives of this model have a long term in office within one government agency. Having received the appropriate training, passing the competition, passing the necessary exams, the future public servant aims to follow the hierarchical structure of positions, reflected in the appropriate mechanism of service and the implementation of their own career ambitions. The hierarchical system of order is inherent in the career model, which allows a civil servant to pass a number of levels from the initial to the highest one in a certain term and time. Various levels of education are an indicator of career selection.

Thus, the career model of public service is characterized by such features as: mandatory compliance with statutory requirements, the necessity for career growth; leveling experience in the private sector; taking into account career level, years of service; an appropriate system of remuneration and a statutory pension system for public servants; regulated principle of subordination; the code of conduct of the employee in the chosen position is legislatively fixed [3, p. 79].

The job model of the public service regulates its needs exclusively for short-term periods of work of a public servant. The employee is hired exclusively for a specific service with a narrow range of responsibilities, not related to the nomenclature department or any other. A public service employee is not limited to this service framework and his professional potential can be used in both the public and private sectors. It is allowed to take all steps to achieve career growth within the chosen field of official interests. In the example of the Dutch public service, we can see that career and employment can be compatible. A civil servant makes a career and works in various positions at the private level. A distinctive feature in this model of public service is revealed in the following formula: «promotion of an employee for hiring is actually his difficulties in terms of staffing, the responsibility falls on the administrative body of public service» [3, p. 83].

Thus, the specific features of the job models are regulation exclusively by contract,

election to certain positions without targeted or other special training, adherence to experience gained in the private sector, restrictions on career growth and special pension provision. Given the above, we can state that the job model of public service cannot have a special public statute for civil servants [3, p. 84].

The formation of public service in most European states has taken place over a long historical period. The influence of society, national philosophy, mentality, ideology, beliefs, traditions – all these are factors that determine the principles of the civil service. However, the difference in historical development did not affect the similarity of development in the features of formation of public service systems, which contributes to the theoretical characterization of the civil service models of the state. We can state that the political vision of the state is compatible with a specific model of public service, but does not exclude a combination of certain principles of other models of public service. At present, there is a tendency to combine, synthesize, enrich one model with another, and sometimes absorption.

There are a number of factors that influence the formation of the public service model:

– specific historical development of the political and law system of the state;

– special features of the law system of the state (Anglo-Saxon, it is characterized by the lack of a unified system of laws on public service; Romano-Germanic law system tends to strict implementation of the constitution as the basic law and legislation);

– form of political system, government, political regime within the state.

Scholars distinguish regional models of public service (continental and Anglo-Saxon). The continental model tends towards the career principles of public service, and is guided by the principle of individual service throughout his life in the civil service. In most cases, employees are in office for most of their professional lives, thus ensuring successful career growth. The process of long-term employment in the public service can be traced in a number of Central and Western Europe states.

A prominent representative of the Anglo-Saxon model is Great Britain. Today, there are trends in the evolution of public administration, the combination or convergence of the two models. Scientists conclude that this trend might well relate to the evolution of public service in Ukraine [4, p. 42].

Researchers note that the Romano-Germanic model tends to move towards unification and codification of legal norms. Civil service according to this model is characterized by detailed regulation of legal acts, hierarchy; the basic principle is devotion to public service).

The model, presented in states such as Germany and France, aims to focus on factors such as: career reticence, intangible benefits, protection in social and individual status. Public officials are selected through competitive selection, with all candidates initially having equal rights. If we talk about the shortcomings, it is leveling the issue of employees’ mobility between departments.

The corporate model is characterized by fruitful and long-term competitive election; the principle of «employee for the vacancy wanted» applies. This model has its own feature, which is to sign a contract with a public servant. The corporate model does not use such definitions as: «employee number limit», «register of employees», etc. The manager is allowed to decide on the limit of employees to achieve the objectives. The features of the corporate model can be called the following:

– clear orientation to the labor market;

– leveling the issue of limited selection of civil servants for the purpose set;

– use of corporate governance principles [4, p. 44].

There is a tendency to converge the organization of public service with the state system, which provides for the separation of public service within states with federal and unitary system. Based on the previous judgment, several models of public service are distinguished, which are presented in European states: centralized and decentralized model.

A characteristic feature of the centralized model of public service is a clear organization, management principles and significant powers of employees. Unified approach to payment for all employees. The process of coordination of all cases together with fast changes in the personnel system is provided.

The decentralized model implies blurring and branching of the main structural elements of the public service, which in turn significantly limits the control powers.

There are a number of advantages and disadvantages of the outlined models, so for the centralized model the advantages are: consistency in making basic decisions; shortcomings – certain conservatism in taking responsibility for regional special decisions. The decentralized

model possesses such features as mobility and speed in decision-making, responsibility for the performance of their duties [5, pp. 18-19].

Researchers studying the models of public service in Western Europe states typologize them according to a certain affiliation and distinguish the following: closed model with governing centralized principles of governance (France); closed model with decentralized management principles (Germany).

Characterizing the traditional model, we note that it is characterized by: focusing the civil service exclusively on government institutions; political institutions are a higher level than a public servant; restrictions on corporatism and autonomous principles. The model clearly demonstrates the combination of important aspects of public service with the political regime of the state where it is applied.

The modernization model of the public service reflects the civil service, which is guided exclusively by public interests and demands. Lack of dependence on political principles is inherent. The foundations of corporatism and social exchange of experience of public workers are laid.

Transient model is characterized by public affiliation to models with an open focus on itself. Representatives of higher official bodies have the right to their own vision of resolving political (official) situations, and this model is characterized by: formalism and bureaucratic traditions [6, p. 15].

The New Public Service model historically began to take shape in the 1980s, in the process of a new vision of the practical use of such a resource as New Public Management, originated in the UK. Public service provides constant support to society, most of the principles are taken from the private sector, and peculiarity is that the management is carried out on the principle of providing services. At present, most of the European Community states are guided by the principles of the new public service model.

The introduction of some public entities in Ukraine, such as: licensing offices, administrative service centers, public hearing councils, expert hearings, provides an opportunity to make fuller use of the basic principles of the New Public Service model.

The postmodernist model of public service (Post – NPS, New Public Service) dates back to the 90s of the twentieth century, when the attention of the bureaucratic system tended to public servants. The model is represented by a new categorical apparatus: individual and social values, humanistic principle, transparency, network principles. The vast majority of the model supporters are inclined to think about the formation and further operation of open dialogues between all participants in the public service. The society is inclined to open cooperation of citizens and representatives of the civil service [2, pp. 144 - 145].

The mixed model of public service involves a number of civil servant positions with a well-defined career organization and availability for election. The model presented by the United Kingdom provides for the procedure for appointing employees without competitive selection. This interpretation is legally established in government decrees. Note that this primarily applies to the highest governing body of Britain, the central authorities. If a representative of a higher government body has to resign, the bureaucracy subordinate to him takes the same step.

The mixed model is manifested in the so-called contractual relationship between a public employee and a government agency, a representative office of municipal authorities [3, p. 84].

Conclusions. The characteristics of key models of public service in this study can be considered conditional, but practically significant for political changes in states looking for a theoretically sound, optimal model of public service organization. This approach to the study of the issue of public service optimal organization emphasizes the importance of «new models of public service».

The use of the European experience is crucial and involves the selection of the best model and its implementation. Among the presented systems the classical, mixed models (provide integration processes of separate elements of various models) are investigated; regional models (Anglo-Saxon, Romano-Germanic); models depending on the state system (centralized and decentralized); «New models of public service organization» (modernizational, transitory, new public service model, postmodern model).

Thus, the characteristics of the public service models organization reflect the peculiarities of the civil service functioning within the European Community states and can be useful for determining areas for improvement of public administration in Ukraine.

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Abstract

The article deals with elucidating the general features of various systems of civil service organization. The relevance of the study is due to the fact that Ukraine's participation in globalization and European integration processes reflects the necessity to study the experience of states that make up the Western law tradition, which should focus on civil service systems, based on the state's tasks within democratic societies and permanent public administration reform in Ukraine.

The focus is on the distinguishing of three classic systems of civil service organization that are immanent to the European community states: career, job and mixed system. It is indicated the prevalence of career models within the abovementioned states. The determinant feature of the modernization model of the civil service is the management of purely public interests and demands.

Keywords*: civil service, civil service mixed model, civil service career system, civil service classical model, civil service systems.*

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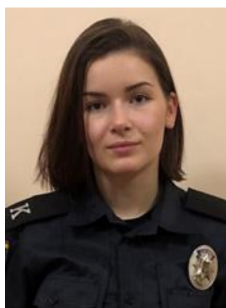

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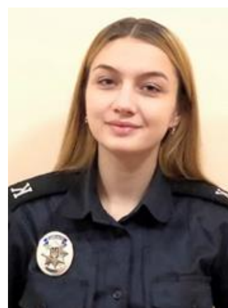

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GENDER EQUALITY AS A VALUE OF LAW

Сергій Петренко, Андрій Кириченко, Дмитро Білан, Ангеліна Баб'як, Юлія Костюк. ГЕНДЕРНА РІВНІСТЬ ЯК ЦІННІСТЬ ПРАВА. З'ясовано суть антропологічного підходу до розуміння гендерної рівності; проаналізувано право на різницю в дискурсі гендерного підходу в правовій сфері; описано структурні компоненти гендерної рівності; досліджено гендерну рівність як цінність права.

Надано характеристику гендерної рівності як цінності права в дискурсі антропологічних тенденцій. Охарактеризовано основні компоненти гендерної рівності. Розглянуто право на відмінності в аспекті гендерної підходу в праві. Розглядається нормативно-правова база впровадження та забезпечення гендерної рівності в Україні. На основі аналізу відповідних нормативно-правових актів візначено ефективність правових механізмів, спрямованостей на її врегулювання. На основі порівняння відповідних державних програм виявлено недоліки і прорахунки у цій сфері, окреслено напрями подальшого вдосконалення правового регулювання забезпечення гендерної рівності в Україні. Усвідомлення логічного ланцюжка «людський капітал – права людини – гендерна рівність – сталий розвиток – прогрес – якість життя» диктує важливість недопущення прояву гендерної нерівності в процесі розвитку. Гендерна рівність – це і мета розвитку, і розумний підхід до економічної політики, оскільки розвиток розглядається як процес розширення свобод у рівній мірі для кожної людини – жінок і чоловіків.

Автори вважають, що актуальність постановки питання обумовлена насамперед тим, що гендерна рівність важлива саме по собі, а також розумінням того, що розкриття жіночого людського потенціалу здійснює значний вплив на продуктивність праці. Продуктивність веде до підвищення економічної ефективності, що є умовою досягнення й інших провідних цілей в галузі розвитку.

Ключові слова: *стать, гендер, гендерна рівність, право на різницю, гендерний паритет, гендерна інтеграція, гендерна симетрія.*

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Relevance of the study. A new paradigm of development of anthropological approach to man and his subjective rights is introduced in modern philosophical and legal thought, as human life, dignity, freedom, justice, equality are widely discussed values in modern scientific philosophical and legal literature. The man of the future is a man of modern education, with high psychophysical, moral and intellectual qualities, has developed needs and interests, who recognizes universal values, including gender equality. The trends of the time show that the quality use of human potential, regardless of gender, leads the country to progress, because both women and men are comparable members of building a developed society in which everyone can be realized.

Therefore, in modern conditions of anthropological tendencies, the introduction of the priority of the individual requires a systematic analysis of such a value as gender equality.

The article's objective is to find out the anthropological approach to understanding gender equality; to analyze the right to differences in the discourse of the gender approach in the legal sphere; describe the structural components of gender equality; explore gender equality as a value of law.

Gender parities of the current stage of legal development in Ukraine as a legal concept, as an integral element of the legal system «There are also many other publications that address various aspects of gender equality, but none of them addresses the legal mechanisms for gender equality provided by current legislation of Ukraine.

Discussion. Law (both natural and positive) in its content and ideas is directed to the highest value – the man. The discussion of the nature of law is related to human nature. Along with the concept «man» there are such concepts as «personality» and «individuality», which primarily characterize something special that distinguishes a particular person as an individual and as a person in the whole, including natural, physical and mental, and social properties, as inherited, acquired and produced in the process of human development.

Gender is an integral fundamental characteristic of man, inextricably linked to his nature. Gender is a characteristic of a person that cannot be ignored. It is in sexuality that a person first feels his biological nature, its immutability. But not only biological. Gender governs and determines, emphasizes and persuades. It preserves, protects, becomes a source of energy, inspiration.

To determine the socio-gender characteristics of sex, in contrast to the actual biological (genetic-morphological, anatomical, physiological), characterizing the way of life, behavior, intentions and aspirations, etc., use the concept of «gender». Gender refers not only to men and women as individuals, but also characterizes the relationship between them as socio-demographic groups and gender relations in general – how gender socialization and identification of individuals, taking into account gender roles and stereotypes [1].

Every time we talk about the concept of gender in modern conditions, we have to constantly overcome the existing stereotype of the «women's issue», thus emphasizing that gender issues are primarily social problems, problems not only women but also men, the problems of all societies that are not limited to physiological relationships and the distribution of roles in population reproduction.

Today, anthropological value orientations require the filling of public consciousness with new content, in particular the gender-minded mentality of society, i.e. conscious recognition, respect and promotion of the principle of equality of people regardless of gender. It is clear that the issue of gender equality has acquired special relevance today and is of great value to the law.

The relationship between the concepts of legal and de facto equality, equality of starting opportunities and equality of results plays an essential role in determining gender equality. Legal equality presupposes equality of subjects of law before the law, enshrines equal legal means of realization of their subjective rights, equal protection and equal legal responsibility for their violation. It is formal in nature, because it does not create de facto equality between the subjects of law, which differ significantly in their abilities, natural, physical and social capabilities, marital status, intellectual development. Under such conditions, an equal right for unequal people becomes de facto unequal, and to overcome this shortcoming, the right «should be unequal instead of being equal». The term «gender equality» in the context of social and economic transformations is interpreted as a condition of equality before the law, equal opportunities (including equality in receiving remuneration for equivalent work, as well as access to human resources) in terms of their interests regardless of gender. That is, in this context, equality implies that men and women have the freedom to choose different (or similar) roles

and different (or similar) end results – according to their intentions, goals, desires and preferences. Gender equality is a component of the general principle of equality as a principle of democratic society. Law is understood today as an equal measure of freedom for everyone – women and men. The construction of gender equality is revealed through the category of human rights as a universal standard that is the same for both sexes.

According to feminists, it is appropriate to include the principle of bodily differences in legal theory. Only in the perception and representation of people by physically personified beings can we understand how the processes of their thinking and decision-making and, accordingly, the motives of a particular behavior. Theorists of feminist jurisprudence emphasize the relationship between corporeality and related differences, and therefore, try to include in law the specifics of differences in bodily experience of people of different genders, races and ages. Thus, gender equality implies differences, because the equality of the sexes in the philosophical and legal plane does not mean their biological identification.

Gender equality implies the right to distinction between women and men. Differences should not negatively affect the living conditions of a person, both male and female, should not be a cause of discrimination, lead to inequality. Differences in the reproductive sphere of women and men do not lead to inequality, which may arise under the influence of certain social factors, situations, actions (legal guarantees to protect the health of pregnant women). Physiological differences cannot be accepted or abolished by law, so a woman's ability to have a child is a difference that does not change over time, and the fact of protection does not lead to inequality [2].

However, the law should not be the basis for abuse and discrimination, because, as noted by N. Isayev, «stereotypical thinking about women's rights as a set of benefits due to physiological characteristics of sex and reproductive function, ignoring the principle of gender equality leads to equal opportunities for men, who found themselves in the same conditions in labor, family and other relations». Thus, in contrast to discrimination, there is a fine line between the right that a gender approach allows. The gender approach in the legal sphere is impossible without reflecting the right to differences between men and women at the legislative level.

Gender equality is linked to the current order of things, but it is also about human behavior and relationships. In the axiological dimension, gender equality has both individual and social components, encompassing many implications, namely:

– equality of rights – the legislative endowment of equal rights for men and women in all spheres of life;

– equality of opportunity – providing (guarantees) in practice equal conditions for equal distribution, use of political, economic, social and cultural values that exclude discrimination and restrictions of any sex, which negatively affect life and self-expression;

– ensuring equal conditions for the realization of rights and opportunities;

– gender symmetry – a state in which the principle of equal rights and opportunities for women and men is implemented in practice [3].

The category of «gender symmetry» is inextricably linked with «gender parity», which is to ensure gender-balanced relations between the sexes, taking into account gender differences, promotes the development of partnerships between men and women, their joint responsibility to eliminate imbalances in private and public areas, the assertion of parity principles leading to convergence rather than gender segregation.

The two most important circumstances determine the urgency of the question of why it is important to prevent the manifestation of gender inequality in the development process. First, gender equality is important in itself. Second, a high degree of gender equality means the emancipation of women's human potential, which has a strong impact on productivity, which in turn helps to increase economic efficiency and achieve other key development goals. Gender inequality also affects men's human potential, which results in gender stereotypes and prejudices. Gender equality inevitably has a civilized positive effect on men. The link between development and gender equality is becoming clear. Gender equality is a goal of development aimed at improving the quality of people's lives and a tool of the development process, as it provides a sensible approach to economic policy. A. Einstein noted: «All the value of human society is determined by what opportunities it provides for the development of personality».

There is a chain: productivity – increasing economic efficiency – achieving other key development goals. This is nothing but a logical circle of civilizational existence: human capital – human rights – gender equality – sustainable development – progress – quality of life –

human capital. This construction deserves to be marked as a humanitarian formula of civilizational development. It is necessary to realize that the manifestation of gender inequality in the development process is unacceptable. That is why a sensible gender policy is needed.

Of course, the position of women in the world over the past quarter of a century has undergone significant changes for the better in areas such as education, health care, employment in the labor market, sources of income. Today, 136 countries directly guarantee in their constitutions the equality of all citizens and the prevention of discrimination against men and women. One hundred years ago (1911), only two countries allowed women to vote, and today, in 2020, the right to vote has become universal. There are gender equality committees in 60 parliaments around the world.

It is important to note that the Political Declaration contains a commitment to take further steps to ensure the full, effective and accelerated implementation of the Beijing Platform for Action. These measures are planned for implementation in the following areas:

– improving the application of laws, policies, strategies;

– strengthening and expanding support for institutional mechanisms to ensure gender equality;

– transformation of discriminatory norms and gender stereotypes;

– a significant increase in investment to ensure gender equality;

– strengthening accountability to meet existing obligations;

– capacity building, data collection, monitoring and evaluation.

The head of the UN-Women says that women want their leaders to renew their promises, for leaders to reaffirm their commitment to the Beijing Declaration, the Beijing Platform for Action, and to speed up and boldly implement them. They want to see more women among the leaders. And they want these women, along with men, to dare to change economic and political paradigms. Gender equality must be achieved by 2030 so that we can intensify the sluggish progress [4].

If we start from the premise that politics is a relationship about power, and power is access to control and disposal of resources, it is quite obvious that without access to power half of humanity is deprived of a fair share of its influence. Women's power is not an end in itself. It is an objectively necessary tool for achieving gender equality and justice, key prerequisites for the progress and sustainable development of humankind. «When we unleash the potential of women, we will be able to secure a future for all,» said UN Secretary-General Ban Ki-moon on the occasion of International Women's Day 2015. It is difficult to doubt the validity of these words. It remains a matter of practice.

World experience shows that in the absence of equal opportunities for women and men to take an active part in public and political life and to influence laws, policies and their development, institutions and policies risk becoming socially inadequate and systematically focused on the interests of narrow more influential forces. The fact is that policies and decisions developed and made only by men reflect only part of human experience and potential, they are in a sense ineffective. In practice, such policies and decisions do not tend to take into account gender and economic and social factors that affect women's lives. As a result, politics is socially insufficient.

At the same time, partnership in politics is a source of full and representative democracy, which creates real opportunities to take into account multipolar interests in society. Women make a special contribution to public life. Not only do they represent and can better represent their interests than men, but they will also be able to influence the political system by holding leadership positions. From the point of view of a healthy society, the equal representation of women in elected and appointed positions of power is a matter of justice and equality. Gender and geographically balanced institutions, government (community) is a source of efficiency, comprehensive and sustainable results.

The question was: «Do you approve women's participation in politics?» The result may have been surprising for some: 60% of respondents said yes; 40% – a relative majority of students – answered in the affirmative to the question of the desirability of seeing a woman as President of Ukraine in the next 5 years. Of course, we can cite the results of other polls, which will sound less optimistic. However, one way or another, there is a tendency to increase attention to the position of the female population of Ukraine and to strengthen the role of women and their voices in making vital decisions for the whole country.

Gender blindness – the refusal to recognize the importance of the gender factor – is a dead end for the evolution of human civilization. According to the classical theory of minority behav-

ior, women who are successful in the world of men absorb the dominant culture to such an extent that they tend to distance themselves from other women, underestimate their own success (or, conversely, overestimate it) and accept any discrimination they face as a result of their own shortcomings. Often such women say: «There is no discrimination on the basis of sex, I could!» At the same time, they do not want to analyze honestly their own path into politics.

Women's political participation, including in decision-making, has always been the focus of the world community, the United Nations and, in particular, the concerns of the Council of Europe. Equal participation of women and men in all aspects of political and public life is a principle supported by all OSCE participating States. The OSCE Office for Democratic Institutions and Human Rights works to increase women's participation in political and public life, identifying discriminatory laws and regulations, and supporting the dissemination of examples of good practice in ensuring women's participation in democratic processes.

Thus, if we assume that the developed countries include mainly the countries of the European region, it turns out that the representation of women in parliaments in this region is almost the same as in the countries of the African continent. Meanwhile, the latter usually belong to the group of developing countries. If we add to them the countries of Central and South America, which will be almost 60%, it is clear that the factor of industrialized countries in the trend of increasing representation of women in parliament does not play a single and predominant role. The conclusion seems paradoxical, because it has been historically proven that the coming to power of women in a modern political way (through the electoral process) is associated with the degree of development of countries (economic and political) [5].

It is clear that the quantitative indicator requires a very careful and sensitive attitude and the above characteristics of women's representation in countries of different levels of development suggest the need for careful study of other factors (complex culturological characteristics of gender political culture) affecting gender, including women's representation in parliaments.

Women ministers, mayors, women in local government, over the past two decades, women have been heads of governments and states in a number of OSCE participating States. Yes, they have been prime ministers in Canada, Croatia, Denmark, Finland, Germany, Iceland, Poland, Slovakia, Ukraine and the United Kingdom, and have acted or continue to act as speakers of parliaments in a number of other countries.

It is obvious that the representation of women in elected positions is slowly advancing in the OSCE region, although the figures are quite high.

As for the spheres of activity and jurisdiction of the ministries headed by women, there is a former trend: in their hands, as a rule, social issues, education, family and women's issues. Number of women in ministerial positions in departments such as defense, finance, budget, and foreign affairs that are considered more prestigious and therefore more influential (access to, control, and disposition of resources by a particular agency)

Thus, over the past two decades, the following trends have been identified:

– the improvement of women's representation in national parliaments around the world has been steady but slow;

– all regions have shown progress in improving the gender balance in national parliaments since 1995;

– Western Europe had the highest rate of female representation;

– gender and geographically balanced institutions, government (community)

– a source of efficiency, comprehensive and sustainable results.

Factors for increasing women's representation at the decision-making level:

– the presence in the country of a national mechanism for gender equality;

– women'-friendly electoral system (election laws, party laws, campaign finance law);

– gender quotas;

– gender-sensitive procedures and rules in parties, in elected bodies;

– political will, focus on «breeders» (party machines, gray cardinals for the selection of political personnel);

– pressure from below and inside, an active independent women's movement, without which it is difficult to hope for political will to pursue a sensible gender policy.

In many countries, electoral gender quotas are considered an effective measure to improve the gender balance in parliament, although controversy over them has not abated. Currently, quota systems aim to ensure that women make up at least 30, 40 or even 50%. Many countries around the world use gender quotas to compensate for the obstacles that women face.

Gender quotas – compensation for obstacles and accumulated historical injustice in

government. The electoral quota for women may be prescribed in the constitution provided for in the national legislation of the country or formulated in the statute of a political party. One country can have several types of quotas.

Governments can support good practice by demonstrating a commitment to sound policy, as it is in line with their commitment to the Beijing Declaration, which states: decision-making and access to power are fundamental to achieving equality, development and peace».

Sweden. Combating male dominance in politics. The aim of the project is to stimulate public debate on power. The project was implemented by the National Federation of Women – Social Democrats (S-WOMEN). Among other, the project means conducting research in the field of theory of male power, training, preparation of publications, including «Power Handbook». The guide provides tips for women on how to gain access to power. The publication has been translated into many languages and distributed across countries. The positive is that it has been adapted for certain groups and the media, which has been of great importance in spreading across the country and holding discussions, including schools.

Portugal. Project «From woman to woman». The target group is young women. The Portuguese Youth Network for Gender Equality (supported by the European Social Fund), using the Swedish experience, has implemented a project targeting ethnic minority groups (girls and boys). Manuals and publications were prepared, and good media coverage was provided under the slogan «Women can do it!».

Croatia. CESI is a feminist organization that fights for gender equality. Street performances «pillar of shame» were used; political parties were identified that did not comply with 40% of the gender quota for the electoral list, violators were posted on the web portal; sexist statements by politicians were tracked and made public. It is difficult to assess the exact effect of this campaign, but women's political representation has increased in local and national elections.

Ireland. Campaigns to increase the number of women in grassroots politics. The initiator is the National Women's Council of Ireland, the national umbrella organization of the country's network of women's local groups. Six ways to build a women-friendly parliament have been worked out, and the campaign has supported a gender quota that currently requires at least 30% of candidates.

Germany. Women's power policy. The initiative aims to support women's political representation at the local level. It makes up for the lack of attention of political parties on this issue. The project includes: development of joint activities horizontally, implementation of visibility strategy, development and support of local initiatives and exchange of international experience, creation of information websites. The project is supported by the federal government [6].

The world community, represented by the United Nations, is deeply concerned about the condition of half of humanity, women. The report proposes six mandatory elements of success in achieving sustainable development goals. Among them are:

– the dignity needed to eradicate poverty and combat inequality;

– people who need to ensure a healthy lifestyle, education and involvement in the active social life of women and children;

– prosperity, which means creating a strong, comprehensive, transformation-oriented economy;

– a planet that provides for the protection of ecosystems in the interests of all societies;

– justice, which is necessary to ensure a secure and peaceful society and the creation of strong state institutions;

– a partnership that strengthens global solidarity for sustainable development.

There is no doubt that one should not hope for a single panacea. Any successful strategy must be implemented taking into account the country's democratic experience, its current political problems, international obligations, socio-cultural and historical heritage. It is also true that progress in achieving gender equality is tidal, but the changes that have taken place tend to be a progressive historical movement in which the energy of progressive democratic forces, including the world women's movement, accumulates.

Conclusions. Today, one of the basic values of law is equality between men and women. The introduction of gender equality is not only a requirement of basic social justice and a necessary component of democracy, but also the realization of the possibility of approaching the goal of sustainable human development, organization of public relations on the principles of justice, integrity and tolerance. Gender equality requires a radically new way of thinking, in which development is seen as a process of expanding freedom of choice for members of both

sexes. Gender equality as a value of law is a decisive step forward in building a democratic, gender-oriented society. The analysis of the above-mentioned government programs gives grounds to assert that the current legislation of Ukraine not only does not have a clearly developed mechanism for ensuring gender equality, but also lacks a holistic understanding of the essence of gender equality, its legal content.

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Abstract

The description of gender equality as the value of law in discourse of anthropological tendency is given in the article. The right to differences in the aspect of gender mainstreaming in law has been considered. The main components of gender equality are characterized. The article studies the regulatory foundation of the implementation and promotion of gender equality in Ukraine. Determination of the effectiveness of legal mechanisms aimed at its regulation is based on the analysis of relevant legal acts. Based on the comparison of state programs, deficiencies and failures in this area, the direction of further improvement of legal regulation of gender equality in Ukraine, is determined. Awareness of the logical chain «human capital – human rights – gender equality – sustainable development – the progress and quality of life» dictates the importance of avoiding gender inequalities in the process of development. Gender equality is both the development objective and reasonable approach to economic politics, because development is seen as a process of expanding freedoms equally for every individual – for all women and men. The topicality of the question is primarily due to the fact that gender equality is important in itself, and also due to understanding that the emancipation of womens human development has a strong impact on work performance. That in its turn leads to increased economic efficiency, which is a condition for achieving other key development goals.

Keywords: *sex, gender, gender equality, right to differences, genders parity, gender mainstreaming, gender's symmetry.*

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PUBLIC GENDER-LEGAL EXPERTISE AS A FORM OF PUBLIC CONTROL: THEORETICAL AND LEGAL ASPECT

Людмила Сірко. ГРОМАДСЬКА ГЕНДЕРНО-ПРАВОВА ЕКСПЕРТИЗА ЯК ФОРМА ГРОМАДСЬКОГО КОНТРОЛЮ: ТЕОРЕТИКО-ПРАВОВИЙ АСПЕКТ. Досліджено громадську гендерно-правову експертизу як форму участі громадян в управлінні державними справами, яка в умовах сучасних державно-політичних трансформацій є однією з дієвих форм громадського контролю. Наголошено, що активне застосування громадської гендерно-правової експертизи проєктів нормативно-правових актів та чинного законодавства дозволить виявити та попередити наявність правових норм, які є дискримінаційними чи можуть у майбутньому призвести до обмеження або переваги однієї статі над іншою.

Акцентовано, що ефективна участь в управлінні державними справами щодо проведення громадських гендерно-правових експертиз зумовлена роботою її суб’єктів, зокрема, громадськими організаціями.

Ключові слова: *гендерна рівність, інститути громадянського суспільства, гендерно-правова експертиза, громадська гендерно-правова експертиза, управління державними справами.*

Relevance of the study. In the conditions of democratic transformations taking place in our state, the search for new progressive forms of political communication between public authorities and civil society institutions continues. In particular, in the field of public administration the issues of studying public control and public gender-legal expertise, as one of its effective forms, are relevant.

Today, an important social task is to ensure gender equality. Professional legal expertise, part of which is gender law, improves the quality of both existing legislation and draft regulatory acts in the field of equal rights and opportunities for women and men. However, one of the important tools for the influence of civil society institutions on the formation of gender equality in all spheres of life is the conduct of public gender-legal expertise.

Recent publications review. The study of public legal expertise is connected with the scientific works of such scientists as: A. Balatska, K. Babenina, V. Zakharova, M. Latsyba, O. Litvinov, K. Levchenko, O. Orlovskyi, E. Pozniak, O. Sushko, O. Khmara, A. Chernousov, I. Shevchenko and others.

The article’s objective. Regarding the European integration aspirations of our state, it is important to consider a new form of participation of civil society institutions in the management of public affairs, namely public gender-legal expertise, aimed at establishing gender-based legal norms that are discriminatory or may lead to restrictions or advantages of one sex over another in the future.

Discussion. For public authorities at all stages of the political or public decision-making process, including on issues related to the principle of gender equality, an important component is information, as well as taking into account the views of civil society institutions, which can be obtained, for example, through consultation or dialogue. Thus, with the help of two-way communication, opinions are exchanged and joint bills, recommendations, strategies, etc. are developed. However, the interaction of public authorities with civil society institutions in the field of ensuring the principle of gender equality can be effective only if the partnership provides for their openness to each other and mutual responsibility.

The current legal framework is imperfect and creates obstacles for the implementation of public initiatives. Given the above, in the context of the introduction of comprehensive reform of public authorities in our country began to use various forms of public control, but the

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vast majority of them, having a sufficiently low efficiency, requires a thorough theoretical and practical study.

The Law of Ukraine «On Ensuring Equal Rights and Opportunities for Women and Men» contains norms that provide for the need to conduct only gender-legal expertise of compliance of current legislation and draft regulatory legal acts with the principle of equal rights and opportunities for women and men [1]. For example, the conclusion of the gender-legal expertise is submitted as a mandatory component for consideration together with the draft normative legal act. However, there are no provisions on public gender-legal expertise.

In order to address state and social issues related to the realization of the principle of gender equality, it should be emphasized that the implementation of reforms is confirmed by enshrining in law the possibility of public gender-legal expertise, the primary task of which is to change stereotyped perception of women and men at the initiative, in particular, of individuals, legal entities and public associations.

Gender-legal expertise is the process by which the various impacts of proposed / existing policies, programmes and legislative acts on women and men are assessed. Quite often, the potentially different impact of policies, programmes and legislative acts on different sexes is masked or unclear [2]. Due to this form of participation of civil society institutions in the management of public affairs, it is possible to compare how and why public policy affects women and men, as well as to determine the ratio of the sexes. The phenomenon under study often has a latent effect. The readiness of the state apparatus to formulate and implement state policy in the field of equal rights and opportunities for women and men depends primarily on how the subjects of power react, especially those who have the legislative initiative in the context of public legal expertise.

In accordance with paragraph 4 of the Procedure for gender-legal expertise, approved by the Resolution of the Cabinet of Ministers of Ukraine dated 28.11.2018 № 997 (hereinafter – the Procedure), at the initiative of individuals, legal entities and public associations there may be conducted public gender-legal expertise of regulatory legal acts [3].

If we compare the provisions of the Resolution of the Cabinet of Ministers of Ukraine «Issues of Gender-Legal Expertise» dated 28.11.2018 № 997 with the Resolution of the Cabinet of Ministers of Ukraine «On Approval of the Procedure for Promoting Public Legal Expertise of Executive Bodies» dated 05.11.2008 № 976, it should be noted that the latter contains an expanded list of legal entities at the initiative of which the study may be conducted. Regarding the regulation of public gender-legal expertise, the legislation needs to be improved, which can be implemented by supplementing the Law of Ukraine «On Ensuring Equal Rights and Opportunities for Women and Men» and the Resolution of the Cabinet of Ministers of Ukraine «Issues of Gender-Legal Expertise» with such a legal entity as institutions of civil society. This addition will expand the list of legal entities at the initiative of which public gender-legal expertise can be conducted.

It should be noted that the Resolution refers only to the expertise of draft regulatory legal acts, nothing is stated about the current regulatory legal acts and further changes to them. Despite the fact that individuals, legal entities and public associations may conduct public gender-legal expertise, compared to gender-legal expertise, there is no obligation for the authorities to take into account the conclusion based on the results. Thus, given the current challenges of globalization, the urgent issue is to supplement the Resolution with provisions on the possibility of initiating a public gender-legal expertise not only of draft regulatory legal acts, but also of current legislation. It is also necessary to provide the direction of the conclusion to the body that developed the project or adopted a legal act in order to be able to take it into account.

In the context of the analysis of problematic aspects of the provisions of regulatory legal acts in the field of public gender-legal expertise, it should be noted that there is no definition of the concept under study enshrined in law. Thus, the need to study the definition of the concept of public gender-legal expertise as a new form of public control presupposes the introduction of this concept into legal circulation. The processed material has allowed to define the concept of public gender-legal expertise as a component of the mechanism of democratic governance, which involves civil society institutions using a set of measures aimed at identifying in draft regulatory legal acts and current legislation norms that are discriminatory on the basis of sex or may lead to the limitation or advantage of one sex over the other in the future. Based on the results of this expertise, there has been drawn a conclusion, which is recommended to be taken into account by public authorities in their activities.

In the conditions of formation and implementation of the policy of the modern state,

public gender-legal expertise can be effective and efficient only in the presence of a clearly defined procedure for its implementation, but currently this procedure is absent.

Resolution of the Cabinet of Ministers of Ukraine «Issues of Gender-Legal Expertise» dated 28.11.2018 № 997 approved a new procedure for conducting gender-legal expertise [3]. This document does not contain provisions on the stages of public gender-legal expertise, as well as the transfer of the conclusion on the results of its conduct, as well as the possibility of its further consideration by public authorities.

This procedure is regulated by legislation governing other forms of public control. The lack of a procedure for conducting public gender-legal expertise necessitates the development of its methodology. The Ministry of Justice of Ukraine, for example, has to determine the procedure for conducting a public gender-legal expertise.

In order to comprehensively address the issue of developing a procedure for conducting public gender-legal expertise, it is important to determine how it will be carried out. This issue can be addressed, for example, through two stages, one of which is mandatory and the other is optional. In the first stage, a draft or current legal act is checked for compliance with the principle of gender equality. As for the second stage, it is implemented in case of detection of non-compliance with this principle during the first stage and involves in-depth expertise by civil society institutions, which will further explain the problem thoroughly and implement basic recommendations for its elimination.

In order to conduct the second stage of public gender-legal expertise effectively, it is advisable to conduct it taking into account the guidelines, which can be presented in the form of the following stages:

The first stage is a description of the subject of regulation of the analyzed draft or current regulatory legal act.

At this stage, the following issues are clarified: the range of public relations, which will be regulated by a draft regulatory legal act or are regulated by current legislation; the group of the population to which the provisions of the draft regulatory legal act will apply or the current legislation applies; the responsibility of public authorities that will exercise or are exercising control over the implementation of the provisions of the draft regulatory legal act or current legislation, etc.

The second stage is the study of national and international legislation in the field of gender equality.

The provisions must be applied as during the gender-legal expertise. Among the national legal acts in the field of gender equality are: the Constitution of Ukraine, the Laws of Ukraine «On Ensuring Equal Rights and Opportunities for Women and Men» of 08.09.2005, «On Principles of Preventing and Combating Discrimination in Ukraine» of 06.09.2012, «On Prevention and Counteraction to Domestic Violence» dated 07.12.2017, «On Combating Trafficking in Human Beings» dated 20.09.2011, National Action Plan for the Implementation of UN Security Council Resolution 1325 «Women, Peace, Security» for the period up to 2020 year, approved by the order of the Cabinet of Ministers of Ukraine from 24.02.2016, the National Action Plan to implement the recommendations set out in the concluding observations of the UN Committee on the Elimination of Discrimination against Women to the eighth periodic report of Ukraine on the Convention on the Elimination of All Forms of Discrimination against Women 2021, approved by the order of the Cabinet of Ministers of Ukraine dated 05.09.2018 № 634-r, etc.

The study of international regulatory legal acts can be divided into two parts: the first involves the analysis of acts that contain general grounds for ensuring the principle of gender equality; the second involves the study of acts that formulate standards for ensuring the principle of gender equality in the context of the studied area of social relations, for example, they relate to employment and representation, overcoming gender-based violence, and so on.

The third stage is the search for relevant laws, regulatory legal acts and public gender-legal or gender-legal expertise.

According to K. Levchenko, this stage is important because the national legislation contains a large amount of bylaw regulatory legal acts and orders of the Cabinet of Ministers of Ukraine, departmental orders and other documents [4, p. 289]. It is bylaws that often specify the norms formulated in the laws.

The fourth stage is a thorough analysis of the norms on the possibility of their effective implementation.

It should be borne in mind that articles can be related to ensuring the principle of gender equality both directly and indirectly. The draft regulatory legal act or current legislation is de-

termined as to whether they are: gender-neutral, discriminatory on the basis of a certain sex, gender-unbalanced, do not provide equal opportunities for women or men, etc.

The fifth stage is the preparation of the conclusion and its publication. It is formed on the basis of generalization of each of the stages of expertise and is a mandatory component of expertise.

The conclusion should consist of an introductory, analytical and final part, which contains data on the civil society institution that conducted the expertise, substantiated comments on the compliance of the project or current legal act with the principle of gender equality or information on their absence; suggestions on possible ways of further refinement or improvement, etc. The opinion should be posted both on the official website of the civil society institution that conducted the expertise and on the website of the public authority that draft regulatory legal act or adopted the current legislation.

With the adoption of the Resolution of the Cabinet of Ministers of Ukraine «Issues of Gender-Legal Expertise» dated 28.11.2018 № 997 NGOs began large-scale work in the framework of the National Plan and recommendations of the UN Security Council and public gender-legal expertise.

There is national experience in conducting pilot public gender-legal expertise of bills submitted to the Verkhovna Rada of Ukraine. Thus, thanks to cooperation with NGOs, experts, international donor agencies and with the support of the USAID Eastern Europe Foundation Programme, the research work was actively started in the Verkhovna Rada of Ukraine of the VIII convocation by the inter-factional parliamentary association «Equal Opportunities». The methodology of the pilot expertise for compliance of draft laws with the principle of equal rights and opportunities for women and men was based on the requirements of the Laws of Ukraine «On Principles of Preventing and Combating Discrimination in Ukraine» and «On Ensuring Equal Rights and Opportunities for Women and Men». Its approaches can be used as anti-discrimination and for other groups of protected features [5].

It should also be noted that the National Academy of Legal Sciences of Ukraine is actively involved in reforming the legal system and legislation, which promotes the participation of civil society institutions in the management of public affairs, in particular in the field of public gender-legal expertise. Following the existing experience of establishing such research centres, an important event was the decision to establish a Training and Research Laboratory to study the legal status of internally displaced persons and gender equality (hereinafter – the Laboratory) in 2017. In public gender-legal expertise, which is systematically conducted by specialists of the Laboratory, we can focus on the following: Programmes for the preservation and development of cultural and natural heritage sites located in the Dnipropetrovsk region for 2014-2019; Program for the development of small and medium enterprises in the Dnipropetrovsk region for 2019-2020, Program for supporting war veterans and family members of the fallen participants in hostilities in obtaining land ownership in 2019-2021; Code of Judicial Ethics, etc.

Thus, based on a comprehensive study of public gender-legal expertise as a form of participation of civil society institutions in the management of public affairs, we can draw the following **conclusions**.

1. The entry of our state into the democratic system of relations requires consideration of the peculiarities of the rights of women and men as socially equal. Public gender-legal expertise in the context of modern state and social transformations, as well as in the context of European integration aspirations of our state is one of the effective forms of public control. It is also a manifestation of real democracy, which allows civil society institutions and the state as a whole to interact effectively, while establishing a meaningful dialogue at all stages of the decision-making process in the field of gender equality. The application of effective public gender-legal expertise of draft regulatory legal acts and current legislation will identify and prevent the existence of legal norms that are discriminatory or may lead to the restriction or advantage of one sex over another in the future.

2. We consider it necessary to supplement the Law of Ukraine «On Ensuring Equal Rights and Opportunities for Women and Men» and the Resolution of the Cabinet of Ministers of Ukraine «Issues of Gender-Legal Expertise» dated 28.11.2018 № 997 in terms of regulating public gender-legal expertise with: first, such an legal entity as civil society institutions; secondly, the possibility of initiating expertise not only of draft regulatory legal acts, but also of existing legislation; thirdly, to consolidate the possible consideration of conclusions based on the results of public gender-legal expertise by public authorities in their activities.

3. Public gender-legal expertise is a component of the mechanism of democratic governance, which involves civil society institutions using a set of measures aimed at identifying in draft regulatory legal acts and current legislation norms that are discriminatory on the basis of sex or may lead to the limitation or advantage of one sex over the other in the future. Based on the results of this expertise, there has been drawn a conclusion which is recommended to be taken into account by public authorities in their activities.

4. The lack of a procedure for conducting public gender-legal expertise, enshrined in national legislation, is an obstacle to its effective conduct. In the context of modern globalization challenges, the urgent task is to develop a special methodology for conducting public gender-legal expertise in order to facilitate the orientation of civil society institutions in the field of public gender-legal expertise. The Ministry of Justice of Ukraine, for example, has to define this procedure for conducting public gender-legal expertise. The procedure for conducting public gender-legal expertise should be presented in two stages. The first stage is mandatory and involves checking the draft regulatory legal act or current legislation for compliance with the principle of gender equality. The second stage is implemented in case of non-compliance of the bill or current regulatory legal act with this principle and involves civil society institutions to conduct in-depth expertise, which will thoroughly explain the problem and put into practice the recommendations based on its elimination. In order to conduct public gender-legal expertise effectively, it is advisable to conduct the second stage, taking into account the guidelines which are presented in the following stages: the first stage – a description of the subject of regulation of the analyzed project or current legislation; the second stage – the study of national and international legislation in the field of gender equality; the third stage is the search for relevant laws, other regulatory legal acts and public gender-legal or gender-legal expertise, if any; the fourth stage – a thorough analysis of the rules on the possibility of their effective implementation; the fifth stage is the preparation of the conclusion and its publication.

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Abstract

The article examines public gender-legal expertise as a form of citizen participation in the management of public affairs, which in the conditions of modern state and political transformations is one of the effective forms of public control. It is emphasized that the active application of public gender-legal expertise of draft regulatory legal acts and current legislation will identify and prevent the existence of legal norms that are discriminatory or may lead to the restriction or advantage of one sex over another in the future.

The current legislation has been analyzed and it is proposed to supplement the Law of Ukraine «On Ensuring Equal Rights and Opportunities for Women and Men» and the Resolution of the Cabinet of Ministers of Ukraine «Issues of Gender-Legal Expertise» dated 28.11.2018 № 997 in terms of regulating public gender-legal expertise.

Keywords: *gender equality, civil society institutions, gender-legal expertise, public gender-legal expertise, public affairs management.*

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EVALUATION OF THE EFFICIENCY OF PROVIDING SOCIAL AND SERVICE SERVICES BY THE POLICE OF THE COUNTRIES OF WESTERN EUROPE AND UKRAINE

Станіслава Миронюк, Майкл Антонів. ОЦІНКА ЕФЕКТИВНОСТІ НАДАННЯ СОЦІАЛЬНИХ ТА СЕРВІСНИХ ПОСЛУГ ПОЛІЦІЄЮ КРАЇН ЗАХІДНОЇ ЄВРОПИ ТА УКРАЇНИ. Визначено засоби та способи оцінювання ефективності надання соціальних та сервісних послуг поліцією та стан їх законодавчого закріплення. З'ясовано ефективність та доцільність їх застосування з огляду на позитивний міжнародний досвід реалізації контрольних функцій громадянського суспільства за діяльністю поліції.

Виокремлено недоліки нормативного визначення підстав та процедур оцінювання ефективності надання поліцейських послуг: визначення індикаторів оцінювання не громадськістю, а МВС; відсутності вимог та процедур оприлюднення результатів оцінки, а також процедур врахування результатів оцінки в подальшу діяльність поліції та наслідків оцінки ефективності діяльності поліції, як позитивних так і негативних, які мають наступати в обов'язковому порядку, що призводить до нівелювання процедури оцінки ефективності діяльності поліції з надання поліцейських послуг.

З урахуванням міжнародного досвіду оцінювання якості надання поліцейських послуг запропоновано ефективні критерії комплексної оцінки сервісно-обслуговуючої діяльності Національної поліції, які поділено на чотири блоки: громадське оцінювання шляхом соціологічного опитування громадян, у тому числі через електронні сервіси за певними критеріями; оцінювання з боку бізнес-середовища шляхом онлайн опитування за відповідними критеріями; оцінювання з боку органів публічної влади та місцевого самоврядування за визначеними критеріями; самооцінка сервісно-обслуговуючої діяльності поліції шляхом анонімного анкетування.

***Ключові слова**: соціальні та сервісні послуги Національної поліції, оцінка публічно-сервісної діяльності поліції, критерії та процедури оцінювання; зарубіжний досвід; форми адаптації зарубіжного досвіду.*

Relevance of the study. As a member of the Council of Europe, Ukraine, in accordance with the Paris Charter for a New Europe of November 21, 1990, undertook to accede to international human rights standards, to create domestic guarantees of their implementation, based on universally recognized international legal guarantees enshrined in relevant international law.

The need to introduce uniform international standards in policing is due to the growing level of transnational organized crime, significant rates of migration in the world, significant

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differences in national training systems, as well as the problem of human rights in policing. The signing of international agreements also stipulates strict adherence to human rights standards in the work of the police in the implementation of law enforcement functions, the need to respond to the emergence of new types of crime and act in accordance with international human rights standards.

The article's objective. Therefore, there is an urgent need to harmonize the principles of the National Police of Ukraine (hereinafter – NP) with world (including European) standards. It is, first of all, about the transition from punitive to social and service content of its activities, the transformation of the police into a law enforcement institution of the European standard, which should provide law enforcement services to citizens who in accordance with Art. 3 of the Law of Ukraine «On the National Police» are provided in the areas of: ensuring public safety and order; protection of human rights and freedoms, as well as the interests of society and the state; crime prevention; providing, within the limits specified by law, services to assist persons who, for personal, economic, social reasons or as a result of emergencies, need such assistance [1].

Discussion. Thus, based on the new «service» function of the police, the main customer of police services is the people of Ukraine, its citizens, who support the police by paying taxes, and therefore must have a statutory guarantee of control over its activities. Modern legislation of Ukraine, which regulates the system of citizens' rights in general and their observance and protection by the police provides certain opportunities for evaluation of police activities, but forms of evaluation of police service, types of evaluation criteria, technologies and evaluation methods need to be implemented and improved.

Thus, in order to fulfill the research objectives within this scientific article, it is advisable to find out the means and methods of assessing the effectiveness of social and service services by police in foreign countries (especially Europe) and identify areas for their implementation in the national doctrine of public control over the National Police in Ukraine.

In order to fulfill this goal, the following tasks will be solved within the scientific article: means and methods of assessing the effectiveness of the provision of social and service services by the police and the state of their legislative consolidation will be identified; the efficiency and expediency of their application are clarified in view of the positive international experience in the implementation of the control functions of civil society over the activities of the police.

Statement of basic provisions. Article 11 of the Law of Ukraine «On the National Police» for the first time since the creation of the national model of police (militia) defines the legal basis for assessing the effectiveness of police, in particular the main criterion for such assessment – the level of public confidence in the police, determined by the Cabinet of Ministers of Ukraine [1].

In accordance with this procedure, the main principles of the assessment are the objectivity of the processing of information about the work of bodies and units of the National Police, the systematic assessment of the quality of their work. The objects of assessment are: the level of satisfaction of the population's need for police services; processes occurring in the system of the National Police, and the characteristics and results of its activities. The assessment is carried out by an independent sociological service on the basis of a contract concluded with the National Police in accordance with the Law of Ukraine «On Public Procurement» periodically: at the national level – at least once a year, at the territorial level – when necessary [2]. At the same time, the indicators on which the assessment is carried out are determined by the Ministry of Internal Affairs. The National Police determines: issues on which the level of trust is investigated in accordance with the powers of the National Police defined by the Law of Ukraine «On National Police»; terms of assessment; an independent sociological service that will conduct an assessment in the manner prescribed by the Law of Ukraine «On Public Procurement»; the degree of representativeness of social groups; receives final analytical information on the results of the assessment; takes into account the results of the assessment in its activities; prepares a report on the results of the assessment and publishes it on the official websites of the Ministry of Internal Affairs, the National Police and in other acceptable ways. The independent sociological service, which evaluates the effectiveness of police activities, has the following functions: preparation of a research program; publication of a questionnaire on issues identified by the National Police; conducting a study of the level of public confidence in the National Police; generalization and analysis of research results; preparation of final analytical information on the results of the assessment; providing the National

Police with final analytical information on the results of the assessment.

The analysis of normatively defined grounds and procedures for evaluating the effectiveness of police services makes it possible to identify a number of its shortcomings: first, the indicators on which the evaluation is carried out are determined by the Ministry of Internal Affairs and not by the active public; secondly, the requirements and procedures for publishing the results of the evaluation are not defined, and most importantly, the procedure for taking into account the results of the evaluation in further police activities and the conse-?uences of evaluating the effectiveness of police activities, both positive and negative, must be determined, leveling the procedure for assessing the effectiveness of police activities in providing police services.

The following are the criteria for evaluating the effectiveness of policing. Without going into a detailed analysis of these criteria, which have been studied in the works of many sociologists and lawyers, and taken into account by us, we summarize that there were and are not objective criteria for such an assessment [3, pp. 155–159; 4, pp. 52; 5, pp. 145–149]. Thus, one of the main criteria for police activity in the international context is the state of crime. Distortions of this criterion in Soviet times led to its next interpretation – the state of crime detection. In today's realities of reforming the National Police, the main criterion for assessing police performance in the international context is the level of public confidence in policing, which together with the analysis of crime can give an objective picture of the effectiveness of policing, but again it is distorted, leading to such its interpretation – estimates of the number of complaints about police activities. The main problem in this sense is the so-called «going from one extreme to another « and the lack of a «golden mean», namely, taking into account all the rational criteria for assessing the effectiveness of the police. We agree with the opinion of I. Okhrimenko, who believes that the assessment of the effectiveness of law enforcement should not be limited to the level of public confidence in the police, which according to the law is calculated by independent sociological services in the manner prescribed by the Cabinet of Ministers (Part 4 of Article 11). After all, a set of factors (both objective and subjective) should be taken into account, which in general determines the effectiveness of the police in all its manifestations [6, p. 142]. M. Nebeska concludes that an effective policing system should be multidimensional, taking into account the immediate and final results of policing, the various dimensions of policing (crime prevention, crime detection and investigation, law and order, the effectiveness of policing, public policing) [7, p. 96].

As noted above, the evaluation of the effectiveness of public policing is carried out according to certain criteria, which are developed by the world practice of public monitoring of police activities, the most successful examples of which should be given below.

Thus, historically, when evaluating the work of police units in the United States, attention was paid primarily to four indicators: reducing crime; number of arrests and detentions; level of disclosure (ratio between recorded and disclosed crimes); call response time [8, p. 2]. In addition, with the introduction of the community policing system in a number of departments, the level of public satisfaction with police services began to be used as an indicator of efficiency. The most common alternative sources of information for assessing police performance in the United States are:

1. Public opinion research. This data is used by about a third of local police depart-ments. Such surveys are conducted annually, in particular to assess the level of latent crime and the community's assessment of police work.

2. Questionnaire of persons who had contacts with the police. The information obtained by this method, as a rule, more accurately reflects the quality of police work, and allows a more detailed assessment of certain areas of police activity (e.g. questionnaires of drivers about traffic police, questionnaires of victims, including certain categories of crimes, etc.).

3. Questionnaire of police officers. This technique allows you to assess the state of morale in the unit, to identify problems with management, and so on.

4. Direct observation. It provides for the study by specially trained observers of certain aspects of police work or its consequences (eg, observation of police contacts with citizens in everyday situations, the state of law in problem areas of the city, etc.). This method is considered effective for independent evaluation of police work, though, given the need for special training, it is quite expensive.

5. Simulation method. Unlike the previous method, researchers are not passive observers, but simulate certain typical situations (e.g. reporting a crime to the police). However, this method remains controversial, especially in simulations that lead police officers

to illegal actions [9; 10, p. 19].

In summary, it can be pointed out that, on the one hand, the United States has a significant theoretical basis and practical experience in evaluating police activities, but in fact there is no system for evaluating police activities as such. Despite the lack of systematic assessment of the police at the national level, in the context of police reform in Ukraine, the US experience in developing and using methods to study the effectiveness of law enforcement is extremely interesting.

Canada's police system, as in the United States, is complex. The state has a federal police, the Royal Canadian Mounted Police, and two provinces (Ontario and Quebec) have separate police services; in addition, municipal police have been established in a number of cities. Accordingly, the state has several systems for evaluating police performance, but, unlike the United States, they are much more unified. The performance of the federal police body, the Royal Canadian Mounted Police, is evaluated primarily in the context of achieving strategic goals, each of which, in turn, is specified by the relevant budget programs. This practice is typical for other public authorities, and is based on the already mentioned methodology of a balanced scorecard, the key of which are: 1) the percentage of Canadians satisfied with the contribution of the Royal Canadian Mounted Police to ensure order and security; 2) reduction of the damage caused by crimes in Canada within the jurisdiction of the Royal Canadian Mounted Police; 3) reducing the number of crimes per capita in Canada within the jurisdiction of the Royal Canadian Mounted Police; 4) the percentage of respondents who agree that the Royal Canadian Mounted Police provides quality services; 5) the percentage of international commitments made by Canada that meet the priorities of its government; 6) the percentage of participants in training programs who positively assess the skills and knowledge acquired within them; 7) the percentage of respondents who agree that the Royal Canadian Mounted Police is a recognized symbol of Canada; 8) the percentage of responses to inquiries and requests submitted within the established standards. At the local level, there is no single, generally accepted system for evaluating the work of police units. The legislation of the Canadian provinces provides for the operation of police commissions, which are formed in the cities to supervise the activities of the municipal police. Thus, the Canadian Association of Police Commissions defines their main powers as follows: determining the adequate number of staff; budget formation; budget execution supervision; evaluation of police activities; appointment of the police chief; providing assistance in the field of labor relations; imple-?entation of disciplinary practice; assistance in the development of unit policy [11]. In other words, police commissions in Canada have a slightly wider range of powers and tasks than their American counterparts.

Although the United States and Canada have a unitary state, Britain's police structure is also complex and highly decentralized. In particular, there is no single police service in England and Wales. Instead, these parts of the UK are served by 43 independent police services. In addition, Scotland and Northern Ireland have their own police forces. Under the Police Act 1996, the main body evaluating the work of the police in England and Wales is the Police Inspectorate (Scotland has a separate Police Inspectorate in Scotland, in Northern Ireland it carries out inspections on request). This body is one of the four law enforcement inspectorates (the other three are the Prosecutor's Office, the Probation Inspectorate and the Prison Inspectorate). The Inspectorate uses a number of forms to assess the activities of the police. The largest is the annual generalized assessment of territorial police services according to the PEEL method. According to it, three basic indicators of police activity are evaluated: 1) efficiency, i.e. how fully the territorial police service performs its tasks; 2) expediency, i.e. how effectively the territorial police service uses its available resources; when assessing this area determines the effectiveness of management of resources available in the service, the feasibility of planning and implementation of financial activities, etc.; 3) legitimacy, i.e. the degree of public confidence in the police unit is assessed; in this area, the work of the unit to ensure compliance with the norms of professional ethics, as well as the state of interaction of the unit with the population, the degree of faith in it [12]. When preparing the report, each of these indicators is specified in separate areas. The result of the study is a report on each of the 43 territorial police services of England and Wales, which provides a detailed assessment of each of the areas in terms of the above issues. Each question and each direction as a whole is evaluated by one of the four evaluations «excellent», «good», «needs improvement», «unsatisfactory».

One such example is the British Crown Inspectorate of Police

(http://justiceinspectorates.gov.uk/hmic), which inspects police units and prepares thematic and periodic (annual) reports on the evaluation of police units with recommendations [13]. These reports and recommendations are available to the public. One of the tools of such assessment is «PEEL assessment» (police effectiveness, efficiency, legitimacy – police efficiency, produ-?tivity, legitimacy). Effectiveness is assessed in how the police perform their duties, including reducing crime, protecting vulnerable people, combating anti-social behavior, dealing with emergencies, and other service challenges. Productivity is assessed in relation to the means by which the result is achieved. Legitimacy is assessed in relation to how ethically and within the law the police unit operates. This technique can be applied to both approaches. In this regard, it is much better to develop certain incentives to improve the quality of police work. These include criteria for evaluating the effectiveness of policing as a tool to improve policing [14].

In contrast to the states mentioned above, the French police system has a high level of centralization, which is reflected in the system of its evaluation. The activity of the police, as well as many other public authorities, is evaluated primarily to determine the degree of performance of tasks [4, p.45]. At the same time, a common point of criticism of the police evaluation system in France is the lack of indicators that characterize public opinion about its activities [15, p. 334]. At the same time, the evaluation system in particular and the management system in general are often compared with its British counterpart; researchers point to a paradoxical situation: while the level of violent crime in France is lower than in the UK or the US, the level of trust in the police in the latter two countries is much higher. In addition, it is necessary to emphasize the high level of centralization of the evaluation system, which does not allow to take into account regional characteristics and needs and expectations of local communities in the field of security when measuring the effectiveness of police units.

In conclusion, the optimization of police interaction with the public in the context of law enforcement has the main purpose – to give new impetus to positive domestic practices of involving citizens in policing, which are time-tested and supported by society and implement best practices of police structures in the world. procedures of public interaction with the police, which is implemented in one particular country, and which is more or less adapted in those countries that have passed similar stages of statehood with Ukraine and show the prospects for their development.

Conclusions. Taking into account the international experience of assessing the quality of police services, we will offer effective criteria for a comprehensive assessment of service activities of the National Police, which can be divided into four blocks:

1. Public evaluation by sociological survey of citizens, including through electronic services on the criteria: speed and quality of service for which there was a citizen's appeal to the police; the state and consequences of police intervention on its initiative in the activities of citizens in the application of preventive and coercive measures; a sense of security when communicating with the police and in connection with the presence of a police officer in the service area; general legal literacy of the police officer and the possibility for him to provide priority legal assistance; readiness of citizens for police assistance (cessation of violations, notification of violations, testimony as a witness to the violation).

2. Evaluation by the business environment through an online survey on the criteria: completeness, efficiency and quality of registration, permitting and licensing services; the quality of ensuring public order within the activities of a legal entity, which is a public place (restaurant, cafe, hotel, office, trade hall, playground or pavilion, etc.); awareness of the personnel of police officers who provide police services in the service area (posting infor-?ation about them at facilities); readiness to assist the police in providing police services (additional placement of surveillance cameras, lighting, equipment for smoking areas, etc.).

3. Evaluation by public authorities and local governments on the criteria: completeness, efficiency and quality of police services, especially for the protection of public order at mass events; the quality of ensuring public order within the activities of a legal entity, which is a public place (parks, squares, transport, educational institutions and cultural institutions); awareness of the personnel of police officers who provide police services in the service area (posting information about them in communal property); readiness to assist the police in providing police services (placement of surveillance cameras, lighting, road signs, equipment for smoking areas, etc.).

4. Self-assessment of service and service activities of the police by anonymous questionnaire on the criteria: state of satisfaction with the performance of state functions; availability of moral, psychological and service resources for further service, the state of

financial, social and material resources of activities and areas for improvement; the state of efficiency of management (heads) of departments and their level of trust among the staff.

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Abstract

The authors have identified means and methods of assessing the effectiveness of the provision of social and service services by the police and the state of their legislative consolidation. The efficiency and expediency of their application are clarified in view of the positive international experience in the implementation of control functions of civil society over the activities of the police.

Taking into account the international experience of assessing the quality of police services, effective criteria for a comprehensive assessment of service activities of the National Police have been proposed, which are divided into four blocks.

Keywords*: social services of the National Police, evaluation of public service activities of the police, evaluation criteria and procedures; foreign experience; forms of adaptation of foreign experience.*

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LAW ENFORCEMENT REFORM IN UKRAINE – A ONE-TIME PHENOMENON OR A CONSTANT PROCESS?

Олексій Бочковий, Люся Можечук. ПРАВООХОРОННА РЕФОРМА В УКРАЇНІ – РАЗОВЕ ЯВИЩЕ ЧИ ТРИВАЛИЙ ПРОЦЕС? У науковій статті досліджується ефективність та перспективи реформування правоохоронних органів України. Висвітлено питання, що виникли під час запровадження такої реформи, яка, у свою чергу, вплинула на ефективність правоохоронної діяльності в Україні. Досліджено питання щодо запровадження проєкту «Поліцейські детективи». Розкрито значення поняття «поліцейські детективи», наведено особливості їх роботи та результати.

Акцент зроблено на необхідності внесення відповідних змін до існуючих нормативних актів у зв'язку з реформою, оскільки більшість положень не узгоджуються між собою або не повністю регулюють певні правовідносини.

Звернуто увагу на пенсійну реформу в Україні, висвітлено ключові аспекти такої реформи. Особливу увагу було приділено, зокрема, питанню пенсійного забезпечення працівників Національної поліції в контексті реформи, проаналізовано нормативно-правові акти, що регулюють правовідносини у цій сфері. Висвітлено проблемні аспекти реалізації права на пенсію колишніми правоохоронцями, зокрема, виплату пенсій за новими перерахунками. Наводяться конкретні приклади із судової практики щодо порушення права на належне пенсійне забезпечення.

***Ключові слова**: правоохоронні органи, реформи, соціальний захист, пенсійне забезпечення, Національна поліція, поліцейські детективи, поліцейські.*

Relevance of the study. «May you live in interesting times», this is the famous English saying, where «interesting» means times of change, reform and so on. The subtext of such an expression is a wish with a negative meaning, wishing for anxiety and problems. Such are the times in Ukraine, because today there isn't a single law enforcement agency that hasn't been reformed.

Dozens of new law enforcement agencies have been created, others have been liquidated or reformatted. At the same time, during the introduction of the next reform, changes with a positive mood are announced and forecasts for improving the efficiency of the reformed activity are provided. Of course, the reform is carried out in order to improve at least it is announced before the start. But do the reforms achieve these goals – improve the efficiency of units that protect the rights and freedoms of citizens, the interests of society and the state? Sometimes it is difficult to find out, as new reforms are introduced for law enforcement agencies that haven't yet completed the previous reform. However, the intensity with which the old and new law enforcement units are reformed doesn't even allow to adjust the current legislation in time,

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which, of course, doesn't contribute to the effectiveness of law enforcement activities. Thus, today there is a need for scientific research on the effectiveness and prospects of reforming law enforcement agencies in Ukraine.

Recent publications review. The issue of law enforcement reform has always been and remains the focus of domestic scholars. In particular, some aspects of such reform were covered in the works of such scientists as Bodruk O.S., Hovorukha M.M., Kulish A.M., Marochkin I.Ye., Melnyk M.I., Medvediev O.V., Panonko I.M., Pylypchuk V.H., Rybalko H.S., Rudenko M.V., Sybilova N.V., Khavroniuk M.I., Khoma V.O., Yusupov V.A. and other.

Special attention was paid to the issue of pension provision by such scientists as Andriyiv V.M., Bolotina N.B., Venedyktov V.S., Vyshnovetska S.V., Vitruk M.V., Voievodin L.D., Honcharuk V.V., Inshyn M.I., Klemparskyi M.M., Kryvenko O.A., Melnyk K.Yu., Prylipko S.M., Pylypenko P.D., Chanysheva H.I., Shcherbyna V.I. and others.

The article's objective is to analyze the issues of efficiency and further prospects of law enforcement reform in Ukraine.

Discussion. The need to reform the law enforcement system of Ukraine is recognized by all stakeholders: society, politicians, law enforcement. Ukraine has significant support from international organizations (EU, OSCE, NATO) and partner countries (USA, Great Britain, the Netherlands, etc.) For example, the EU Civil Security Reform Advisory Mission (EUAM), the EU Border Assistance Mission to Moldova and Ukraine (EUBAM), the EU Support Group for Ukraine (SGUA), and the International Department of Justice's Criminal Investigation Program are currently operating in Ukraine, USA (ICITAP) [1, p. 5].

As an example, in 2017, with the initiative and support of the European Union Advisory Mission to Ukraine, a pilot project of introducing police detective positions was launched. According to the Minister of Internal Affairs of Ukraine, the experiment was introduced in order to find the optimal balance between the institute of investigators and the institute of detectives. Therefore, it was decided to introduce the project «Police Detectives» in eight regions of Ukraine – in Kyiv, Zaporizhia, Lviv, Odessa, Poltava, Sumy, Kharkiv and Khmelnytsky regions [2]. This is stated in the order of the Ministry of Internal Affairs of Ukraine dated 10.04.2017 № 337 «On conducting an experiment on the introduction of new forms and methods in some police departments of the main departments of the National Police». All these ideas seem reasonable and extremely interesting, because in theory, the combination of functions of an operative and an investigator saves not only effort but also time, which is constantly lacking in the investigation of criminal proceedings due to the timeliness of most sources of evidence. The combination of the functions of an operative and an investigator in the person of a detective would eliminate bureaucratic red tape during the approval of orders, their transfer, execution, etc.

But what does it all look like in practice? Google's search query for «police detective» yields more than 800,000 results, most of which relate to the term «detective» in the sense of a literary work or a private detective. As for police detectives in the sense of officials, most of the results date back to 2017-2018, and quote the words of the Minister of the Interior and then Head of the National Police, regarding the presentation of the same experiment.

Only a few links allow us to learn at least a little about the peculiarities of the work of police detectives and their results. In particular, it is news about detection by detectives of criminal activity in the Khmelnytsky and Nikolaev areas in 2019. But the most detailed material from the GUNP in the Donetsk region, which, in addition to the peculiarities of the work of police detectives, contains an analysis of activities in 2019, as well as the basic requirements for a candidate for the position of detective.

Thus, analyzing the information content of the request for police detectives on the Internet, there is a certain contrast between the vivid presentation of the project «Police Detective» and it's further implementation. We suspect that the lack of information is due to the increased level of secrecy of police detectives. And the analysis of the activities of detectives in the GUNP in the Donetsk region, which is presented on the official website of the unit, doesn't allow to say about its lack of effectiveness [3].

The practical implementation of the experiment was as follows: in the police departments that participated in the experiment, the vast majority of detectives were appointed as investigators and empowered to conduct a full range of investigative and operational measures, starting from the detection of the crime and ending with court.

It should be noted at once that if such experience could have existed in the regional police departments, then in the district departments, due to the workload, the project implementa-

tion was problematic. Moreover, the use of the Western name of the subject of the proceedings «detective» isn't provided by any legal act, and therefore, from a legal point of view, all detectives are ordinary investigators who independently conduct covert investigative (search) actions (hereinafter NA (R) D). Although, according to the current CPC of Ukraine and without experiment, the investigator isn't prohibited from conducting an emergency (R) D on his own without sending instructions to operatives.

Talking to colleagues in the practical units, it became known that today, some «detectives» were transferred back to the criminal investigation department, while others remained to work as ordinary investigators, because even some heads of «police detectives» didn't understand the experiment and didn't want to continue it. Whether the experiment ended or not is currently unknown, as well as its effectiveness.

A study of information on the effectiveness of recent law enforcement reforms gives the impression that the vast majority of them are grant projects. And there would be nothing wrong with this if the main goal of many such projects wasn't to obtain financial benefits without taking into account the end results. After all, conducting a variety of grant research allows you to implement scientific ideas and at the same time receive appropriate funding. But the ideas of scientists aren't always effective, which is often manifested only in practical implementation.

In particular, domestic researchers in the field of law often blame the imperfect Ukrainian law enforcement sphere and take as an example the experience of many successful countries, including European or American ones. This fascination with Western experience sometimes leads to ignoring many important aspects, one of which is historical experience and belonging to a particular legal system.

Thus, in the criminal process there is a century-old division into continental and Anglo-American paradigms. Ukrainian law has always professed the first of these, which has a pretrial investigation, which deals with the collection and evaluation of evidence, and not the court, as in the latter. Unfortunately, this aspect isn't taken into account by many followers of fashion trends in law.

Recently, such an example took place when legislators, following the trends of copying Western legal provisions, amended Art. 242 of the CPC of Ukraine (Law № 2147-VIII of 03.10.2017) regulating the conduct of examinations exclusively by expert organizations, experts or specialists on behalf of the investigating judge or court, provided at the request of a party to criminal proceedings. After the entry into force of such novelties, the work of law enforcement agencies was paralyzed, because even obtaining a certificate for the burial of a person who died a natural death required going to court. It took two whole years to return the previous procedure for conducting examinations (Law № 187-IX of October 4, 2019).

Sometimes the adoption of legislation leads to absurd incidents. Thus, in June 2003, Ukraine planned to accede to the International Convention on the Carriage of Goods by Rail. The abbreviation of this convention is COTIF(КОТІФ). During the voting, the board read the inscription, which was included in the transcript: «Ratification of the International Convention on the Carriage of Cats by Rail». At the same time, none of the deputies was surprised by such a name [4].

At the same time, in reforming law enforcement agencies, the management ignores an important component of this process – social and pension provision for employees. After all, the unsuccessful personnel policy on the pension provision of the National Police units has led to the loss of experienced employees and the complete destruction of the institution of mentoring in the units. And those who remained unsure of the need to continue serving in the police due to the increase in the length of service before the possibility of retirement and the lack of effective guarantees of social security for police officers.

As you know, starting from 2017 to the present, Ukraine is in the process of reforming the pension sector, which aims to implement European standards for the functioning of the pension system as a whole. In October 2017, the Verkhovna Rada of Ukraine adopted the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine on Increasing Pensions» [5], which defined the stages of reform. The normative legal act provides for changes in special pension regimes (pension for years of service for certain categories of persons, etc.), the use of modern information and management technologies, uniform standards of service quality. The legislator didn't ignore the issue of pension provision for police officers. It should be noted that at the legislative level there isn't definition of the concept of pension provision for this category of persons. Most scholars consider pensions as a set of certain guarantees of social orientation. According to Bortnyk S.M. police pensions – a type of guarantee of social security of

police officers, which is associated with the receipt of their established cash benefits to satisfy their vital needs after dismissal from the National Police, which take place in the cases, in the manner and under the conditions provided by law [6, p. 10].

Legal regulation of pension provision for police officers is defined by the Law of Ukraine «On the National Police» [7], but the document contains only one article which deals with pension provision (Article 102), which in turn is blanket, i.e. refers to another normative-legal norm. Act – the Law of Ukraine «On pensions of persons discharged from military service and certain other persons» of 09.04.1992. This normative legal act defines the conditions, norms and procedure for pension provision of citizens of Ukraine from among persons who have served in the military, service in the internal affairs bodies, the National Police, but today the document contains more than 70 amendments, which indicates imperfection categories of legal relations.

One of the priority tasks of the pension reform is the recalculation of pensions, which in turn has become resonant among former law enforcement officers who received pensions according to outdated calculations. Thus, according to the Law of Ukraine «On pensions of persons discharged from military service and some other persons» persons who have been discharged from both police and former police have the right for pensions [6, p. 10]. Article 102 of the Law of Ukraine «On the National Police» [7] stipulates that pensions for police officers and payment of one-time cash benefits after their dismissal from the police are carried out in the manner and under the conditions specified by the Law of Ukraine «On pensions for persons discharged from military service, and some other people». That is, the pension provision of police officers is carried out in accordance with the pension legislation, which provides for the pension provision of police officers.

Thus, this article of the Law gives grounds to believe that the pension provision of police officers and the pension provision of military service officers are identical. Thus, former police officers (pensioners) have the right to recalculate their pensions on the basis of Article 63 of the Law of Ukraine «On Pension Provision for Persons Released from Military Service and Certain Other Persons» of April 9, 1992 [8] in connection with the establishment of salaries of police officers by the Resolution of the Cabinet of Ministers of Ukraine № 988 of November 11, 2015 «On financial support of police officers of the National Police» [9, p. 51].

Today, according to court practice, a significant number of lawsuits related to the violation of the right to adequate pension provision of former employees of the Ministry of Internal Affairs. As an example, the decision of the Supreme Court of 15.02.2018 № Pz / 9901/8/18 (no 820/6514/17) – on the recalculation of pensions for pensioners of the Ministry of Internal Affairs, taking into account the cash security of police officers [10]. Thus, according to the decision of the Supreme Court, the inaction of the Main Department of the Pension Fund of Ukraine in Kharkiv region was declared illegal.

Conclusions. Thus, the analysis of law enforcement shows a large number of problems and contradictions that negatively affect its effectiveness. And this is subject to constant reforms. It is hoped that the lack of positive results doesn’t indicate the ineffectiveness of the reform, but only an intermediate stage of successful initiatives. After all, as realists, we must understand that no reform is carried out spontaneously, and its results can be delayed due to objective factors.

The issue of pension provision for police officers remains problematic today, which is primarily due to the imperfection of regulations, as there is a so-called fragmentary application of legislation to regulate this issue. In addition, the issue of enshrining in law the mechanism of recalculation of pensions for former law enforcement officers is acute, which would increase the effectiveness of legal guarantees of their social protection and, of course, would encourage existing police officers to increase their efficiency.

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Abstract

The scientific article examines the effectiveness and prospects of reforming law enforcement agencies of Ukraine. Issues that arose during the implementation of such a reform, which in turn affected the effectiveness of law enforcement in Ukraine, were highlighted. The issue of introduction of the project «Police detectives» is investigated. The meaning of the concept «police detectives» is revealed, the peculiarities of their work and results are given.

Emphasis is placed on the need to make appropriate changes to existing regulations in connection with the reform, as most provisions aren't consistent with each other or don't fully regulate certain legal relations.

Emphasis is placed on pension reform in Ukraine, highlighting key aspects of such reform. Particular attention was paid, in particular, to the issue of pensions for employees of the National Police in the context of the reform, analyzed the regulations governing legal relations in this area. The problematic aspects of the exercise of the right to a pension by former law enforcement officers, in particular the payment of pensions under the new recalculations, are highlighted. Specific examples from case law on the violation of the right to adequate pension provision are given.

Keywords: *law enforcement agencies, reforms, social protection, pension provision, National Police, police detectives, police officers.*

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SOME FEATURES OF SERVICE IN THE POLICE ACCORDING TO THE LEGISLATION OF THE REPUBLIC OF LITHUANIA

Андрій Іваниця. ДЕЯКІ ОСОБЛИВОСТІ ПРОХОДЖЕННЯ СЛУЖБИ В ПОЛІЦІЇ ЗГІДНО ІЗ ЗАКОНОДАВСТВОМ ЛИТОВСЬКОЇ РЕСПУБЛІКИ. У дослідженні йдеться про особливості служби в поліції Литовської Республіки щодо загальної системи державної служби, статусу поліції та посадових осіб поліції, висвітлюються нормативні акти, якими регулюється діяльність поліції. Вказується, що в кожній країні на формування специфіки державної служби та служби в поліції впливали історичні особливості, перебування у певній правовій сім'ї, форма держави. Встановлено, що в Литовській Республіці існує особлива категорія державних службовців, які називаються статутними державними службовцями й на них поширюється спеціальне законодавство та статути, які регламентують їх правила добору на службу, процес проходження служби, соціальні гарантії, правовий статус та повноваження, систему звань, правила розрахунку заробітної плати, умови та підстави звільнення тощо, на них не розповсюджується дія Закону «Про державну службу». Наводиться правовий статус посадової особи поліції, який мають поліцейські, поліцейські чиновники та слухачі відомчої академії поліції за деяких умов. Висвітлюються норми Закону «Про поліцію» та Статуту про внутрішню службу щодо умов добору кандидатів в поліцію, вимог та цензів, які ставляться до них, підкреслюються обставини, за яких особа не може стати поліцейським або посадовцем внутрішньої служби, серед яких акцентується увага на вимогу про вірність та лояльність до Республіки Литви (наводяться умови, за якими особа не вважається лояльною, а саме співпраця з іноземними спецслужбами, заклики щодо порушення територіальної цілісності тощо). Визначаються вимоги та підстави, за якою особа не вважається із бездоганною репутацією. У дослідженні на основі Статуту про внутрішню службу вказані обставини, які унеможливлюють права особи обіймати посади в системі Міністерства внутрішніх справ. Наводяться підстави та умови звільнення з лав поліції та умови, за яких особа підлягає звільненню із служби в системі Міністерства внутрішніх справ. Акцентується увага на необхідності впровадження в Україні литовського досвіду щодо умов вірності та лояльності до держави.

***Ключові слова**: статутний державний службовець, посадова особа поліції, цензи, добір, підстави звільнення, лояльність, репутація.*

Relevance of the study. After the fundamental political changes that took place in 2014, Ukraine has taken a decisive course towards integration into the EU, the NATO bloc and in general has chosen the path of building a state of liberal democracy. However, the «club» of Western civilization sets high standards in many areas, including the rule of law, protection of citizens' rights and freedoms and confidence in the institutions entrusted with the task of observing and ensuring this. The state of affairs in the law enforcement system, in particular the police, is an important indicator of the state's readiness or unwillingness to join the EU. Of course, countries with developed democracies, where the police have high standards of social and material security of the police, the standards of a fair and impartial body, which has a high level of trust on the part of citizens, have gone through the police for hundreds and decades, they have had much more time than in Ukraine. At the same time, there is a particularly important and relevant for Ukraine experience of the states that were part of the Soviet Union, as well as Ukraine, but as a result of the reforms they already meet EU standards in public administration and are in this community. They did not have hundreds of years to build a police force, they started next to Ukraine, but they achieved much greater success in a much shorter time.

Therefore, it is necessary to study the experience of Poland, Lithuania, Latvia, Estonia, the Czech Republic, Slovakia and other countries comprehensively, including the relevant and

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important vector of research in the specifics of police service in these countries, the relevant regulations. The chosen research issues become especially relevant for Ukraine, taking into account that the National Police of Ukraine appeared recently, namely in 2015, and of course that it will continue to develop for a long time, and scholars, lawyers and legislators look for ways to improve Ukrainian legislation regulating the service in the National Police of Ukraine.

Recent publications review. Problems of development of civil service in general and service in police, in particular, are covered by domestic and foreign researchers, among which we can mention the following: V. Averyanov, Y. Bytyak, R. Botvinov, A. Britko, M. Bilynska, S. Dubenko, M. Inshin, V. Kikinchuk, D. Lemesh, V. Malinovsky, G. Mamchur, V. Oluyko, O. Parkhomenko-Kutsevil, L. Prokopenko, N. Sidorenko, O. Solonenko, L. Stelmashchuk, I. Shabatina, N. Yanuk and others.

The article's objective is to highlight the peculiarities of police service in the Republic of Lithuania in accordance with current regulations and to determine the rules that can be used in Ukraine.

Discussion. Service in the police in foreign countries due to their belonging to the Anglo-Saxon, Romano-Germanic systems of public service, has its own characteristics in the context of the role and place in the structure of the public service. In general, researchers identify several key factors that may also influence the specifics of the public service system, including features of the historical development of the country (for example, stay in the Russian Empire or the Soviet Union, depending on the duration had a fundamental impact on a number of post-Soviet countries including not only Ukraine, but also Georgia, Poland, Latvia, Lithuania and Estonia and others); the specifics of belonging to a legal family have already been mentioned; form of state, i.e. the form of state order, government and political regime [1, p. 42].

In the Republic of Lithuania, police officers are classified as a special category of public servants. In general, the basic principles of service in the police are determined by the Law «On Police» of 1990 [5] and the Law «On Police Activities» of 2000 [4]. The Law «On Public Service» of 1999 stipulates that among the categories of public servants there are so-called statutory public servants, whose service is regulated by the statute approved by law, which establishes various special rules for selection for civil service, service process, special rules for calculating wages and social guarantees, dismissal and other circumstances related to the peculiarities of the conditions of service (Part 7 of Article 2) [3]. Also in item 10 of h. 6 Art. 4 of the Law states that this Law does not apply to statutory civil servants.

Art. 1 of the Law on the Police of 1990 states that the police are the executive body of state power that ensures the protection of law and order. The main tasks of the police are the prevention of crimes and other offenses, the detection of crimes, protection of public order, etc. [5]. According to Art. 5 of the Law, which determines the legal status of a police officer, the state and laws of the Republic of Lithuania guarantee the honor and dignity, life and health, rights and freedoms of police officers, such as policemen, police officials and in some cases students of the Lithuanian Police Academy. This article states that a police official is a citizen of the Republic of Lithuania who is in the service of the police and holds a position and performs police functions. It is also stated that he/she everywhere and always has the legal status of a representative of the authorities and the official title (which indicates the peculiarity of the process of police service included) [5].

The Law «On Police Activities» of 2000 specifies that according to Part 3 of Art. 2 a police official is a citizen of the Republic of Lithuania who has been admitted to a police institution as a statutory civil servant and empowered in the field of public administration in relation to persons who are not subordinate to him/her, and in Part 5 of Art. 2 specifies the content of the status of a police official – is defined by this and other laws a set of official rights and responsibilities, which is established by legal regulations governing the recruitment and dismissal of a police official, his/her rights, duties, responsibilities, wages, social and other guarantees [4].

Section III «Service in the Police» of the Law «On Police» of the Republic of Lithuania defines the basic requirements for police candidates, the procedure for selection and service, as well as dismissal and training of candidates for service in the Police. According to Art. 25 of the Law, recruitment to the police takes place on a voluntary basis through selection. There are a number of requirements and qualifications for police officers. The age requirement is the minimum limit of 18, there is a language qualification, namely the need to speak the state language, it is also noted that the education, personal qualities, business and physical training and health status of a person should be able to perform duties a policeman, i.e. a police officer or a police official. Selection for the service takes place only after the conclusion of the medical

commission at the Ministry of Internal Affairs. Persons who are hired for the first time and who do not have special or higher education receive the status of an intern (for a period of one year). There is a common practice in Europe ban on membership in political parties for the police. The order of service and its conditions, except for the Law «On Police» and other legislative acts, are regulated according to par. 6 Art. 25 of the Law approved by the government by the Statute on internal service in the police and the Statute of the police. Police officers are allowed to engage in research and teaching activities in addition to police service [5].

Art. 27 contains provisions on police ranks in order to determine the length of service, qualifications and positions held by a person and for internal hierarchical interaction. Ranks are awarded in case of appointment to the position, as well as after passing the qualifying exam. It also provides for the use of qualification categories of job titles to indicate the qualifications of a police officer. Art. 28 identified nuances of uniformity in the police [5].

The conditions under which police officers are to be dismissed are important. In total, the Law provides for eight of them: at one's own will, upon reaching the age limit; for health reasons; in the attestation procedure; in cases stipulated by the Police Statute (i.e. for violation of discipline, etc.), in case of participation in strikes; by court decision or verdict; due to loss of citizenship [5]. Police officers have the opportunity to appeal the dismissal in court.

Among the peculiarities of service in the Police, according to Section III of Art. 30 it provides for the possibility of involving interior employees in the performance of police duties. Art. 31 of the Law defines the issue of forming a police reserve, which includes police officers who were dismissed for objective reasons. The conditions and procedure for formation are defined by the Regulations on the Police Reserve of the Republic of Lithuania [5]. Also Art. 32 of Chapter III contains provisions on training for the police, which must be trained in special schools, and for persons with higher education who have joined the police, retraining courses are provided.

Regulations on service in the Lithuanian police are detailed and specified in the «Statute of the Internal Service» [6]. Art. 1 defines the purpose of the statute, namely the establishment of the principles of internal service, the status of officials of the internal service system, admission and dismissal, admission and training in departmental vocational schools, responsibility, promotion, wages, social and other guarantees. In addition that Statute provides for the definition of principles and features of trade unions in statutory institutions [6].

According to Art. 2 of the Law «On Police» the principles of policing are the principles of democracy, humanism, legality, social justice, publicity, professional secrecy, unity and collegiality [5]. Service in the internal affairs bodies is based on the principles of the rule of law, equality, political neutrality, transparency, career, compensation for the peculiarities of the internal service, subordination, as well as the continuous performance of official duties [6].

The Statute also details the requirements for a candidate for service in the police and the internal service in general (in the Ministry of the Interior). It should be noted that in 2018, the Statute was amended in accordance with the Law «On Amendments to the Statute of the Internal Service» [2], which was reflected in the requirements for candidates, the procedure for dismissal, and so on. In addition to the mentioned citizenship qualification and language qualification, the age qualification is specified, the minimum age of 18 is specified according to the Law «On Police», but the maximum age limit of 60 is also mentioned here. A police officer must have an impeccable reputation. Art. 3 contains rules on factors that do not allow the candidate's reputation to be considered faultless [2].

Such factors are convictions for an intentional criminal offense, regardless of whether the conviction has been expunged or revoked; if the person is released from criminal liability in the manner prescribed by law and less than three years have passed; if the person has previously worked as a public servant, judge, notary, prosecutor, lawyer, or in the national defense system and was dismissed for humiliation of an official, contempt for a judge, professional ethics and violation of ethical norms of notaries, etc.; for dismissal from the civil service for illegal actions and from the date of dismissal less than three years have passed, or for a disciplinary offense in the form of dismissal from office and less than three years have passed; was dismissed or lost the right to engage in certain activities due to non-compliance with the requirements of impeccable reputation, as determined by other laws, or due to violation of ethical norms, and less than three years have passed since the dismissal; was a member of an organization that is prohibited by law and less than three years have passed since the termination of membership in the organization [2].

The next important condition is extremely relevant for today Ukraine, the situation contained in paragraph 4 of Part 1 of Art. 8 of the Statute in accordance with the Law «On Amendments to the Statute of the Internal Service» on Loyalty or Loyalty to the Republic of Lithuania. According to Art. 10 of the new version of the Statute of Loyalty to the Lithuanian State, persons and officials applying for internal service must be loyal to the Lithuanian state. Signs of disloyalty are the presence of interests that are contrary to the interests of the Republic of Lithuania, if a person cooperates or has cooperated, maintains or was maintaining relations with special services or security services of foreign states or a person who cooperates or maintains such relations; a person takes part or was participating in the activities of a terrorist organization or terrorist group, maintains or was maintaining contacts with a person belonging to such organizations or groups; receives or has received funds from the military, special services or security services of foreign states, unless otherwise provided by international treaties or agreements of the Republic of Lithuania; calls for the abolition of the independence of the Lithuanian state, the violation of territorial integrity, the overthrow of the constitutional order or supports movements that call for such actions; if the person is engaged or has been engaged in other activities or has connections, or there are other circumstances or facts related to the person that give grounds to believe that the person's service in the internal service system will be incompatible with national security interests [2].

The Statute also specifies the minimum educational qualification set at the level of secondary education. The person must also have a sufficient state of health to perform the duties, in addition, the physical condition necessary for the specifics of the internal service (paragraphs 5-7 of Part 1 of Article 8) [2]. Article 16 additionally establishes the requirements according to which a person may not be hired for internal service, namely, one that does not meet the requirements of faultless reputation specified in the Statute (paragraph 1, part 1 of Article 16); if a person is suspected of committing a criminal offense (paragraph 2, part 1 of Article 16); if a person provides knowingly false information about himself/herself (paragraph 3 of Part 1 of Article 16); if the person is not loyal to the Lithuanian state (paragraph 4, part 1 of Article 16); if a person has conflicts of interest in matters of appointment to a position in a public institution in relation to close relatives and direct subordination (paragraph 5 of Part 1 of Article 16); in the presence of the circumstances specified in items 1, 4-6 of Art. 24 of the Statute (paragraph 6, part 1 of Article 16), namely, if a person is elected or appointed a member of a self-governing body, works at an enterprise, institution or organization and receives remuneration for it; holds more than one position of a civil servant, works under an employment contract in a government agency, where he/she is an official; to participate in or be a member of a political party or organization; if other compromising data were found (paragraph 7, part 1 of Article 16) [2].

Article 72 provides the grounds for dismissal of a person from the internal service: at his/her own request, after reaching the age limit specified in Art. 73 (there is a differentiation according to which managerial level the person holds, in the case of primary levels after reaching 55 years of age, middle level – after 60 years of age, and senior officials – after reaching 65 years of age); decision on dismissal on the proposal of the attestation commission; for health reasons; loss of citizenship; rejection of the oath; when a person's behavior degrades the name of the official; for unsatisfactory internship results; upon the entry into force of a court decision according to which a person has been convicted of an intentional crime or an intentional criminal offense or deprived of the right to work in law enforcement agencies; in cases of obviousness of the circumstances which are contained in item 16; in the case of entry into force of a court that declares illegal the decision to admit a person to the internal service; if the position of the person is liquidated and he does not agree to another proposed position; at the own request of the state pension of officers and soldiers; in the case of official punishment in the form of dismissal; by agreement of the parties [2].

Conclusions. Thus, the peculiarities of service in the Lithuanian police are contained in several legislative acts, namely in the Law «On Civil Service», «On Police», «On Police Activity» and in the Statute on Internal Service. The concept of policeman includes police officers, police officials and students of the departmental police academy. A police officer is a public servant, who in law is called a statutory civil servant. In the public service system police officers are guided by their own laws and statutes, which determine the procedure for selection, service, their powers, ranks, calculation of remuneration, social guarantees and conditions and grounds for dismissal. In comparison with the Ukrainian legislation on the requirements for a police candidate, it is worth focusing on such a requirement for a Lithuanian police officer as

fidelity or loyalty to the Republic of Lithuania. Ukraine has a negative experience in the statistics of the transition of police in the Autonomous Republic of Crimea and Donbas to the side of the occupier, however, the situation with police personnel and their position on Ukraine and the role of the aggressor state in the war requires the adoption of similar rules in Ukraine for screening potential traitors or those who take anti-state position from the ranks of civil service in general and the National Police in particular. However the situation with the grounds for dismissal from the service in the internal affairs bodies and the police, the Lithuanian experience should also be taken into account, which presupposes a lack of fidelity or loyalty to the grounds for dismissal.

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Abstract

The study deals with the peculiarities of service in the police of the Republic of Lithuania in relation to the general system of civil service, the status of the police and police officials, highlights the regulations governing the police. It is pointed out that in each country the formation of the specifics of the civil service and the police service was influenced by historical features, being in a certain legal family, the form of the state. It is established that in the Republic of Lithuania there is a special category of civil servants, called statutory civil servants, and they are subject to special legislation and statutes governing their selection rules, service process, social guarantees, legal status and powers, system of ranks, rules for calculating wages, conditions and grounds for dismissal, etc., they are not covered by the Law «On Civil Service».

The grounds and conditions of dismissal from the police and the conditions under which a person is subject to dismissal from service in the system of the Ministry of Internal Affairs are given. Emphasis is placed on the need to introduce in Ukraine the Lithuanian experience in terms of loyalty and loyalty to the state.

Keywords: *statutory civil servant, police official, qualifications, selection, grounds for dismissal, loyalty, reputation.*

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CONFLICTS ARISING DURING VERBAL COMMUNICATION BETWEEN LAW ENFORCEMENT OFFICERS AND THE PUBLIC

Дмитро Казначеєв, Володимир Тимофєєв. КОНФЛІКТИ, ЩО ВИНИКАЮТЬ ПІД ЧАС ВЕРБАЛЬНОГО СПІЛКУВАННЯ ПРАВООХОРОНЦІВ З НАСЕЛЕННЯМ. Е статті розглядаються проблеми, що виникають під час комунікації правоохоронців з населенням та ключові пункти довіри населення до правоохоронних органів. Адже саме від роботи патрульної поліції у більшій мірі і залежить те, яким чином громадяни ставитимуться до правоохоронних органів в цілому, та поліції зокрема, що безпосередньо впливає на бажання та готовність громадян допомагати правоохоронцям у випадку необхідності.

Однією з актуальних проблем, що не дозволяє поліцейським під час виконання службових обов'язків на достатньому рівні ефективно співпрацювати з населенням, є проблема професійного спілкування патрульного із громадянами. Дотримання етичних норм під час спілкування працівників правоохоронних органів, та поліцейських зокрема, передбачено низкою законодавчих та відомчих нормативно-правових актів як на національному рівні, так і в міжнародних документах, в яких прописані певні практичні рекомендації щодо культури спілкування працівників поліції з громадянами під час виконання ними своїх безпосередніх обов'язків щодо підтримання правопорядку. Розглядаються типи конфліктів у діяльності поліцейського при виконанні ним службових обов'язків, їх характеристика та причини виникнення, а також перешкоди для розвитку ефективного психологічного взаєморозуміння між правоохоронцями та громадянами. Визначаються основні показники довіри суспільства до працівників правоохоронних органів, що впливає на зниження рівня конфліктів під час виконання поліцейськими своїх обов'язків щодо забезпечення публічного порядку та безпеки. Наведені основні положення та рекомендації, відповідно яких повинна ґрунтуватись мовна поведінка поліцейського при спілкуванні з громадянами з метою недопущення конфліктних ситуацій під час виконання ним службових обов'язків щодо забезпечення публічного порядку та публічної безпеки.

Ключові слова: *поліцейський, конфлікт, комунікація, службові обов'язки, професійна діяльність.*

Relevance of the study. One of the decisive steps in the process of reforming the law enforcement system was the measures that formed the basis for changing the stereotypes that shaped public opinion about the police and the police in general. The measures envisaged and implemented by the current reform are aimed primarily at decisive changes in the activities of the new police, and should reduce the negative attitudes of the population to the police as a representative body of state power, including the formation of positive attitudes towards the National Police of Ukraine and its employees. The new law «On the National Police» provides new functions, rights and responsibilities of police officers, a radical overhaul of the system of

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public safety and order. The selection and training of new personnel, which form the basis of the patrol police has not only increased the level of public safety, but has also increased confidence among the population. Increasing public confidence in the police was one of the key goals of the reform of the Ministry of Internal Affairs. And it depends on the work of the patrol police to a greater extent how citizens will treat law enforcement agencies in general and the police in particular. It is the satisfaction of police officers that directly affects the desire and willingness of citizens to help law enforcement if necessary. To this end, new approaches have been developed to reinforce the desired trend, namely, rapid response teams have been set up to ensure public safety and order in rural areas, increase police presence, respond to calls and work more systematically with the population. However, even in a well-designed system, there are shortcomings that do not allow to ensure good general order.

Recent publications review. One of the urgent problems that prevents police officers from cooperating effectively with the population in the performance of their duties at a sufficient level is the problem of professional communication between the patrol and citizens. The culture of communication between law enforcement officers and the population was considered in their works by such scientists as: O. Balinska, O. Borisenko, O. Vynoslovska, L. Humenyuk, B. Dmitriev, L.Kazmirenko, V.Klachko, V. Kostyuk, V. Litvin, M. Striletska, N. Fedorovskaya and others. These studies are primarily aimed at determining the desired strategy of language behavior of police officers in the performance of their duties, but at present there are still issues that require a more detailed study of this problem.

The article's objective is to find out and identify conflicts that arise during verbal communication between law enforcement and the public.

Discussion. Observance of ethical norms during communication between law enforcement officers, and police officers in particular, is provided by a number of legislative and departmental regulations, including: Law of Ukraine «On the National Police» July 2, 2015, Law of Ukraine «On the Disciplinary Statute of the National Police of Ukraine» March 15, 2018, the order of the Ministry of Internal Affairs of Ukraine «On approval of the Rules of ethical conduct of police» November 9, 2016 №1179, as well as international acts ratified by Ukraine, UN General Assembly Resolution 34/169 «Code of Conduct for Law Enforcement Officials», Resolution № 690 (1979) of the Parliamentary Assembly of the Council of Europe «Declaration on the Police», etc.

The above-mentioned normative documents define norms of behavior and prescribe certain practical recommendations on the culture of communication between police officers and citizens in the performance of their direct duties. A police officer, as a law enforcement officer must: taking into account the circumstances that may arise in different situations, be friendly, without using profanity and slang; in the performance of official duties to show sensitivity that would fall under the form of preventive measures, namely police care; always tactfully and without raising his voice to communicate when addressing citizens, to give clear and comprehensive answers, when it is impossible to provide answers to the question, to explain where to go to resolve the issue; show respect for people, good manners and help those who need it; if there is a need to make a remark to the citizen, it should be done as correctly as possible, namely to introduce himself, according to the instructions, without interfering, to greet, explain what the violation is and the responsibility for it, etc. All actions of the police, both positive and negative, in any case, will affect the attitude not only to the police, but also to public authorities in general.

As a police officer, in the performance of his or her duties, he or she inevitably becomes a party of the conflict, as the current trend towards globalization, modernization and transformation of traditional lifestyles somehow produces a conflict of social behavior and coordination of different strata of society. Analyzing various works, we can determine that the conflict is a clash of opposing interests and views, tension and extreme aggravation of contradictions, which leads to active action, complications, struggles, accompanied by complex conflicts. Factors that are important for its emergence and course may be the perception of people, their attitudes, mental states, positions in relationships, individual personality traits [1]. Conflicts in the activities of police are characterized by: – imperfect organization of work, which is determined by: congestion, uncertainty of competence and functional responsibilities, constant responsibility; – conflicts of legal norms; – blurring of understanding of the norms of morality and life in society; – improper management by the management and excessive administration; – interpersonal hostility in the team [2, p.73].

The causes of such conflicts can be divided into groups: in the relationship between the individual and the group there are problems in connection with which a person has a wrong

reaction to others or, conversely, unjustified demands on the environment, overestimation of their skills and abilities, objective assessment and inconsistency of the possibilities of the environment, the discrepancy of these possibilities. Reasons that occur in the team, namely the lack of self-discipline in some team members, the presence in groups of people who are disorganized, socially unstable and immature, such for whom work in the team is not acceptable and desirable: careerists, robbers, egoists, etc. Many problems arise as a result of rejection of innovative processes in official activities – conservatism. There is a banal rudeness and lack of subordination, which manifests itself in rudeness, excessive meticulousness, sharpness, lack of flexibility in behavior, propensity to gossip and more. Reasons that directly depend on the law enforcement officer, such as low intellectual level, insufficient training, difficulties in service, difficult working conditions, weak material and technical base, lack of normal relations among colleagues, friendly environment, limited interactive relations of the employee, lack of motivation to work, physical data, lack of a certain system during the performance of official duties, contradictions of actions to the accepted norms, inconsistency of behavior of the employee's personality to the established statutory or formal norms adopted according to traditional habits, rules of informal communication, etc. [3, p.178].

Conflicts in the activities of employees of the National Police can be classified according to the following principle: 1) interpersonal: – between the employee and the object of intervention (or object of activity); – between one employee and another employee (or manager) of the same unit; 2) intergroup: – between different units; 3) intragroup: – between an individual employee (employees) and the unit; 4) personal. Interpersonal conflicts are clashes between several people; the situation of confrontation of the participants, which is perceived by them (at least one of them) as a significant psychological problem that needs to be solved and causes activity of the parties aimed at overcoming contradictions in the interests of both or one of the parties [4, p.16-18]. Interpersonal conflicts, in turn, are divided into: 1) motivational – conflicts of interest, i.e. when goals, plans, interests do not coincide with others; 2) cognitive – value conflicts, i.e. situations in which the participants are incompatible ideas; 3) active – role conflicts that arise due to violations of norms and rules of interaction. Intergroup conflicts are those that arise during the interaction of both individual members of groups and between groups, it is important that they perceive themselves and others as members of different groups. Intragroup conflicts, as well as interpersonal ones, are quite common. Intergroup conflicts can take the form of a contradiction between law enforcement and the external social environment. It is a matter of non-perception of the surrounding goals, attitudes, norms, which are represented by both individuals and informal or formal social entities, and are the object of activity or official intervention for the specified employee. These are individual offenders, criminal groups or groups, their social ties, including in the spheres of family, kinship, domestic, friendly, industrial and other contact relations. Such a conflict, as already noted, includes, on the one hand, mediated in the specific activities of the police, the interests, goals and objectives of the entire system of internal affairs, when it occurs, for example, through measures to protect public order, termination, exposure, investigation of crimes, road safety, etc., during which certain rights and freedoms of individual citizens are restricted, methods and means of coercion, including force, are used, etc. On the other hand, it is the interests, needs, goals, motives of offenders, which, in addition to actions related to their satisfaction, are carried out by the resistance of the environment under consideration, its open struggle with patrol police officers, etc.

If we consider the activities of the police only from the side of activities to combat offenses, then in this area we can distinguish two types of conflicts related to: – crime prevention; – activity on counteraction to offenses. The above types of conflicts require the police officer to adhere strictly to the law and to be professional. The second type of conflict, compared to the first, due to their typical emotional tension, duration is more dangerous to life and health. Depending on the presence or absence of socially useful purpose of conflicts in law enforcement can be divided into positive and negative. For example, a positive direction of the conflict can be considered when law enforcement officers have different versions and approaches to solving the problem of stopping the offense. However, when a police officer tries to achieve selfish or selfish goals, it is a negative conflict [5].

The members of the National Police have many functional responsibilities in their professional activities: protection of life, health, rights and freedoms of citizens of Ukraine, foreign citizens, stateless persons; in the fight against crime, protection of public order, property and to ensure public safety. Very important are the psychological aspects of positioning this body in society today as: public activity and police authority, popularization of law enforcement agencies

among the population, creating a positive image in the minds of citizens, forming a favorable public opinion to establish their own positions on the basis of generally accepted world norms, inherent in any civil society, trust among the population and the effectiveness of professional activities of employees of all units of the National Police. However, we can state that a significant obstacle to the development of effective psychological understanding between law enforcement officers and citizens is the prejudice and mistrust caused by the unprofessionalism of former police officers of Ukraine, corruption, stereotypes about the police and the alienation of public administration from the population. The fight against crime, delinquency and the prevention of criminal encroachments are impossible without the effective cooperation of the police and the population. Trust, as a special indicator of the effectiveness of the National Police on which the status of the police as a whole depends and what the level of public confidence is, depends on whether the police are viable. After all, the work of a state body that does not enjoy the respect of society can be considered useless. Maintaining this state can lead to increased social tensions in society. Public confidence in law enforcement agencies will stimulate the work of police officers, as it will give them a sense of the importance of their activities, which will lead to a strengthening of professional dignity, increase self-esteem. According to a study by the Kyiv International Institute of Sociology, in December 2015, 14.9% of the population trusted the National Police and 20.7% trusted the patrol police. Today, the level of trust of the population of Ukraine in the police, according to various sources, is from 40% to 55% [6]. The level of trust in the state of emergency is formed under the influence of several factors: – personal experience of communication with the state of emergency; – information received from the media; – the influence of the immediate environment. The majority of respondents noted that an important criterion for assessing the NP is: – politeness; – decency; – friendliness; – transparency, public activity; – appearance. It is safe to say that all these features are present in police officers, because in 2015 there were twice as many appeals to the police than in 2014, which is an indicator of increased trust. Among the reasons for distrust of law enforcement agencies, the majority of Ukrainians call bribery – 60.7%. In addition, 39.2% believe that the police themselves cover up criminals, 26.7% – are wary of abuse of power by law enforcement officers, 17.8% – believe that the police are engaged in formal bureaucracy, rather than actual detection of crimes, and 11.5 % believe that the professional level of the police is very low [6].

Conclusions. Employees of the National Police in the performance of their duties under the Law of Ukraine «On the National Police» to protect citizens from criminal and other encroachments, often as government officials are forced to use methods that may limit the rights of others under the law. The law is the same for everyone, and objectively assessing, it can be said that not all people can behave in accordance with generally accepted norms, laws, traditions, approved by society. That is why in such cases it is very important for police officers to remain polite and tolerant in different situations. And for a representative of the authority, it is also an indicator of professionalism, endurance and education. Therefore, the culture of communication of police officers is determined by whether they remain polite in various situations related to their professional activities, whether they show tolerance, maintain endurance, do not respond rudely to rudeness, even in conflict situations.

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Abstract

The article considers the problems that arise during the communication of law enforcement officers with the population and the key points of public confidence in law enforcement agencies. Here are the main provisions according to which the language behavior of a police officer during the performance of his duties should be based.

The main provisions and recommendations are given, according to which the language behavior of a police officer when communicating with citizens should be based in order to avoid conflicts during the performance of his official duties to ensure public order and public safety.

Keywords: *policeman, conflict, communication, job responsibilities, professional activity.*

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ACTORS OF ADMINISTRATIVE AND LEGAL SUPPORT OF SERVICE AND COMBAT ACTIVITY OF THE NATIONAL GUARD OF UKRAINE IN PEACETIME

Дмитро Корнієнко. СУБ'ЄКТИ АДМІНІСТРАТИВНО-ПРАВОВОГО ЗАБЕЗПЕЧЕННЯ СЛУЖБОВО-БОЙОВОЇ ДІЯЛЬНОСТІ НАЦІОНАЛЬНОЇ ГВАРДІЇ УКРАЇНИ В МИРНИЙ ЧАС. На основі аналізу чинного законодавства, що регулює суспільні відносини в секторі безпеки та оборони держави, у статті розглянуто суб'єктів адміністративно-правового забезпечення службово-бойової діяльності Національної гвардії України в мирний час. Побудова авторського бачення системи суб'єктів адміністративно-правового забезпечення службово-бойової діяльності Національної гвардії України в мирний час здійснена з урахуванням змістовного наповнення концепту «адміністративно-правове забезпечення».

Констатовано поділ законодавчо визначених функцій Національної гвардії України на три групи залежно від умов в яких функціонує це військове формування. Наголошено на тому, що адміністративно-правовий статус Національної гвардії України змінюється залежно від запровадження певного адміністративно-правового режиму, який передбачає зміну правового статусу фізичних (обмеження прав і свобод) і юридичних осіб, збільшення обсягу повноважень посадових та службових осіб Національної гвардії України у конкретно встановлених законом юридичних умовах.

Розглянуто повноваження Міністра внутрішніх справ України як суб'єкта адміністративно-правового забезпечення службово-бойової діяльності Національної гвардії України в мирний час. Проаналізовано роль та місце Головного управління Національної гвардії України та Командувача Національної гвардії України в адміністративно-правовому забезпеченні службово-бойової діяльності Національної гвардії України в мирний час.

Зроблено висновок, що суб'єкти адміністративно-правового забезпечення службово-

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бойової діяльності Національної гвардії України характеризуються через структуру та їх адміністративно-правовий статус. Узагальнено, що метою суб'єктів адміністративно-правового забезпечення службово-бойової діяльності Національної гвардії України в умовах мирного часу є досягнення заздалегідь визначеного, запропонованого стану системи службово-бойової діяльності Національної гвардії України, який дозволяє вирішувати певну проблему, ефективно виконувати завдань і функції Національної гвардії України, закріплені у законодавстві України.

Ключові слова: *Національна гвардія України, адміністративно-правове забезпечення, суб'єкти адміністративно-правового забезпечення, службово-бойова діяльність, мирний час.*

Relevance of the study. In the context of drastic renewal of the security and defense sector of Ukraine, aimed to build a highly effective system of national security, one of the main directions is the development of military formations with law enforcement functions. It is one of the main tasks of large-scale administrative reform and aimed to a comprehensive restructuring of existing public administration systems and the development of a new «European» state.

The thesis is confirmed by updating and approving the system of strategic documents of security and defense planning (Military Doctrine of Ukraine [1]; National Security Strategy of Ukraine [2]; Sustainable Development Strategy «Ukraine 2020» [3]; Concept of security and defense sector development [4]; Strategic Defense Bulletin [5], etc.), the adoption of the Law of Ukraine «On National Security of Ukraine» [6].

The approval of these documents defines for the National Guard of Ukraine, a military formation with law enforcement functions [7, Art. 1], a number of tasks and declared that its development should be aimed to improve capacities of performing public security and public order, physical protection of critical infrastructure objects, participation in the protection and defense of the state border, as well as support for operations of the Armed Forces of Ukraine in crisis situations that threaten national security and in a special period. And the priority area for further activities of the National Guard of Ukraine, in accordance with the plan of priority actions of the Government, is to ensure its development in terms to improve the efficiency of national security and defense [8].

Achieving these goals and performing the tasks is entailed in the implementation of measures aimed:

– to equip military units of the National Guard of Ukraine with the latest and modernized armaments, military and special machinery, special means and equipment taking into account their needs;

– to ensure the development of combat and special training system;

– to improve the NGU management system;

– to integrate of the combat and special training system of the National Guard of Ukraine into a single system of security and defense sector training with the involvement of lectors, instructors from NATO and EU member states, also, if there will be such need, preservation of specialization and individual training system of the National Guard of Ukraine, etc. [9].

Recent publications review. General issues and legal principles of administrative and legal support of law enforcement agencies and military formations with law enforcement functions were considered in the works of O.V. Ahapov, O.M. Bandurka, A.I. Berlach, S.M. Husarov, U.V. Dubko, I.V. Zozulya, R.A. Kalyuzhniy, V.K. Kolpakov, O.H. Komisarov, M.V. Korniyenko, V.V. Krutov, S.O. Kuznichenko, M.V. Loshytskiy, V.I. Olefir, O.I. Ostapenko, V.P. Petkov, A.M. Podolyaka, Kh.P. Yarmaki, O.N. Yarmysh and others.

The direct theoretical basis for the study of service and combat activities of the NGU are the scientific works of Yu.V. Allerov, S.V. Belay, G.A. Drobakha, I.O. Kyrychenko, O.V. Kryvenkj, V.A. Laptiy, S.T. Poltorak, A.S. Spaskiy, O.M. Shmakova, S.A. Yarovyy and other domestic specialists.

The article's objective is to analyze the current legislation which regulates public relations in the security and defense sector of the state and the subjects of administrative and legal support of combat service of the National Guard of Ukraine in peacetime through the prism of changing the administrative and legal status of the National Guard of Ukraine according to establishment of the certain administrative and legal regime.

Dicussion. Sharing the position of O.V. Ahapov that the effectiveness of the practical activities of law enforcement agencies and military formations, above all, depends on the organized management system, through which the coordination of such structures during the implementation of their respective tasks and functions [10, p. 103] it should be mentioned that the National Guard of Ukraine, as a military formation with law enforcement functions, the scope

of which includes issues of internal security and stability in the state, is under constant control by various branches and bodies of state power and non-governmental organizations.

Returning to the content of the concept of «administrative and legal support», it should be mentioned that this is one of the key categories of the science of administrative law. This issue often attracts the attention of scientists and becomes the subject of scientific researches.

Administrative and legal support is considered as one of the types of legal support, which, according to M.V. Tsvik, is a purposeful action on human behavior and social relations through legal (judicial) means [11, p. 327].

K.V. Barsukov considers the concept of «insuring» in two senses. Firstly, as the activities of state-authorized bodies to perform their functions, secondly, as a result of this activity, this expressed in actual implementation of legal requirements, rights and freedoms of citizens [12, pp. 7, 9, 12].

G.V. Atamanchuk understands a «subject of public administration» as a set of citizens and state bodies involved in the formation and implementation of state-governing influences. At the same time, in the structure of the subject of public administration G.V. Atamanchuk additionally proposes to single out components (employees of the state apparatus) and elements (statuses, functions, structures, methods, resources, powers, responsibilities, etc.) [13, pp. 115, 514, 521].

Same position is held by Yu.V. Kovbasyuk, K.O. Vashchenko, Yu.P. Surmin, who by the term «subject of management» understand a system endowed with certain competence and state powers, which allows to implement its will in the form of management teams or decisions that are binding, it is a system that manages [14, p. 239]. Considering multilevel structure of the system of subjects of management of the NGU, all subjects can be classified into three groups, namely: 1) general political bodies that form the state policy in the field of management of the National Guard of Ukraine – the Verkhovna Rada of Ukraine; President of Ukraine; The Cabinet of Ministers of Ukraine (not only formulates state policy, but also acts as a body responsible for its implementation); 2) bodies that implement the state policy in the field of management of the National Guard of Ukraine – the Ministry of Internal Affairs of Ukraine; Ministry of Defense of Ukraine; Ministry of Economic Development and Trade of Ukraine (hereinafter – MEDTU); local executive bodies; 3) non-governmental bodies: in particular public, charity and volunteer organizations, etc.

In turn, I.B. Tatsyshyn, without defining the very concept of administrative and legal support, notes that its tasks should be understood as a set of measures of public authorities aimed at implementing public policy in a particular area. These tasks can be divided into the following groups: 1) economic; 2) regulatory and legal; 3) social; 4) managerial [15, p. 9].

Despite the significant number of definitions and scientific opinions on the nature and components of administrative and legal support, it can be concluded that theoretically it is considered in an absolute sense and a narrow view. In an absolute sense, administrative and legal support can be defined as the regulation of public relations by the authorities authorized by the state, their legal consolidation through legal norms, protection, implementation and development. As for the narrow view, the definition will change depending on what social relations will be discussed. The second key point is to determine the structure of administrative and legal support. The analysis of the scientific literature gives grounds to single out five of its elements: 1) the object of administrative and legal support; 2) the subject of administrative and legal support; 3) norms of law (norms of administrative law); 4) administrative and legal relations and their content; 5) guarantees, measures, means, forms and methods of administrative and legal support. In this case, the object will be public relations (activities) that require government regulation. In the researches of domestic scientists it is revealed through the definition of the concept, essence, history of origin, legal basis, purpose, functions, principles, elements and so on.

The subject is a body (or bodies) authorized by the state, which is empowered to implement, protect or develop such relations. First of all, such subject will be characterized by its structure and administrative status. Norms of administrative law regulate public relations in the field of public administration. Administrative-legal relations are legal relations that arise, develop and terminate between the subject and the object in the process of implementation of the provisions of administrative-legal norms. Guarantees, measures, means, forms and methods of administrative and legal support will act as elements that actually implement in practice the policy of the state in relation to certain social relations [16, p. 48].

The main activities of the National Guard of Ukraine are carried out both by methods of

service and combat activities, and by methods of combat activities. Service and combat activity is a type of law enforcement activity, which is inherent in the forces (formation) of internal security of the state and consists in the implementation of law enforcement tasks mainly through their official activities (law enforcement methods), and in aggravation – and military methods [17, p. 3]. Analysis of the main functions of the National Guard of Ukraine listed in Art. 2 of the Law of Ukraine «On the National Guard of Ukraine», allows us to conclude that for their implementation there must be certain legal conditions [18, pp. 3-7]. In this regard, the division of the legally defined functions of the National Guard of Ukraine into three groups depending on the conditions in which this military formation operates is scientifically:

1) in peacetime;

2) during the introduction of the legal regime of the state of emergency in Ukraine or in some of its localities, or the emergence of another crisis situation that threatens the national security of Ukraine;

3) in the case of the introduction of martial law.

In this context, we share the opinion of S.O. Kuznichenko that one of the substantive administrative and legal consequences of the introduction of administrative and legal regimes is a change in the legal status of individuals (restrictions on rights and freedoms) and legal individuals [19, p. 176]. Thus, using the administrative-legal regime as a criterion for the classification of functions, we can see how the administrative-legal status of the National Guard of Ukraine changes and increases the powers of its officials and officials in the legal conditions specified by law.

There is no doubt that in peacetime the National Guard of Ukraine performs the functions of law enforcement (law enforcement functions), in particular: 1) protection of the constitutional order of Ukraine, the integrity of its territory from attempts to change them by force; 2) protection of public order, ensuring the protection and preservation of life, health, rights, freedoms and legitimate interests of citizens; 3) ensuring the protection of public authorities, the list of which is determined by the Cabinet of Ministers of Ukraine, participation in the implementation of measures of state protection of public authorities and officials; 4) protection of diplomatic missions, consular posts of foreign states, missions of international organizations in Ukraine and others [7]. The above functions are carried out by using the methods of service and combat activities through the units, units and formations of such types of service as: patrol, guard and convoy [20, p. 148].

At the same time, there is a problem of legislative consolidation of the purpose (goal) of management of such military formations with law enforcement functions as the National Guard of Ukraine. According to the generally accepted scientific position of legal scientists, the purpose of management is a predetermined, proposed state of the system, the achievement of which in the management process allows to solve the problem [21, p. 21; 22, p. 238]. It should be noted that the general purpose of the National Guard of Ukraine is organizational and managerial actions of the subjects of the National Guard of Ukraine, aimed at effective implementation of tasks and functions of the National Guard of Ukraine, enshrined in Ukrainian legislation.

In this aspect, it is worth quoting the opinion of O.M. Bandurka that the division of specific goals into further and immediate (strategic and tactical) reflects the dynamics of long-term and immediate interests of participants in management processes. It is the strategic interests that are a necessary condition for their implementation in the future and also are a factor in the development of the system [23, p. 18].

In continuation of this thesis, we note that the tasks of a short-term and long-term perspective, as a rule, is embodied in the relevant regulatory sources (government development programs, doctrines, concepts, plans, etc.). They are a necessary prerequisite for improving the management of the entire sphere of activity of the National Guard of Ukraine [10, pp. 48-49].

The National Guard of Ukraine as a military formation with law enforcement functions, which is part of the Ministry of Internal Affairs of Ukraine and is designed to perform tasks to protect and protect life, rights, freedoms and legitimate interests of citizens, society and the state from criminal and other illegal encroachments, protection of public order and ensuring public safety, as well as in cooperation with law enforcement agencies – to ensure state security and protection of the state border, the cessation of terrorist activities, the activities of illegal paramilitary or armed groups (groups), terrorist organizations, organized groups and criminal organizations in peacetime of the Security Forces of Ukraine, which by the Constitution and laws of Ukraine are entrusted with the functions of ensuring the national security of Ukraine [6, item. 1(16) Art. 1] and performs law enforcement functions, as well as develops the capabili-

ties necessary to perform tasks within the defense forces [6, Part 5 of Art. 18].

The total number of the National Guard of Ukraine in accordance with the legislation of Ukraine is no more than 60 thousands of personnel. If necessary, the number of the National Guard of Ukraine may be increased by the relevant law [7, Part 7 of Art. 5].

The subjects of administrative and legal support of service and combat activities of the National Guard of Ukraine in peacetime are:

1. Minister of Internal Affairs, who carries out military and political (activities aimed at ensuring the implementation of state policy in the field of the National Guard of Ukraine, political and strategic goals, principles and directions of its development) and administrative (activities aimed at comprehensive support of the National Guard of Ukraine, its functioning and development in order to fulfill the main tasks of state policy in the field of its activities) management [7, Part 1 of Art. 6].

Main Headquarters of the National Guard of Ukraine is the main body of the military management of the National Guard of Ukraine tasked with participating to ensure the implementation of state policy on the activities of the National Guard of Ukraine; organization of performance the tasks and main functions assigned to the National Guard of Ukraine; planning the use of territorial commands of the National Guard of Ukraine, their military management bodies, which are territorial commands of the National Guard of Ukraine, formations, military units (subdivisions), higher military educational institutions, military training units (centers), bases, health care institutions and institutions that are not part of the territorial associations of the National Guard of Ukraine; providing direct military leadership to the territorial departments of the National Guard of Ukraine, formations, military units (subdivisions), higher military educational institutions, military training units (centers), bases, health care institutions and institutions that are not part of the territorial commandments of the National Guard of Ukraine [24, item 3];

2. The Commander of the National Guard of Ukraine carries out the direct military leadership of the National Guard of Ukraine (activities aimed at implementing measures for the development of the National Guard of Ukraine, its technical equipment, training and comprehensive support, determining the basics of its application and management during service and combat activities) and at the same time is the chief of the main body of military management of the National Guard of Ukraine [7, Art. 7];

3. Territorial Command of the National Guard of Ukraine is a body of military management of the operational and territorial command and provides management of service and combat, administrative and economic, financial and daily activities of formations, military units and subdivisions that are part of the operational and territorial command [25, item 3 of R. 1]. The main tasks of the territorial command of the National Guard of Ukraine are: providing direct management of units, military units and subdivisions that are part of the operational and territorial command, their combat and mobilization readiness, making up of their staff, weaponry, military equipment and material technical assets; preparation of all types of service and combat activities of subordinate formations, military units and subdivisions and coordination of their joint actions during the performance of assigned tasks; participating in ensuring the implementation of state policy on the activities of the National Guard of Ukraine; organization of execution by subordinate formations, military units and subdivisions the tasks assigned to the operational and territorial command; planning within its competence the use of formations, military units and subdivisions which are the part of the operational and territorial command [25, item 1 of R. II].

4. Commands of formations, military units (subdivisions), military training units (centers), higher military educational institutions, bases, health care institutions and institutions that are not part of the operational and territorial commands of the National Guard of Ukraine [7, p. 3, item 1 of Art. 5], which provide management of service and combat, administrative and economic, financial and daily activities of subordinate units.

Conclusions. All mentioned above ensures us to believe that the improvement of the management system of the National Guard of Ukraine is a key element of the Concept of Development of the National Guard of Ukraine until 2020 and on which, above all, depends the effectiveness of practice activities, provides a clear delineation of administrative and legal service and combat activities of the National Guard of Ukraine.

Inversely, the actors of administrative and legal support of military service of the National Guard of Ukraine are characterized by the structure and administrative and legal status and is the state body (or bodies) authorized by the state, have the authority to implement, pro-

tect or develop certain relations.

It should be noted that the administrative and legal status of the National Guard of Ukraine changes depending on the introduction of a certain administrative and legal regulation, which keeps in view a change in the legal status of individuals (restrictions on rights and freedoms) and legal entities, increasing the powers of officials of the National Guard Ukraine in the legal conditions specifically established by law.

The general purpose of the National Guard of Ukraine management, as predetermined, proposed state of the system, the achievement of which in the management process allows to solve a problem, is organizational and managerial actions of the National Guard of Ukraine, aimed at effective implementation of tasks and functions of the National Guard of Ukraine captured in the legislation of Ukraine.

The actors of administrative and legal support of service and combat activities of the National Guard of Ukraine in peacetime are: the Minister of Internal Affairs of Ukraine; main headquarters of the National Guard of Ukraine; Commander of the National Guard of Ukraine; territorial command of the National Guard of Ukraine; command of formations, military units (subdivisions), military training units (centers), higher military educational institutions, bases, health care institutions and institutions.

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Abstract

Based on the analysis of the current legislation governing public relations in the security and defense sector of the state, the article considers the subjects of administrative and legal support of service and combat activities of the National Guard of Ukraine in peacetime. It is emphasized that the administrative and legal status of the National Guard of Ukraine changes depending on the introduction of a certain administrative and legal regime, which provides for a change in the legal status of individuals (restrictions on rights and freedoms) and legal entities, increasing the powers of officials of the National Guard of Ukraine, specifically established by law legal conditions.

***Keywords**: National Guard of Ukraine, administrative and legal support, subjects of administrative and legal support, service and combat activities, peacetime.*

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COMBATTING ADMINISTRATIVE OFFENCES COMMITTED BY FOREIGNERS AS A COMPONENT OF ADMINISTRATIVE ACTIVITY OF STATE MIGRATION SERVICE OF UKRAINE

Світлана Рижкова. ПРОТИДІЯ АДМІНІСТРАТИВНИМ ПРАВОПОРУШЕННЯМ ІНОЗЕМЦІВ ЯК СКЛАДОВА АДМІНІСТРАТИВНОЇ ДІЯЛЬНОСТІ ДЕРЖАВНОЇ МІГРАЦІЙНОЇ СЛУЖБИ УКРАЇНИ. Досліджено особливості адміністративної діяльності Державної міграційної служби України у сферах міграції (імміграції та еміграції) та організації і функціонування системи підпорядкованих органів, підрозділів та установ у протидії адміністративним правопорушенням іноземців як складової адміністративної діяльності ДМС. Встановлено, що адміністративна діяльність ДМС України може бути поділена на внутрішньоорганізаційну діяльність та зовнішньоорганізаційну відповідно. Визначено, що адміністративну діяльність ДМС України можна поділити на адміністративно-наглядову, адміністративно-розпорядчу та адміністративно-юрисдикційну. Таким чином, адміністративна діяльність ДМС України може бути визначена як специфічна, врегульована переважно нормами адміністративного права, підзаконна, державно-владна, виконавчо-розпорядча діяльність, пов'язана з практичним здійсненням заходів, спрямованих на безпосередню реалізацію державної політики у сферах міграції (імміграції та еміграції) та організацію і функціонування системи підпорядкованих органів, підрозділів та установ.

Запропоновано авторське визначення протидії адміністративним правопорушенням іноземців, як складової адміністративної діяльності ДМС України, яка є різновидjv зовнішньоорганізаційної діяльності ДМС України, що полягає у врегульованій, переважно нормами адміністративного права сукупності організаційно-правових заходів, які здійснюються ДМС України з метою запобігання, виявлення та припинення порушень міграційного законодавства з боку іноземців, притягнення винних осіб до адміністративної відповідальності, виявлення і усунення причин та умов, що сприяють їх вчиненню.

Ключові слова: *Державна міграційна служба України, адміністративна діяльність, протидія, нелегальна міграція, іноземці, особи без громадянства.*

Relevance of the study. Ukraine's choice of a democratic path of development has led to the establishment of ties with the high-developed states of the world and its gradual integration into European and world organizations. Accordingly, along with European integration, issues related to migration policy and migration processes in Ukraine, which take place in today's conditions and affect the effectiveness of combating phenomena that threaten Ukraine's national security, in particular, illegal migration, are becoming a cornerstone.

The pandemic of the acute respiratory disease COVID-19, caused by the coronavirus SARS-CoV-2, has affected all areas of public relations, both internationally and nationally, including a significant impact on migration processes. Therefore, in order to prevent the spread of COVID-19, government agencies have taken measures to close the borders and repatriate some foreign workers, terminate transport links between countries, and so on. On the one hand, the taken measures have reduced the number of offenses in the field of illegal migration. On the other hand, according to the head of the National Police of Ukraine Ihor Klymenko, fraudulent schemes have not disappeared. The attackers have either transferred their «activities» to Ukraine or are seeking to circumvent the current quarantine restrictions.

Only during January-August 2020 law enforcement bodies found 64 groups of illegal immigrants (compared to 123 groups in the same period in 2019) which included 282 foreigners (compared to 519 people identified for the same period in 2019). Thus, the level of illegal migration in Ukraine has fallen by half. However, it should be noted that there have been

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changes in the regions of the country where such groups were found. In particular, this year it was only in Lviv, Zakarpattya, Chernivtsi, Volyn, Rivne, Zhytomyr, Kharkiv, Luhansk regions. Instead, in 2019, such facts were recorded in Kyiv, Vinnytsia, Odesa, Sumy and Kherson regions. Most foreigners came to our country (these are people who were found in groups of illegal migrants) from the following countries of origin: Afghanistan, Bangladesh, Sri Lanka, Turkey, India, Syria, Iraq, and Vietnam. In the past, the most common countries of origin for illegal migrants were Afghanistan, Pakistan, India, Bangladesh, and Vietnam. Regarding the channels of transit movement of illegal immigrants, in recent years the main channels for illegal migrants to enter Ukraine are Luhansk, Sumy and Kharkiv regions. Usually the city of Kyiv and Kyiv region, Odesa region, Zakarpattya region become places of temporary dislocation (transshipment, transfer) of illegal migrants on the way to EU countries. In addition, due to restrictive anti-epidemic measures, some foreigners released in 2020 from penitentiaries and temporary detention facilities for foreigners and stateless persons have become hostages of illegal stay and aimed at entering the EU illegally [1].

The problem of illegal migration of foreigners, who are mostly sent in transit through Ukraine to Western Europe, is quite serious. Although the number of migrants with unregulated status in Ukraine is incomparably smaller than in the EU. But war, economic problems and insufficient capacity of relevant institutions make it difficult to identify immigrants without proper status, their detention and deportation from Ukraine.

The State Migration Service of Ukraine predicts further intensification of activities of persons and organizations involved in making channels of illegal or covert migration from the territory of migration risk countries in Asia, the Middle East and Africa through Ukraine to EU countries.

It should be noted that the migration situation in Ukraine continues to be determined by two main factors: the migration crisis in the EU, which affects the formation of channels of illegal immigration in a number of regions, including in neighboring EU countries, and mass labor migration from Ukraine to other countries [2].

Despite the decrease in the number of cases of violation of migration legislation by foreigners and stateless persons, the risks of committing administrative migration offenses and administrative offenses of a general nature by foreigners staying in Ukraine remain pressing.

Thus, according to the statistical indicators of the State Migration Service under Part 1 of Art. 203 of the Code of Ukraine of Administrative Offenses (Violation by foreigners and stateless persons of the rules of stay in Ukraine and transit through the territory of Ukraine), for the 1st half of 2020 5475 individuals were imposed to administrative liability [3].

Violators of migration legislation were fined UAH 13,940,341 under the State Migration Service regulations. Compared to the 1st half of 2019 under Part 1 of Art. 203 of the Code of Ukraine of Administrative Offenses, 12454 persons were brought to administrative liability [4]. In our opinion, the decrease in the number of violated migration legislation on the number of administrative protocols drawn up in 2020 was influenced by the worldwide spread of the incidence of COVID-19 caused by the coronavirus SARS-CoV-2. In this regard, due to the introducing of anti-epidemic restrictions, during 2020 the LCA together with the National Police of Ukraine did not conduct nationwide operational and preventive measures «Migrant», which aims to combat migration offenses of foreigners.

Prevention and combating relevant violations, as well as elimination of their harmful impact on state-protected public relations is achieved through the functioning of law enforcement agencies, and especially – the State Migration Service of Ukraine, as a key actor in implementing state policy in the field of migration (immigration and emigration) including combating illegal migration, citizenship, registration of individuals, refugees and other categories of migrants specified by the legislation.

Recent publications review. The theoretical basis for writing this article were the works of domestic scholars in administrative legal sciences, in particular: O.O. Bandurka, M.M. Bohuslavskyy, I.K. Vasylenko, D.V. Holoborodko, V.K. Kolpakov, O.V. Kuzmenko, T.P. Minka, A.P. Mozol, S.O. Mosyondz, V.I. Olefir, O.I. Piskun, B.V. Proshchayev, A.A. Rubanov, N.P. Tyndyk, S.B. Chekhovych, etc.

The article's objective is to analyze the characteristics of administrative activity of the State Migration Service of Ukraine in combating administrative offense of foreigners as its component.

Discussion. The State Migration Service of Ukraine is a central executive body, whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Min-

ister of Internal Affairs of Ukraine [5], and the main task of the Ministry of Internal Affairs of Ukraine, among other things, is the formation of state policy in migration (immigration and emigration), combating illegal (illegal) migration, citizenship, registration of individuals, refugees and other categories of migrants specified by law [6]. Regarding the clarification of the peculiarities of the administrative activity of the State Migration Service of Ukraine and combatting administrative offenses of foreigners as its component, we note that the administrative activity of the State Migration Service of Ukraine can be divided into internal and external organizational activities respectively. Following a different approach, the administrative activity of the State Migration Service of Ukraine can be divided into administrative-supervisory, administrative-managerial and administrative-jurisdictional ones.

Further we'll consider in detail each of the selected types of administrative activities of the State Migration Service of Ukraine.

Internal-organizational ones are such activities related to the functioning of the system and management within it. These include internal organizational changes in the structure of the State Migration Service of Ukraine, the issuance of orders, instructions, guidelines, etc., work schedule and so on.

This type of activity corresponds to administrative-managerial and administrative activities. Administrative activities within the LCA of Ukraine are aimed at organizing the work of structural units: departments (Department of Organizational Support; Department for Foreigners and Stateless Persons), offices (Office of International Relations, Office of Personnel), divisions (Division of International Cooperation and Organizational and Protocol support), sectors (Sector of organization and analysis of administrative proceedings; Sector «Training and Methodological Center», Sector for International Technical Assistance). It consists of defining the structure of the relevant units, its improvement, recruitment and personnel placement, planning and coordination, decision-making for a certain period or for specific activities, operations, providing practical assistance to subordinate units and employees, interaction with other services, generalization and dissemination of best practices of the central executive body, which ensures the implementation of state policy in the field of migration, control and verification of tasks, encouragement of employees, their certification, use of disciplinary practices, etc.

The effectiveness of the internal-organizational activities of the State Migration Service of Ukraine is a condition for successful solving problems of implementing state policy in the field of migration (immigration and emigration), including combating illegal migration that occurs within the apparatus or the State Migration Service staff. The main areas of internal organizational administrative activities are: organizational and headquartering, staffing, ensuring legality and discipline and other areas of staffing; staff activities, in particular the deployment of forces and means, organizational and methodological work, control and inspection, information and analytical work, etc.

External-organizational one concerns the interaction with other actors. This includes public relations, other public administration bodies, public associations, etc. An example of this type of activity can be paragraph 10 of the above Regulation, that the State Migration Service of Ukraine, in accordance with its tasks carries out registration and issuance to citizens of Ukraine identity documents and confirm citizenship, temporarily detains and seizes such documents in cases stipulated by law [5].

The external administrative activity of the State Migration Service of Ukraine is aimed at detecting, preventing, and terminating administrative migration offenses and is in controlling the regime of staying of foreigners and stateless persons in Ukraine. In these cases, the State Migration Service of Ukraine enters into relations with officials of other institutions and organizations, as well as with citizens.

Administrative supervision is closely connected with external organizational activities. This type of administrative activity represents the managerial influence of the State Migration Service of Ukraine on public relations, the behavior of actors – participants in legal relations in the field of migration. And the more actively the State Migration Service of Ukraine uses the rights of administrative influence, the higher the effectiveness of the illegal migration combatting, the less conditions under which offenses can be committed by foreigners and stateless persons.

Thus, in order to prevent corruption offenses by employees of the State Migration Service of Ukraine during the performance of their duties, the anti-corruption program of the State Migration Service for 2020-2022 has been approved, related to the implementation of official activities by employees of the State Migration Service of Ukraine [7] the purpose of

which is to take a set of effective means and to introduce mechanism of the State Migration Service of integrity of civil servants related to the implementation of official activities by employees of the State Migration Service of Ukraine.

Administrative-jurisdictional activity is a relatively independent type of administrative activities which consists in the appropriately enshrined powers of the State Migration Service of Ukraine to examine and solve individual cases of conflict concerning its activities. These include the administrative consideration of complaints against illegal actions of employees of the State Migration Service of Ukraine, bringing persons who violated migration legislation to administrative liability, or the application of disciplinary measures against employees of the State Migration Service of Ukraine who have committed relevant disciplinary misconducts.

These types of work of the State Migration Service of Ukraine are separate vectors of a unified administrative activity of the State Migration Service of Ukraine.

Thus, the administrative activity of the State Migration Service of Ukraine can be defined as specific, regulated mainly by administrative law, bylaws, government, executive and administrative activities related to the practical fulfillment of measures aimed at the direct implementation of state policy in the field of migration (immigration and emigration) and the organization and functioning of the system of subordinate bodies, units and institutions.

In this regard, it should be emphasized that the basis of the content of combating administrative offenses of foreigners as part of the administrative activities of the State Migration Service covers the use of coercive measures and proper organization of counteraction, namely: prevention and termination of administrative offenses committed by foreigners and stateless persons.

Studying the concept of combating offenses, which undoubtedly include administrative migration offenses committed by foreigners and stateless persons, we propose to dwell on the views of individual scholars on this issue, which will allow to implement appropriate positions to formulate and justify their own definition.

In his own research, O.L. Hamaliy defines combating offenses committed by foreigners in Ukraine as a system of various activities and complex measures carried out by a system of countermeasures aimed at preventing, eliminating, neutralizing and limiting (weakening) the factors determining the offenses of foreigners in Ukraine. This scholar notes that the term «counteraction» as fundamental in administrative law and criminology has received in the legislation of Ukraine both positive and negative contextual features. The components of the structure of combating offenses committed by foreigners in Ukraine are only those activities that directly concerns foreigners [8].

In turn, measures to combat the offense are understood by V.Ye. Tambovtsev as the set of authoritative, restrictive in content physical or psychological actions used by officials of public authorities on the basis of administrative law that are measures of administrative coercion, including measures of administrative prevention; measures of administrative termination; administrative liability and organizational and legal measures to combat the offense [9, pp. 42-43].

Conclusions. Summing up, we emphasize that combatting administrative offenses of foreigners can be considered in two aspects: a) as a component of administrative activity of the State Migration Service of Ukraine and b) as a task set by the State Migration Service of Ukraine in accordance with the regulation of this service.

The above analysis gives us the possibility to offer the author's definition of combatting administrative offenses of foreigners as part of the administrative activities of the State Migration Service of Ukraine. Thus, such counteraction is a kind of foreign organizational activity of the State Migration Service of Ukraine, which is regulated, mainly by the rules of administrative law, a set of organizational and legal measures taken by the State Migration Service of Ukraine to prevent, detect and terminate violations of migration legislation committed by foreigners, bring perpetrators to administrative liability, identification and elimination of the causes and conditions that affect their commitment.

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Abstract

The article deals with peculiarities of administrative activity of the State Migration Service of Ukraine in the area of migration (immigration and emigration) and organization and functioning of the system of subordinate bodies, subdivisions and institutions in combatting administrative offenses committed by foreigners as a component of administrative activity of the State Migration Service.

There is the author's definition of combatting administrative offenses committed by foreigners as a component of administrative activity of the State Migration Service of Ukraine, which is a kind of external organizational activity of the State Migration Service of Ukraine.

***Keywords**: State Migration Service of Ukraine, administrative activity, combating, illegal migration, foreigners, stateless persons.*

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ACTIVITIES OF THE NATIONAL POLICE AS A SUBJECT OF ENSURING PREVENTION OF OFFENSES IN THE FIELD OF ILLEGAL TRAFFICKING OF DRUG SUBSTANCES, THEIR ANALOGUES AND PRECURSORS

Андрій Чаус. ДІЯЛЬНІСТЬ НАЦІОНАЛЬНОЇ ПОЛІЦІЇ ЯК СУБ'ЄКТА ЗАБЕЗПЕЧЕННЯ ПРОФІЛАКТИКИ ПРАВОПОРУШЕНЬ У СФЕРІ НЕЗАКОННОГО ОБІГУ НАРКОТИЧНИХ РЕЧОВИН, ЇХ АНАЛОГІВ ТА ПРЕКУРСОРІВ. У статті досліджується поняття адміністративно-правової протидії правопорушення у сфері незаконного обігу наркотичних засобів, психотропних речовин та прекурсорів та застосування Національною поліцією України різних заходів у сфері обігу наркотичних засобів, психотропних речовин та прекурсорів. Здійснено аналіз профілактичних заходів та їх особливості. Висвітлене питання системи суб'єктів протидії незаконному обігу наркотичних засобів, психотропних речовин, їх аналогів та прекурсорів.

Встановлено, що до завдань і обов'язків поліції відносяться: попередження і припинення злочинів та адміністративних правопорушень, виявлення обставин, що сприяють їх вчиненню, і в межах своїх прав вжиття заходів до усунення даних обставин.

Відповідно до стратегії державної політики щодо наркотиків на період до 2020 року та з метою координації діяльності центральних органів виконавчої влади, інших державних органів у сфері обігу наркотичних засобів, психотропних речовин і прекурсорів, протидії їх незаконному обігу досліджена можливість підготовка та подання Кабінетові Міністрів України пропозиції щодо утворення міжвідомчої координаційної ради з питань протидії обігу наркотичних засобів та психотропних речовин.

У даний час державна політика щодо профілактики наркоманії та правопорушень, пов'язаних з незаконним обігом наркотичних засобів, психотропних речовин та їх прекурсорів є важливим напрямком протидії правопорушенням, які посягають на здоров'я громадян, суспільну мораль, суспільний порядок і громадську безпеку. Профілактичні заходи сприяють не тільки виявлення правопорушень, а й встановлення та усунення причин і умов, які їм сприяють.

Дослідження присвячене висвітленню проблемних питань з профілактики правопорушень у сфері незаконного обігу наркотиків та протидії порушень у сфері антинаркотичного законодавства.

Розглядаються питання щодо визначення механізму притягнення до адміністративної відповідальності за правопорушення у сфері незаконного обігу наркотичних засобів та психотропних речовин, методів протидії порушень в сфері антинаркотичного законодавства, особливості взаємодії системи суб'єктів забезпечення протидії незаконному обігу наркотичних засобів та психотропних речовин,забезпечення протидії незаконному обігу, контроль за обігом.

Ключові слова: *профілактика правопорушень, Національна поліція України, профілактика у сфері незаконного обігу наркотичних речовин, їх аналогів та прекурсорів, суб'єкти протидії, психотропні речовини, їх аналоги і прекурсори.*

Relevance of the study. The urgency of the issue of measures to combat the circulation of narcotic drugs and psychotropic substances is certainly a priority for our society. Despite the fact that drugs have become a global problem facing law enforcement in recent years, the topic of drugs often becomes a lever of pressure not only on those guilty of such offenses, but a means of influencing all actors in the administrative or criminal proceedings.

The National Drug Strategy until 2020 is designed to humanize anti-drug legislation, focusing more on treatment rather than punishment of drug users. However, this does not mean that «use» or other actions related to narcotic drugs, psychotropic substances or their analogues do not entail legal liability.

Despite the humanization of national legislation, the legal responsibility for the «use» of drugs is quite serious and can have a negative impact on whole life. Each such situation is

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purely individual, and also requires extreme care, knowledge of their rights and ways to avoid or minimize liability.

The issue of the content and essence of administrative prevention measures within the powers of the National Police of Ukraine as an entity to combat drug trafficking, psychotropic substances, their analogues and precursors has become relevant with the growing number of cases of drug trafficking. Today, for the institute of existing measures to counteract this negative phenomenon, it remains necessary to improve their effectiveness and legal accessibility for police officers.

Recent publications review. The theoretical basis of the study of this area in the field of administrative law, were the works of such scientists as V. B. Averyanov, O. M. Bandurka, I.A. Belenchuk, A.V. Berezhny, Yu. P. Bytyak, Yu. A. Vedernikov, V. V. Halunko, I. P. Holosnichenko, S. T. Honcharuk, G. Yu. Gulevskaya, V. V. Donenko, N.I. Zolotaryova, D. P. Kalayanov, R. A. Kalyuzhnyy, S.V Kivalov, S.F Konstantinov, T.O Kolomoyets, S.O. Koroyed, V.K Kolpakov, A.T Komzyuk, O.V. Kuzmenko, E.V. Kurinnyy, M.P. Legetsky, M. V. Loshitsky, I.V. Melnyk, S.O. Mosyondz, V.I. Olefir, O.M. Pasenyuk, Yu. I. Rymarenko, O.P. Ryabchenko, S.I. Sayenko, L.V. Soroka, S.H. Stetsenko, V.D. Sushchenko, V.K. Shkarupa and others.

The article's objective is to study a comprehensive analysis of scientifically sound developments, provisions of current legislation of Ukraine in the field of combating illicit trafficking in narcotic drugs, psychotropic substances, their analogues and precursors, as well as to determine the specifics of preventive measures and administrative powers of the National Police. Project in the field of combating illicit trafficking. Formulate full conclusions and practical recommendations for improving the implementation and application of preventive powers.

Discussion. It was with the advent of drug crime that there was a need to combat it with various measures and methods, and actors who would carry out activities in this direction. From the analyzed terms and concepts that cover the content of the administrative powers of the National Police to combat drug trafficking, psychotropic substances, their analogues and precursors, it was determined that the administrative powers of the National Police to combat drug trafficking, psychotropic substances and their analogues and precursors is a set of rights and responsibilities of the National Police to apply the law and use a range of tools to implement public policy in the field of combating illicit trafficking in narcotic drugs, psychotropic substances, their analogues and precursors and overcoming drug addiction [1, p. 302-308]. At the same time, the special characteristics of the administrative powers of the National Police are exclusivity, imperativeness, technical and special support, as well as the provision of state coercion.

In order to describe in detail the preventive activities of the National Police of Ukraine in the field of illicit drug trafficking, it will be appropriate to specifically consider the system of subjects of combating illicit trafficking in narcotic drugs, psychotropic substances, their analogues and precursors.

At present, in accordance with the provisions of the current legislation of Ukraine on narcotic drugs, psychotropic substances and precursors, the mechanism for implementing measures to combat illicit trafficking in narcotic drugs, psychotropic substances, their analogues and precursors provides that countering illicit trafficking in narcotic drugs, psychotropic substances and precursors: National Police of Ukraine, Security Service of Ukraine, Prosecutor General's Office of Ukraine, State Fiscal Service of Ukraine, central executive bodies implementing state policy in the areas of state border protection, trafficking in narcotic drugs, psychotropic substances, their analogues and precursors, combating their illicit trafficking and others executive bodies within the powers granted to them by law.

According to the positions set out by A.A Kornev in his proposed classification of administrative and jurisdictional counteraction to drug trafficking, the National Police of Ukraine is a collegial body of common sectoral competence of an administrative nature with the authority to apply coercive measures for activities related to drug addiction [2, p. 26].

According to B. A Pidgorny, depending on the nature of competence, the entities that provide counteraction to illicit drug trafficking should include: subjects of general competence (President of Ukraine, Verkhovna Rada of Ukraine, Cabinet of Ministers of Ukraine, local state administrations), subjects of special competence (for which ensuring the implementation of state policy in the field of drug trafficking at the national and local levels is the only, main purpose) and subjects of mixed (joint) competence (National Police of Ukraine, Security Service of Ukraine, Prosecutor General's Office of Ukraine etc.) [3, p. 22]. According to A.P. Zakalyuk

the subjects of counteraction to illicit trafficking in narcotic drugs, psychotropic substances, their analogues and precursors include: the President of Ukraine, the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine; Ministries and other executive bodies; bodies of the Prosecutor's Office of Ukraine; governmental agencies, enterprises and institutions whose activities are related to the circulation of drug-containing plants [4].

In accordance with the provisions of paragraph 45 of the Procedure for activities related to the circulation of narcotic drugs, psychotropic substances and precursors, and control over their circulation, control over compliance with business requirements by the State Service of Ukraine for Medicines and Drug Control, The Ministry of Health of Ukraine, the National Police, the Security Service of Ukraine, the State Customs Service and other bodies within their powers is defined by law [5].

Thus, it becomes clear to the subject that the National Police can be considered as carrying out activities related to combating the circulation of narcotic drugs, psychotropic substances and precursors. Powers in this area are defined and enshrined at both the legislative and theoretical levels of scientific developments in the legal literature.

The next step is to uncover the measures taken by the police to prevent drug trafficking and further reduce crime in general.

Crime prevention is an important area of police work related to the prevention of crimes and administrative offenses, as well as the identification and elimination of the causes and conditions that contribute to their commission. Indeed, an administrative offense and a crime is easier to prevent (prevent) than to find the culprit and bring him to justice, as well as to restore the violated rights of others, the interests of enterprises, institutions and organizations and the state as a whole [7, p. 89].

According to A. I Mykolenko, the most typical administrative and preventive measures, as a set of means and methods of coercive nature, which are applied to persons in order to prevent possible offenses and prevent other harmful consequences of disasters, accidents, natural disasters, etc., include: a) control and supervisory inspections; b) inspection of things and personal inspection provided by the norms of the Customs Code of Ukraine; c) verification of identity documents; d) administrative detention in order to establish the identity of the detained person; e) the introduction of quarantine; f) prohibition of traffic and pedestrians in the event of a threat to public safety; g) seizure of property, etc. [8, pp. 10-11].

M.G Shulga recognizes the most typical of the following measures of administrative prevention: a) the requirement to terminate certain actions; b) verification of documents; c) inspection of things and personal inspection; d) temporary restriction or prohibition of access of citizens to certain areas or objects in order to ensure public order, public safety, human health; e) restriction or prohibition of traffic and pedestrians on certain sections of streets and highways in the event of a threat to public safety; e) closure of sections of the state border; f) exercising administrative supervision over the persons in respect of whom it is established, as well as control over those sentenced to criminal penalties not related to imprisonment; g) registration and official warning of persons; g) the right to enter the territory and premises of enterprises, institutions and organizations, housing and other premises of citizens; h) introduction of quarantine in epidemics and epizootics; j) inspection of the medical condition of persons and sanitary condition of public catering establishments; i) requisition of property; j) control and supervisory inspections [9, pp. 153-154].

It is possible to classify administrative and preventive measures in the sphere of circulation of narcotic drugs, psychotropic substances and precursors according to normative fixing, thus they can be conditionally divided into such that: are provided in Code of Ukraine on Administrative Offenses; provided in other regulations.

The following classification of these measures can be carried out according to the level of prevention: administrative and legal measures of general action; administrative and legal measures of individual action.

According to the level of influence, administrative and preventive measures can be divided into two categories: directly related to the prevention of offenses in the field of drugs, psychotropic substances and precursors; indirectly affect the prevention of offenses in the field of trafficking in narcotic drugs, psychotropic substances and precursors.

According to the coverage of the population, administrative and preventive measures are divided into measures of general action and measures of individual action.

To prevent offenses in the field of trafficking in narcotic drugs, psychotropic substances and precursors, in my opinion, should include the following:

- identification of persons who illegally use narcotic drugs and psychotropic substances, and notification of health care institutions about such persons for their obligatory examination and treatment [10];
- verification of personal documents [11];
- surface inspection and inspection [12];
- police care [9];
- control over the implementation of preventive pre-trip narcological examination [11];
- control over the implementation of preventive pre-shift narcological examination [11];
- inspection of vehicles and check of drivers' waybills for compliance of narcotic drugs, psychotropic substances and precursors transported, goods and transport documents;
- revocation of permits for the acquisition, storage and carrying of weapons and ammunition issued to citizens who abuse drugs without a doctor's prescription, other intoxicants;
- detection and destruction of stray drug-containing plants;
- verification of the absence of employees who in their official capacity will have (or have) access directly to narcotic drugs, psychotropic substances and precursors, not removed or not repaid in the prescribed manner a conviction for committing a medium, serious and especially serious crime, or for a crime related to illicit trafficking in narcotic drugs, psychotropic substances and precursors, including those committed outside Ukraine;
- establishment and implementation of administrative supervision over persons who have been sentenced to imprisonment for one of the crimes related to illicit trafficking in narcotic drugs, psychotropic substances and precursors, and released from prisons;
- protection of facilities and premises in which economic activities related to the circulation of drug-containing plants are carried out;
- protection of facilities and premises where activities related to the circulation of narcotic drugs, psychotropic substances and precursors are carried out [12].

Conclusions. Summarizing the above, today in the legal literature, scholars have many classifications and approaches to the formation of a system of administrative and preventive measures, using various aspects of the legal phenomenon. Some scholars focus on the specifics of the application of measures, others focus on the purpose of measures. Summing up, it should be noted that the preventive measures used by the police are not related to the commission of an offense, i.e. their use is possible and necessary in the absence of signs of illegal actions.

Also, it was substantiated that the National Police of Ukraine belongs to a group of entities, the main tasks and functions of which include the authority to ensure the fight against illicit trafficking in narcotic drugs, psychotropic substances, their analogues and precursors. The scope of administrative and preventive powers to ensure the fight against illicit trafficking in narcotic drugs, psychotropic substances, their analogues and precursors, which is endowed with the National Police of Ukraine, due to the lack of a single clearly defined algorithm, essence and content enshrined in law. It is because of this that the effectiveness of the implementation of preventive measures is lost and causes the provision of legal grounds.

For high-quality and full use of measures in the field of combating illicit trafficking in narcotic drugs, psychotropic substances, their analogues and precursors, it would be appropriate to define and consolidate specific rights and responsibilities of individual employees, services and units of the National Police of Ukraine.

In order to prevent stigmatization and discrimination of persons suffering from mental and behavioral disorders due to drug use, include issues of legal and moral and ethical component of the behavior of National Police officers in relation to these persons in training programs for students, cadets and police officers.

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Abstract

The concept of administrative and legal counteraction to offenses in the field of illicit trafficking in narcotic drugs, psychotropic substances and precursors and the application by the National Police of Ukraine of various measures in the field of trafficking in narcotic drugs, psychotropic substances and precursors are considered. The analysis of preventive measures and their features is carried out. The issue of the system of subjects of counteraction to illicit trafficking in narcotic drugs, psychotropic substances, their analogues and precursors is covered.

The study deals with highlighting the problematic issues of crime prevention in the field of drug trafficking and combating violations in the field of anti-drug legislation.

The issues of determining the mechanism of bringing to administrative responsibility for offenses in the field of illicit trafficking of narcotic drugs and psychotropic substances, methods of counteracting violations in the field of anti-narcotics legislation, features of interaction of the system of subjects of counteraction to illicit trafficking in narcotic drugs and psychotropic substances as well as circulation control have been highlighted.

Keywords: *crime prevention, National Police of Ukraine, prevention in the field of illicit trafficking in narcotic drugs, their analogues and precursors, subjects of counteraction, psychotropic substances, their analogues and precursors.*

ISSUES OF PRIVATE LEGAL REGULATION OF SOCIAL RELATIONS

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HISTORICAL STAGES OF DEVELOPMENT OF THE ARBITRATION AGREEMENT AND ARBITRATION

Алла Авсієвич. ІСТОРИЧНІ ЕТАПИ РОЗВИТКУ АРБІТРАЖНОЇ УГОДИ ТА АРБІТРУВАННЯ. Міжнародний комерційний арбітраж є одним із значущих інститутів сучасного права, важливою формою розв'язання спорів, що виникають у зовнішньоекономічній діяльності. Історія міжнародного комерційного арбітражу істотно вплинула на його нинішній стан і тому потребує детального розгляду.

Міжнародний комерційний арбітраж – це третейський суд, постійно діючий або спеціально створений у кожному конкретному випадку. Основна його мета – розгляд і вирішення міжнародного комерційного спору по суті. Міжнародний комерційний арбітраж створюється для вирішення спеціальної категорії справ, а саме комерційних спорів, які містять іноземний елемент. Така системна суперечність і неорганізованість тогочасного судочинства, що включало іноземний елемент, не могла не покликати до життя альтернативні методи врегулювання спорів. Для дослідження цієї тематики необхідно чітко розрізняти різновиди арбітражу, які існували в той чи інший період. Визначено, що основним чинником розвитку арбітражу поставала потреба у додатковій можливості передання спору на вирішення третім особам, які повинні були діяти неупереджено і надавати сторонам рівні можливості для представлення свого погляду на справу та її обставини, факти, права та зобов'язання, що часто надавало змогу не застосовувати державні судові механізми. Виділено та проаналізовано п'ять етапів розвитку міжнародного комерційного арбітражу, в тому числі закцентовано увагу на найважливіших нормативно-правових актах, які регулюють питання арбітражу загалом і арбітражної угоди, зокрема.

Ключові слова: *арбітр, міжнародний комерційний арбітраж, арбітрування, державний суд.*

Relevance of the study. International commercial arbitration is one of the most important institutions of modern law, an important form of resolving disputes arising in foreign economic activity. The history of international commercial arbitration has significantly affected its current state and therefore needs detailed consideration. International Commercial Arbitration is an arbitral tribunal, permanent or specially created in each case. Its main purpose is to consider and resolve an international commercial dispute on the merits. International commercial arbitration is created to resolve a special category of cases, namely commercial disputes with a foreign element.

Recent publications review. It should be noted that the issue of International Commercial Arbitration has traditionally been of considerable academic interest. In particular, the following Ukrainian scholars are worth noting: T. E. Abova, S. S. Alekseyev, A. G. Bobkova, T. S. Kiselyova, V. V. Laptyev, S. A. Lazarev, L. A. Lunz, M. M. Malskiy, V. K. Mamutov, V. S Martemyanov, V. F. Opryshko, I. H. Pobirchenko, D. M. Prytyka, H. V. Pronska, O. M. Sadikov, H. A. Tsyrat, A. S. Vasiliyev, O. H. Yuldashev and others.

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The article's objective is to determine the stages development of international commercial arbitration and its application to resolve international commercial disputes.

Discussion. The arbitration method of dispute resolution and the arbitration agreement have gone through several stages of historical development. The etymology of the Latin term «arbiter» is unknown. Initially, this word had several meanings: «witness, professor, owner» [1, p.8]. The use of the term has become established and assigned a specific meaning – «justice of the peace, mediator» with the popularization of arbitration. The arbitrator was an independent, respected person who acted impartially, fulfilling a high moral obligation to decide on a particular dispute. In commercial disputes, arbitrators were often noble traders with an unblemished reputation, who had considerable experience in trade and could give useful advice on how best to resolve the dispute, or resolved it [2, p. 45].

Well-known French lawyer F. Fouchard notes that arbitration is «an elementary method of resolving disputes, as it consists in transferring them to ordinary persons, whose only qualification is that they were chosen by the parties» [3, p. 1, pp. 30-31]. Quite popular idea is that arbitration originated before the emergence of the state court [4, p. 395]. As V. Burobin notes, «the idea of settling disputes by arbitration without state intervention, i.e. by appealing to famous and respected people, exists as many years as commerce itself» [5, p. 10]. G. Tsirat calls the inability of national courts to effectively satisfy the wishes of the parties as «failures that occur in the activities of these courts due to mismatch between the location of the parties to the dispute and the place of contract, place of dispute and place of execution, etc.» [6, p. 28].

Such systemic contradictions and disorganization of the judicial proceedings of that time, which included a foreign element, could not fail to bring to life alternative methods of dispute settlement. To study this topic, it is necessary to distinguish clearly types of arbitration that existed at one time or another. The main reason for the arbitration development was the need for additional opportunities to refer the dispute to third parties, who had to act impartially and give the parties equal opportunities to present their views on the case and its circumstances, facts, rights, and obligations, which often allowed to avoid state judicial mechanisms. The arbitration agreement has always been an element of the will of the party in respect of such consideration because it is on the expression of respect and trust of both parties to the third is based on the appointment of the latter as an arbitrator. State courts had not had enough experience in resolving commercial disputes [2, p. 45].

It is believed that interstate arbitration preceded arbitration between non-state actors. This is contradicted by the statement made by V. Burobin that «arbitration of disputes has existed for as long as commerce itself» [5, p. 10]. And commerce originated much earlier than states or similar formations began to use arbitration. At the same time, it is indisputable that arbitration in different epochs differed qualitatively, as well as the fact that the decisions of arbitrators in disputes between countries were recorded much more often than in private disputes and thus have survived in more reliable sources. In such situation, it is advisable to use an informal approach, to perceive the first signs of similarity to modern arbitration as those that meet the basic principles of today's arbitration.

The famous French scientist R. David also spoke about the history of arbitration. He believed that «arbitration in the past was perceived mainly as an institution of peace, the main task of which was not to guarantee the rule of law, but rather to maintain harmony between persons who had to coexist. In some cases, the rules and procedures provided by law were too strict. The legislators were prepared to give effect to the arbitration agreement concluded by the parties to transfer the dispute to the arbitrator, but only after the dispute had already arisen. Arbitrators were often chosen on the principle of intuitu personae. This principle means that certain legal relations between the parties are established considering the person with whom a particular contract is concluded. R. David claimed that «the parties trusted the arbitrators or were ready to give them certain powers only because they were relatives, mutual friends or sages, who were expected to be able to find a satisfactory solution to the dispute» [7, p. 29].

Today, there is no consensus on where the arbitration and the arbitration agreement originated as its precondition. M. Mastyl claims that «even from historical sources it is impossible to obtain reliable statistical data on cases of application and types of arbitration, as many cases of dispute settlement have remained undescribed» [8, p. 43]. It is known that almost every national legal system has developed such an institution of law as arbitration. According to some scholars, the emergence of arbitration coincides with the period of formation of states.

V. Nikiforov singles out «five stages of development of international commercial arbitration» [9, p. 20]. V. Nikiforov's periodization emphasizes the most important normative legal

acts, which regulate the issues of arbitration in general and the arbitration agreement but is limited to the twentieth century as a period of development of arbitration. At the first stage, the preconditions for the emergence of international commercial arbitration appear institutions are formed, in which over time international commercial arbitration is created and functions, and the international legal framework is developed. At this stage the International Congress of Chambers of Commerce (1905) has been created, and later the adoption of this Congress Boston Resolution (1912) has been made, which emphasized the need to create international law to resolve disputes arising in international trade. V. Nikiforov includes here the establishment in 1912 of the Arbitration Institute of the Stockholm Chamber of Commerce and the establishment of the International Chamber of Commerce in Paris in 1914. The second stage – «the formation of international commercial arbitration» – involves creation of the International Chamber of Commerce in 1923, the International Court of Arbitration, the signing of the Geneva Convention on the Enforcement of Foreign Arbitral Awards in 1927. This stage, according to the scientist, lasted until the 50s of the twentieth century. At the third stage – «stage of improving the mechanism of enforcement of international commercial arbitration» – at the initiative of the International Chamber of Commerce Convention on the Recognition and Enforcement of Foreign Arbitration was developed and later in 1958 it was adopted in New York, to which many countries acceded, including Ukraine. The unification of the rules governing arbitration and the adoption of the UNCITRAL Model Law on International Commercial Arbitration (UNCITRAL Model Law) in 1985 formed the basis of the fourth stage. The fifth stage is characterized by the implementation of the UNCITRAL Model Law adopted at the previous stage in various jurisdictions of the world.

Speaking about characteristics of the last stage, it should be borne in mind that the full adoption of the provisions of the UNCITRAL Model Law is accompanied by incomplete special modeling of certain provisions and institutions of arbitration law. Based on this, it is more appropriate to define the last stage not as an «implementation stage» but as a «stage of formation of national laws on international commercial arbitration», and in its context to analyze deviations from the provisions of the UNCITRAL Model Law. Analyzing the periodization of the development of international commercial arbitration, proposed by V. Nikiforov, we conclude that to link the emergence of international commercial arbitration with the beginning of the twentieth century and distinguish it as a category along with international arbitration and arbitration is impractical, because it does not allow full understanding. Therefore, based on the periodization of another scientist, S. Lazarev [10, p. 178-179], below is the proposed periodization, which also consists of five, but somewhat different stages. This periodization makes it possible to analyze the historical development of arbitration by tracing the genesis of the legislation on the arbitration agreement. The first stage began in antiquity and lasted until the end of the first millennium BC. The origins of arbitration in this period are evidenced by the procedures for settling various interstate disputes in the Ancient East, Ancient Greece and Ancient Rome. Ancient Chinese rulers agreed to settle all disputes among themselves peacefully, through diplomacy, or, if no agreement was reached, to go to arbitration. Contracts dating from the VI century, BC, can rightly be considered the primary sources of arbitration agreements. The written arrangements that have come down to the present day suggest that earlier oral arrangements may have existed. In the following centuries, certain manifestations of arbitration were also observed, but the establishment of the institution of law was still far away, as it was too early to talk about the emergence of regulations governing the conclusion, execution of the arbitration agreement and arbitration procedure.

Rather, these were the first attempts to create a system that used not force but respect for the fair decision of the arbitrators.

In ancient Greece, arbitration became more important, for which A. Popkov proposes to consider it «the source of modern international arbitration» [11, p. 17]. Sometimes even separate agreements on the establishment of permanent arbitral tribunals were concluded. These treaties were elements of the union treaties. For example, the second treaty of alliance between Sparta and Argos in 418, BC provided that the parties undertake to submit their disputes to arbitration. With integration into unions, such agreements became more popular. In ancient Rome, the possibility of transferring disputes was enshrined in law by Justinian in the V century. The fourth book of Digests states that «the agreement of the parties to transfer the dispute to arbitration acts similarly to the court and is aimed at the final settlement of the dispute». V. Roche, talking about the emergence of arbitration in Rome, quotes an ironic phrase of the speaker: «Arbitration is a method of incompletely winning a good case and incompletely losing

a bad process». This phrase has gained popularity among modern legal practitioners. Thus, during the first stage, the basis for the further development of arbitration was formed and the first agreements were concluded, which provided for an arbitration procedure for the settlement of disputes. However, the emergence of regulations governing the conclusion, implementation of the arbitration agreement and the arbitration procedure was still far away.

The second stage covers the period of XI-XVIII centuries, the Middle Ages, and the period of absolutism. In the Middle Ages, the practice of arbitration became widespread of international disputes. The affiliation of arbitrators to certain classes or groups is indicative: in the Middle Ages, arbitrators were most often either representatives of the Catholic Church, including the Pope, or the emperors of the Roman Empire [13, p. 61]. It is known that an arbitration agreement was concluded between Voldemar of Denmark and Manus of Sweden, according to which each party must appoint 24 bishops and 12 knights as arbitrators.

Under conditions of absolutism, the development of international commercial arbitration slowed down and resumed, as noted by T. Kiselyov, «only in the XVIII century» [14, p. 16]. However, in some countries, where the arbitration system was born with certain features, the development of arbitration has not stopped. In general, the reasons for the partial suspension of arbitration lie in the fact that in the period of absolutism, especially in the XV-XVI centuries, many arbitral awards were not enforced, which undermined the prestige of this legal institution, which was just the beginning of its legal existence. Later, in the XVI-XVIII centuries, despite the rapid development of international law, there was no increase in number of arbitrations [15, p. 66]. Thus, the second stage is characterized by a certain «calm period» in the formation of arbitration as an alternative method of dispute resolution, before the rapid development that took place during the third stage.

The third stage began during the formation and development of bourgeois states, in the late eighteenth century, from striking the «Jay's Treaty» between the United States and Great Britain and lasted until the end of the nineteenth century. The Arbitration Act of England of 1697 is known in the theory of law. However, British scholars believe that arbitration existed long before the adoption of this law, although there is no more precise indication of the beginning of the existence of formal, non-regulated arbitration in the scientific literature. The first mention of arbitration in England is contained in the decision of the national court, dated 1215. Sovereigns, realizing the importance of upholding the will of the parties, did not interfere in their affairs if their relations corresponded to the basic principles of law. With the development of basic legal institutions, there was a need to legislate certain mandatory rules. In the late eighteenth and early nineteenth centuries, interstate arbitration developed most rapidly. According to M. Mikhailovsky, with whom M. Hudson agrees, the impetus for the revival of arbitration was the England-American Treaty of Friendship, Trade and Navigation, concluded on November 19, 1794, also known as the «Jay's Treaty» [16, pp. 30-33].

The agreement was initiated by US President G. Washington, who wanted to resolve the dispute between the former colony and the metropolis as soon as possible after the end of the American Revolutionary War. The treaty provided for the establishment of three commissions: the first is to resolve the border dispute over the southeastern border between the United States and Canada along the St. Croix River; the second is to consider the claims of British creditors for legal barriers imposed by some states to pay off debts and reimburse the relevant damages; and the third is to resolve the conflict over the seizure of merchant ships by Great Britain during the war between Great Britain and France (1755-1763). The first commission consisted of three members, the other two – of five members each. The arbitrators were people of both American and British nationalities. In general, all these disputes were settled by 1802, and arbitration proved to be an effective method of settling disputes. The third commission managed to consider 565 claims during 6 years of its activity.

The «Alabama case» of 1872 is also known, according to which, due to the encouragement and support of the civil war in the United States, England had to pay significant compensation [13, p. 91]. The case dealt with a situation in which Britain breached its commitment to neutrality. Under a treaty between England and the United States, the dispute was to be settled by five arbitrators. After considering the merits of the case, the arbitrators concluded that England should pay compensation in the amount of $ 15.5 million for direct damage caused by its violation of neutrality. The decision was not signed by an English arbitrator, but it was signed by four others – citizens of the United States, Switzerland, Brazil, and Italy. This event is the first example of the use of ad hoc arbitration to resolve a large-scale dispute [17].

M. Hudson notes that «for the next 30 years after 1872, arbitrations considered more

than 100 cases. The United Kingdom was involved in 30 cases, the United States in 20, European countries were parties up to 60 disputes, and Latin American countries were involved in about 50 arbitrations. As early as 1873, members of various scientific societies and scholars of law faculties made the first attempts to codify the norms of the international arbitration process. «The most successful in this period, according to H. Schlohauer, was the activity of the Association of Reforms and Codification of the Law of Nations, which later changed its name to the Association of International Law. The main task of the Association was to create a code of international law, which was to include rules on international arbitration. This was to serve as a basis for creating a new system of international arbitration» [18, p. 19].

Thus, in the XVIII century, the conditions favorable for the development of international arbitration were re-established, and this period can be considered the period of formation of the concept of modern international arbitration. The fourth phase began with the Hague Peace Conferences of 1899 and 1907, which drafted several important conventions on the peaceful settlement of disputes between sovereigns and lasted until the 1965 Washington Convention on the Settlement of Investment Disputes between States and Foreign Persons. Arbitration between England and the United States, as well as the initiatives of individual scholars, prompted the conclusion of the Hague Conventions of 1899 and 1907, as well as the establishment of the Permanent Court of Arbitration in the Hague. According to Art. 41 of the Hague Convention of 1907, the Permanent Chamber of Arbitration was established to enable member states to apply to the arbitral tribunal without delay in cases of international disputes that cannot be settled through diplomatic means. The arbitral tribunal consisted of judges chosen by the parties concerned, and decisions were based on respect for the law.

As a result of the growing confidence in arbitration, permanent courts (chambers, tribunals, etc.) of arbitration began to appear to hear disputes of various kinds. According to G. Tsirat, «The Geneva Protocol on Arbitration Reservations of 1923 is the first multilateral international legal act devoted to the regulation of arbitration agreements in the field of international commercial relations» [6, p. 23]. Following the approval of the text of the Protocol by the member states, in 1927, because at that time there was no international legal agreement on the enforcement of arbitral awards, the Convention on the Enforcement of Foreign Arbitral Awards was signed.

For the development of modern international commercial arbitration, the creation by the International Chamber of Commerce in 1953 of a draft convention on the recognition and enforcement of international arbitral awards was important. The Convention on the Enforcement of Foreign Arbitral Awards of 1927 contained a few shortcomings and was not widely applied, especially since the international community considered it inexpedient to maintain the distinction between the subjects of regulation of the 1923 Protocol and the 1927 Convention. They were replaced in 1958 by a new document – the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), which introduced a fundamentally new mechanism for implementing one of the most important legal institutions of the international arbitration process. At that time, scientists, politicians, and lawyers-practitioners perceived the draft convention as something «super-progressive» [19, p. 3]. The three-week conference at the United Nations headquarters in New York ended with the approval of the text of the draft, which led to the decision to open a convention for accession. This convention is still an important component of the international legal system, which has proven its effectiveness by thousands of successfully recognized and enforced decisions of foreign arbitrations in many jurisdictions around the world. The development of the international arbitration process was not left out, and the United Nations Commission on International Trade (UNCITRAL) was established in 1966 by the UN General Assembly. The aim of the commission was to create more favorable conditions for trade and to remove legal obstacles in its path. On April 28, 1976, the Commission unanimously approved the draft UNCITRAL Arbitration Rules. Even today, the parties often resort to this regulation while resolving international commercial disputes, especially in ad hoc arbitrations. Another important contribution of the UNCITRAL Commission was the adoption in 1985 of the UNCITRAL Model Law. The UN General Assembly recommended that all countries take due account of this model law, which would contribute to the development of a unified approach to law, to arbitration proceedings, as well as to the needs of international commercial arbitration. In 1961, at the initiative of the United Nations Economic Commission for Europe, an equally progressive European Convention on Foreign Trade Arbitration (European Convention) was developed and opened for accession. The novelty of this convention was that it allowed an oral form of arbitration agreement, if the law of both parties allowed it [6, p. 26]. Thus, it was during the fourth stage that the legal

framework for the regulation of international commercial arbitration was formed, regarding the conclusion and execution of the arbitration agreement. It was at this time that national legislation on international commercial arbitration, as well as international arbitration practice, developed. Arbitration was formed as an alternative to national courts in international commercial disputes.

The fifth stage began with signing the Convention on the Settlement of Investment Disputes between States and Foreign Persons in 1965 and continues to this day. S. Lazarev does not single out this stage. However, we consider it appropriate to single it out, because it was after this event that the rapid development of so-called investment arbitration began – a fundamentally new type of arbitration [20], according to which an arbitration agreement between a sovereign and a citizen of another sovereign may be contained in a bilateral interstate agreement.

The development of arbitration had its own specifics in each state. An interesting example is development of arbitration in Sweden, which illustrates peculiarities of the development of arbitration in general. The chronology of events compiled by the Stockholm Arbitration Institute dates to 1359, when the provisions on arbitration first appeared in Swedish law. In 1669, the legislator developed provisions for the recognition and enforcement of arbitral awards, and in 1887 the first law was passed, devoted exclusively to arbitration. In 1917, the Arbitration Institute was established at the Stockholm Chamber of Commerce and Industry. In 1929, Sweden signed the Geneva Protocol of 1923 and the Geneva Convention of 1927, in the same year adopted a new arbitration law instead of the law of 1887. In 1949, the Stockholm Arbitration Institute developed and adopted new regulations. In 1972, Sweden ratified the New York Convention. The Rules of Procedure of the Arbitration Institute have changed twice more, each time gaining a more systematic focus on resolving international disputes. In 1995, the rules of the accelerated procedure were adopted, and 1999 was a landmark year for Swedish arbitration, as this year, for the first time, a new arbitration law was adopted, which replaced the law approved in 1929; secondly, the arbitration rules have once again undergone significant changes; third, a specialized institute of reconciliation was established on the basis of the Stockholm Chamber of Commerce and Industry. Similar development patterns were typical for some other European countries. The principles on which modern international commercial arbitration is based in their activities apply not only to private law, but also to public relations. Such a reflection can be found in Part 1 of Art. 1 of the Charter of the United Nations, which defines one of the activities of the organization «to maintain international peace and security and to this end to take effective collective measures to prevent and eliminate threats to peace and suppress acts of aggression or other violations of peace, and conduct peaceful means, in accordance with the principles of justice and international law, the settlement or settlement of international disputes or situations which may lead to violations of the peace». Although in this quote the clear purpose of regulation is to achieve and maintain peace among the participating countries, it is difficult not to notice the analogy with the ancient methods of resolving commercial disputes, namely: the prevalence of peaceful settlement of disputes over aggression and the importance of justice regardless of the strength of the parties. The very reference to international law indicates the importance of the formation of legal customs of social turnover, and in relation to commercial relations – the customs of trade.

The role of arbitration continues to grow, with each passing year more and more cases are resolved this way, although arbitration, like other methods, has both advantages and disadvantages. Arbitration is firmly rooted in the modern dispute resolution system, primarily because arbitration is more humane than traditional courts, giving the parties more leeway. The proposed division of the historical development of arbitration into five stages makes it possible to fully explore the development of the arbitration agreement and arbitration. Although with the development of international trade and economic relations in the nineteenth and twentieth centuries, we see the most rapid development of arbitration law, the preconditions for this arose in the Ancient East, Ancient Greece, and Ancient Rome. From ancient times, we can observe the emergence of the first regulations governing certain aspects of arbitration. Since the arbitration agreement is a prerequisite for the arbitration of disputes, in the relevant regulations, first we can find the rules that relate to the arbitration agreement. These or other legal acts should be evaluated considering the historical context. Such a historical analysis makes it possible to investigate the legal acts that currently regulate the consideration of disputes in international commercial arbitration more thoroughly, in particular the procedure for concluding and executing arbitration agreements. The beginning of the development of arbitration in Ukraine is associated with the period of Kyiv Rus, where the most common form of contractual dispute was resolution through arbitration. The explanation of this fact, among other things, may be the

presence of the obligatory payment of a high state fee for disputes in state courts of that time [21, p. 37].

Despite the lack of obvious influence of Roman law in the practice of courts, you can still find many analogies with Roman law [22, p. 6]. Arbitration agreements of the time generally provided that the princes of both sides sent boyars to settle disputes, who, without reaching an agreement, had to jointly appoint another link – a third arbitrator, normally the prince or metropolitan. To settle private disputes during the time of the Grand Duchy of Lithuania, there were amicable (the term is still preserved in Polish) and friendly courts. The desire to settle the dispute by compromise was communicated by the parties to the Prince's Chancellery, which appointed judges to settle the dispute. This method of appointment has been used for a long time, and since the XVI century the parties have the right to appoint arbitrators themselves, and the decision of the arbitrators came into force the decision of the state court. The charter of 1566 provided that if one of the parties refused to comply with the decision of the arbitral tribunal, the other party has the right to apply to the district court for enforcement. The role of state courts was also that they were an appellate court for a party that did not agree with the arbitrators' decision. During the following period, the arbitration proceedings continued to develop and improve. This period ended with the approval in 1831 of the Regulations on the Arbitration Court, which, replacing all previous regulations of the relevant regulation, quite clearly regulated the activities of arbitration courts.

The institute of arbitration formally existed under Soviet rule [23, p. 12], but in fact arbitration courts were under control of the state. The state has developed a negative attitude to any non-state settlement of disputes of a commercial nature and, especially, with a foreign element. In the Soviet Union there was a monopoly of foreign trade, which allowed the operation of the country only two permanent arbitration institutions – the Arbitration Court and the Maritime Arbitration Commission of the USSR Chamber of Commerce and Industry. Ukraine, like other ex-Soviet republics, did not have its own international arbitration tribunals. In 1930 the Maritime Arbitration Commission was established, and in 1932 the Foreign Trade Arbitration Commission, which was reorganized into the Arbitration Court at the USSR Chamber of Commerce and Industry in 1987 and was transformed into the International Commercial Court at the Chamber of Commerce and Industry of the Russian Federation in 1992.

Conclusion. Today, two permanent international commercial courts operate successfully in Ukraine – the International Commercial Arbitration Court (ICAC) and the Maritime Arbitration Commission (IAC), both at the Ukrainian Chamber of Commerce and Industry (CCI of Ukraine). Ukraine is also a party to the New York and European conventions. The Law of Ukraine «About International Commercial Arbitration» was developed in 1994 and based on the UNCITRAL Model Law.

Modern legislation concerning the arbitration agreement also cannot be considered perfect, it needs further development, as with the development of society need to review regulations that do not meet the requirements of today.

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Abstract

International commercial arbitration is one of the most important institutions of modern law, an important form of resolving disputes arising in foreign economic activity. The history of international commercial arbitration has significantly affected its current state and therefore needs detailed consideration. To study this topic, it is necessary to clearly distinguish between the types of arbitration that existed at one time or another.

The article is devoted to the stages of development of international commercial arbitration and its application to resolve international commercial disputes. The article examines the provisions of legal acts that for the first time define the concept and legal status of international commercial arbitration.

Keywords: *arbitrator, international commercial arbitration, arbitration, state court.*

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FEATURES OF THE IMPLEMENTATION OF A PUBLIC OFFER AGREEMENT IN E-COMMERCE IN UKRAINIAN, POLISH AND RUSSIAN LAW

Олександр Косиченко. Ілля Клиницький. ОСОБЛИВОСТІ РЕАЛІЗАЦІЇ ДОГОВОРУ ПУБЛІЧНОЇ ОФЕРТИ В E-COMMERCE В УКРАЇНСЬКОМУ, ПОЛЬСЬКОМУ І РОСІЙСЬКОМУ ПРАВІ. Всесвітня мережа, розвиваючись стрімкими темпами, фактично відразу стала засобом для встановлення зв'язків між людьми, і в таких відносинах далеко не останнє місце посідають послуги й товари. Необхідно зазначити, що з 90-х років XX століття, на тлі росту популярності Інтернет-технологій, суттєво розвивається напрямок економічних відносин в електронному середовищі – електронна комерція. Установлення комерційних відносин у мережі має низку значущих переваг: швидкість – ухвалення рішення про угоду може займати секунди, а його акцептація (офіційне виявлення згоди) дуже часто обумовлюється виконанням кількох нескладних

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дій, що не вимагають істотних матеріальних витрат і займають дуже незначний проміжок часу; доступність – нині, виходячи з даних 2019 року, опублікованих американською компанією Hootsuite, світовою мережею користуються близько 5 мільярдів 111 мільйонів людей. Це утворює великий ринок, який і визначає високу швидкість розвитку електронної комерції у світі (починаючи з 2016 року природній приріст користувачів всесвітньої павутини протягом наступних трьох років становив ~2 млрд дол.) [1]; опосередкована анонімність – умови здійснення угоди можуть обмежуватися лише проведенням грошової транзакції або використанням анонімних й умовно анонімних засобів розрахунку (криптовалюта, електронні грошові системи). Враховуючи певну специфіку надання послуг і реалізації товарів у Інтернет, договір публічної оферти є найпоширенішим і наближеним до електронного формату способом закріплення угоди. Однак в Україні, у Російській Федерації й Республіці Польща, як і в інших країнах, використання цього виду правових інструментів має низку проблем, пов'язаних із правовим регулюванням і процедурою укладення угоди. У цій статті вивчено основні аспекти правової реалізації договорів публічної оферти в зазначених країнах. Отже, предметом дослідження є договір публічної оферти як правове явище. Мета роботи полягає у визначенні основних проблем укладання договору публічної оферти в електронному режимі і в знаходженні оптимальних рішень у контексті заявленої проблематики, ґрунтуючись на законодавчій базі та практиці аналізованих країн.

Ключові слова: *Інтернет, договір публічної оферти, правове регулювання, електронна комерція, електронні грошові системи.*

Relevance of the study. The Internet has had a significant impact on the global community since its inception. The WWW, developing at a rapid pace, actually immediately became a means for establishing connections between people, and in such relations, services and goods are far from the last place. It should be noted that since the 90-s of the twentieth century, against the background of the growing popularity of Internet technologies, the direction of economic relations in the electronic environment – e-commerce – has been significantly developed. Establishing commercial relationships in the network has a number of significant advantages:

– speed – making a decision to conclude a transaction can take seconds, and its acceptance is very often due to the implementation of several simple actions that do not require significant material costs and those (i.e. actions) take a very short period of time;

– accessibility – now, based on data published in 2019 by the American company Hootsuite, the world Wide web is used by about 5 billion 111 million people, which is a significant market, which causes a significant growth dynamics of Internet commerce in the world (since 2016, the natural increase in users of the World Wide web over the next three years was ~2 billion) [1];

– anonymity – the terms of the transaction may be limited only to the conduct of a monetary transaction or the use of anonymous and conditionally anonymous means of payment (cryptocurrency, electronic money systems).

Given the specific nature of the provision of services and the sale of goods on the Internet, the public offer agreement is the most common and close to the electronic format method of securing a transaction. However, in Ukraine, the Russian Federation and the Republic of Poland, as in other countries, the use of this type of legal instruments has a number of problems related to legal regulation and the procedure for concluding an agreement.

It should be emphasized that this paper will study the main aspects of the legal implementation of public offer contracts in the above-mentioned countries. Thus, the subject of the study is the contract of a public offer, as a legal phenomenon.

Given the specifics of the provision of services and sales of goods on the Internet, the contract of public offering is the most common and close to the electronic format of the agreement. However, in Ukraine, the Russian Federation and the Republic of Poland, as in other countries, the use of this type of legal instruments has a number of problems related to the legal regulation and the procedure for concluding an agreement. This paper examines the main aspects of the legal implementation of public offer agreements in the above countries. Thus, the subject of the study is the contract of public offering as a legal phenomenon.

Recent publications review. It should be noted that the problem of concluding electronic contracts has been studied by many well-known scientists, among them: S. N. Bratus, F. Nikishin, I. P. Petrovsky, M. K.Savinov, E. B. Sokolova, K. V. Spodar. A public offer agreement is one of the types of agreements, which consists in the provision of services and the sale of goods under the terms of an offer directed to an indefinite circle of persons. The specificity of this type of transactions consists, first of all, in the peculiarities of legal regulation.

The article's objective is to determine the main problems of concluding a public offer

contract in electronic mode, and to find optimal solutions in the context of the stated issues, based on the legal framework and practice of selected countries.

Discussion. *Analysis of the Ukrainian legal framework***.** Ukrainian legislation does not contain separate provisions for the conclusion of such contracts, but based on the sign of publicity (one party always assumes the obligation to provide a certain service or product to everyone who applies to it), this type of transaction is generally regulated by Articles 633 and 641 of the Civil Code of Ukraine. Thus, in accordance with Article 633 of the Civil Code of Ukraine, the contract of a public offer is public, and the offer to conclude an agreement must contain the essential terms of the contract and express the intention of the person who made it to fulfill its own obligation [2]. Taking into account the specifics of relations based on information and telecommunication systems, public contracts in the field of Internet commerce are characterized by the electronic form of contract conclusion, which in part two of Article 639 of the Civil Code of Ukraine is equated with a written form.

For a public agreement in electronic commerce, there is also the possibility of regulation by special normative legal acts, in particular the Law of Ukraine «On Electronic Commerce». Although the field of e-commerce is relatively regulated, there are significant restrictions for contractual relations in this case. So, according to Part 2 of Article 1 of the Law of Ukraine «On Electronic Commerce», transactions requiring state registration and subject to notarization cannot belong to the sphere of Internet commerce in information and telecommunication systems [3, p. 410].

According to A.F. Nikishin, such complications significantly «hinder» the development of the Ukrainian real estate market, however, the specificity of notarization and state registration in this matter is due to the increased degree of security that a public agreement cannot provide. At the same time, the legislation of Ukraine does not contain provisions regarding the simplification of state registration for contracts that are concluded within the Internet [4, p. 12]. They also highlight the following problematic aspects in the implementation of contractual relations under a public offer agreement:

- the complexity of personal identification;
- specific requirements for acceptance;
- lack of legal regulation of cryptocurrency.

In particular, this opinion is contained in the works of scientists I. P. Petrovsky and E. B. Sokolov. Thus, relations on the Internet are ephemeral in nature, which, according to a public contract, may not have significant content, however, the technical specifics of making electronic payments very often requires the actual provision of certain payment data by the buyer (customer) to the seller (performer), these may be:

- personal data (name, surname, patronymic);
- number of a bank account or other instrument for making payments.

Analysis of the Polish legal framework. Based on Polish law, the term «Public Offer Agreement» may be mistakenly adopted as a «Public Offer» (English – «public offer», «IPO»). This term, accordingly, refers to the terminology and tools of financial markets, rather than to the field of e-commerce in the context discussed above. The closest in functional purpose should be considered «Regulamin» («Procedure for application»). Accordingly, this kind of legal document is more intended to establish the rules for the use of one or another Internet resource. The legal basis for drawing up such an act must be considered the relevant law on the provision of services by electronic means – Ustawa z dnia 18 lipca 2002 r. o świadczeniu usług drogą elektroniczną (Dz.U. 2002 nr 144 poz. 1204) [13].

In accordance with the definition contained in the law on the provision of electronic services, a service provider is a natural person, legal entity or organizational unit without legal personality, which, through side, commercial or professional activities, provides services by electronic means. The provision of electronic services means the performance of a service provided without the simultaneous presence of the parties (at a distance), by transmitting data at the individual request of the recipient, sent and received using electronic processing equipment, including digital compression and data storage, which is fully broadcast, received or transmitted through telecommunications network. This definition shows that every person who provides any services or goods, who operates an online store, must develop and place an application procedure (Polish – «Regulamin») on their website.

The Polish legislator went further than the Ukrainian one, pointing directly to the elements that should be in the order of application. Based on Art. 8 paragraph 3 of the Law on the provision of electronic services must specify:

1) types and scope of services provided in electronic form;

2) conditions for the provision of electronic services, including:

2.1) technical requirements necessary for interaction with the system, used by the service provider;

2.2) prohibition on receiving illegal content by the recipient;

3) conditions for the conclusion and termination of contracts for the provision of electronic services;

4) the procedure for drawing up complaints.

Analysis of the Russian legal framework. In the context of Russian law, this category of contracts is provided for at the level of the constituent entities of the Federation, which gives rise to the obligation to equally interpret and apply public offer contracts on the territory of all constituent entities of the Russian Federation without exception. According to the Federal Law of 26.01.1996 (as amended on 18.03.2019, as amended on 28.04.2020, hereinafter referred to as the Civil Code of the Russian Federation), Article 494 provides that the offer of goods in its advertising, catalogs and descriptions of goods, addressed to an indefinite circle of persons is recognized as a public offer (paragraph 2 of Article 437) if it contains all the essential conditions of the retail sale and purchase agreement. In addition, part two of this article establishes that displaying goods at the point of sale (on counters, in showcases, etc.), demonstrating their samples or providing information about the goods being sold (descriptions, catalogs, photographs of goods, etc.) at the point of sale or on the Internet, it is recognized as a public offer, regardless of whether the price and other material terms of the retail sale contract are indicated, unless the seller has clearly determined that the relevant goods are not intended for sale.

Based on the practice of drawing up public offer contracts, it should be emphasized that there is no specific structure or form in both Russian and Ukrainian law. In this case, a widespread principle in contract law is triggered – freedom of contract (proclaimed in both the Civil Code of Ukraine and the Civil Code of the Russian Federation). As additional provisions, the public offer agreement most often includes:

1) obligations and rights given to the seller;

2) obligations and rights of the client;

3) responsibility of the parties;

4) privacy policy;

5) other sections reflecting the specifics of the organization's activities.

Analyzing the public offer agreements of Ukrainian and Russian Internet resources, it is also necessary to highlight an additional practical feature, which is that the name of the public offer agreement may not always exactly correspond to the name established in the above-mentioned codes of civil law. For example, the agreement of the public offer of the project https://olx.ua is presented as «User Agreement for olx.ua services», thereby embracing with its meaning not only the main domain of the project, but also all subdomains on which information is posted and it is possible to order a service or product. It should be noted that not always the conditions of security and protection of personal data are placed in the main contract. The most common practice is to create a separate Privacy Policy agreement. This is also the case in the contract of the above service [8].

Based on the analysis of public offer agreements of such Russian and Ukrainian organizations as: LLC Emarket Ukraine, LLC Ovoks Biay, it should be noted that the civil legal nature of such documents contributes to their formation based on the economic interests of organizations (current commercial offers, and also the way of rendering services) [9]. There are, of course, negative phenomena. Mainly, this characteristic is manifested in the structure of such agreements. In some cases, there is a disregard for the legal style, as well as inalienable elements of contracts, which contributes to the ambiguity of the conditions formulated by the owner of the Internet resource; the data of the seller-party are also not formulated (for example, see the terms of use of the Rozetka website) [10].

The problem of acceptance of conditions by the parties to the public offer. Considering the process of accepting a public offer agreement using user interfaces, one cannot ignore the specifics of providing a person's consent regarding the terms of the agreement. So, in this matter, the element of exclusive consent is quite important. Expression of them before performing a certain paid service for a client or selling a product using an information and telecommunication system must be considered mandatory, because very often the owners of Internet resources place corresponding contracts on their basis. In this case, the buyer, when executing a transaction, does not have the opportunity to confirm or refuse the terms of the agreement. A situation

is created in which the public offer agreement cannot be considered valid, because there is no proper consent of the acceptance – the specified problem has a practical nature, which is due to the incorrect construction of Web interfaces from a legal point of view, as noted in the work of M.K. Savinov [6, p. 4].

Based on the above researched Ukrainian and Russian Internet resources, it is not always clear what should be considered the acceptance of the agreement by the parties. The most widespread international practice of asking for consent before providing a service (selling a product) has not become widespread today when performing such actions. This cannot be said about the processes directly related to the processing of personal data (for example, registration). In this case, the requirement for consent by performing a certain action on the part of the client should be more frequent. Nevertheless, it should be emphasized the importance of adding the above-described opportunity for clients, as evidenced by the recommendations of Roskomnadzor for the Russian Federation [11]. The Ukrainian jurisprudence goes a little further: the court recognized the moment of acceptance of the delivered goods by the client by the conclusion of the purchase and sale agreement, while the terms of the agreement were the provisions of the public offer, confirmed by the client before the purchase [12]. A similar legal position takes place in Polish practice: based on the Civil Code of the Republic of Poland, a sales contract can be considered concluded after the exchange of the will of the parties (Polish: «wymiana oświadczeniami woli stron»). The procedure for use («regulamin»), based on Article 661 of the Civil Code of the Republic of Poland, is mandatory on the basis of the obligation to inform the buyer about the procedure for concluding a purchase and sale agreement, which also confirms to a certain extent the civil nature of this kind of documents, as well as in Russian and Ukrainian law. An important issue is also the method of making payments, because among the means of making payments, cryptocurrencies are also distinguished: electronic currency instruments that allow anonymous payments and their units have a certain market value. These include the following: Bitcoin, Litecoin, Namecoin and others [7, p. 22].

Conclusions. The modern legislation of the three states under consideration, having a similar legal approach in relation to public offer contracts (in the Republic of Poland, the preparation of such is a legislative obligation on the part of the seller), does not even provide for a terminological base for the above means of calculation. This leads to significant difficulties in the legal regulation of contracts that provide for just such a means of payment for goods or services. This is also a problem of modern legislation, which deprives of all rights and guarantees of the offerer and acceptor in the contractual obligation. Thus, the problems of concluding public offer contracts are both issues related to legislation and practical mistakes on the part of the parties to such a transaction (most often on the part of the offerer). Improving legislation in this case cannot be considered the only mechanism for solving the indicated difficulties of concluding the above type of transactions, because increasing legal literacy among business representatives will also significantly improve the use of this type of legal instruments when making an economic exchange of purchase and sale.

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Abstract

Given the specifics of the provision of services and sales of goods on the Internet, the contract of public offer is the most common and close to the electronic format of the agreement. However, in Ukraine, the Russian Federation and the Republic of Poland, as well as in other countries, the use of this type of legal instruments has a number of problems related to the legal regulation and the procedure for concluding an agreement. This paper examines the main aspects of the legal implementation of public offer agreements in the above countries. Thus, the subject of the study is the contract of public offering as a legal phenomenon. The purpose of the work is to determine the main problems of concluding a public offer contract in electronic mode, and to find optimal solutions in the context of the stated issues, based on the legislation and practice of selected countries.

Keywords: *Internet, agreement of public offer, legal regulation, electronic commerce, electronic cost systems.*

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PROTECTION OF INTELLECTUAL PROPERTY IN UKRAINE: PROSPECTS AND CHALLENGES OF IMPLEMENTATION

Ольга Круглова. ЗАХИСТ ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ В УКРАЇНІ: ПЕРСПЕКТИВИ ТА СКЛАДНОЩІ РЕАЛІЗАЦІЇ. Досліджено сучасний стан правової охорони права інтелектуальної власності в Україні. Автором визначено проблеми у вітчизняному законодавстві, що заважають дієвому правовому захисту права інтелектуальної власності, та з'ясовуються перспективи його вдосконалення.

Проаналізовано заходи цивільної, адміністративної і кримінальної відповідальності. Однак зауважується, що такі заходи не можуть дати позитивних наслідків без урахування дії економічних законів, без державного реагування на процеси, що відбуваються на ринку та в економіці в цілому.

Основною ідеєю статті є те, що законодавство у сфері інтелектуальної власності повинно мати комплексний характер для регулювання режиму того чи іншого об'єкта інтелектуальної власності.

Також наголошується на низьких стандартах правового захисту права інтелектуальної власності в нашій країні. Багато в чому вони зумовлені значним дефіцитом кваліфікованих фахівців у цій сфері. Акцентується увага на необхідності фахової освіти.

У статті надається аналіз позитивних законодавчих змін останніх років. Зокрема аналізується роль національного органу інтелектуальної власності, який забезпечить належний міжнародний імідж нашої країни у сфері інтелектуальної власності.

Серед основних складнощів реалізації належного захисту інтелектуальної власності називаються також відсутність налагодженого, ефективного ринку авторського права та суміжних прав, а також неналежне фінансування заходів у сфері запровадження сучасних технологій, організації управління та розвитку інфраструктури у сфері правової охорони інтелектуальної власності.

Процеси, що відбуваються у сфері охорони права інтелектуальної власності, розглядаються також з огляду на ситуацію, яка створена світовою пандемією та активним використанням цифрових технологій.

***Ключові слова**: інтелектуальна власність, захист права, охорона права, авторське та суміжні права, право промислової власності.*

Relevance of the study. The law recognizes that every person entitled to the results of his intellectual and creative activity or another object of intellectual property at the same time establishing a direct prohibition of the use or distribution of these results without the author's consent, with the exceptions established by law. However, complex financial living conditions of recent years and the lack of effective legal mechanisms to promote violations of these rights. This situation must be corrected when it comes to the development of our country and its focus on high European legal standards. Analysis of the implementation issues of intellectual property protection in the country devoted to this article.

The urgency of the problem, clarify the importance of the national level of intellectual property because in the modern world intellectual, creative activity rapidly growing and gaining importance in nearly all areas of civil relations. These processes contribute to the development of society. Modern protection of intellectual property rights, including protection should meet high standards and requirements that would ensure their accessibility, democracy and transparency. Laws aimed at such protection must effectively ensure the private rights of authors and owners to the results of intellectual activity. They have to provide and enhance

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human creative activity, and taking into account the public interest – rightly use its results to encourage fair trade following results.

Due to changes in the organization of life, education, leisure, which were caused by the global pandemic, and the transition to digital active involvement in these areas, active use of the Internet, the issue of intellectual property rights and their protection are particularly relevant. Modernity challenges existing protection mechanisms. There is a need to adapt the existing system of legal regulation of this area to the digital space and social distance conditions.

Recent publications review. The works of such researchers as Yu. Artemov, O. Boykova, N. Vitushko, G. Hutsol, T. Kryvoshiya, S. Kruhovykh, R. Polishchuk and others were dedicated to the study of the issues of legal protection of intellectual property rights.

The article's objective is the study aims to identify the problems in the national legislation that hamper the effective legal protection of intellectual property rights, and determine the prospects for improvement.

The scientific novelty of the research is the analytical approach to identifying ways of improving the system of legal means of protecting intellectual property rights through the analysis of the specific national practices and identification difficulties in the implementation of a legal algorithms.

Discussion. According to Art. 54 of the Constitution of Ukraine, citizens of our country are guaranteed the freedom of literary, artistic, scientific and technical creativity, protection of intellectual property, their copyrights, moral and material interests that arise from various types of intellectual activity.

Clarification of the concept of «intellectual property» is provided in the Convention establishing the World Intellectual Property Organization, signed in Stockholm in 1967. Art. 2 of this Convention recognizes that intellectual property includes rights related to literary, artistic and scientific works; performing activities of artists, sound recording, radio and television programs; inventions in all spheres of human activity; scientific discoveries; industrial designs; trademarks, brand names and commercial designations; protection against unfair competition, as well as with other rights that are the result of intellectual activity in the industrial, scientific, literary and artistic spheres [1].

An almost similar definition of the concept of intellectual property rights is provided in Art. 418 of the Civil Code of Ukraine (the Civil Code of Ukraine). Intellectual property right is a citizen's right to the result of intellectual, creative activity or other object of intellectual property right, defined by current legislation [2]. In total, intellectual property rights can be divided into: copyright and related rights; industrial property rights; means of individualization of goods, works and services and their manufacturers. This right may be provided on the basis of the Civil Code of Ukraine and other intellectual property laws.

The existence of a modern system of intellectual property protection recognized by the international community is a guarantee of achieving high rate of both economic and social development of any country. Proper protection of intellectual property encourages the use and further development of the inventive and creative achievements, development of relevant skills and talents, maintains and develops the national creativity intellectual activity and ensure the involvement of investment in this area in the national economy as a whole, stabilizing the market, the financial situation in which investors will be confident that their rights will be provided. Creating such a system is the protection of intellectual property rights should be a priority for the development of Ukraine – a country which has scientific, technical and intellectual potential.

According to Art. 432 of the Civil Code of Ukraine, each person has the right of protection of intellectual property by the court.

In particular, the Law of Ukraine «On Copyright and Related Rights» [3] and some other legislative acts presented in the Civil Code of Ukraine provide for the settlement of disputes concerning infringement of intellectual property rights in two forms:

1) Actions with involvement of legal authorities, filing claims to control civil law or corporate bodies, courts;

2) a set of actions that a person can perform independently, usually without the involvement of a specialist or consultant on intellectual property rights protection.

The Criminal Code of Ukraine (the Criminal Code of Ukraine) protection of intellectual property dedicated to articles 176, 177, 203-1, 216, 229, 231, 232. Specifically, p. 176 of the Criminal Code of Ukraine regulates the conditions of prosecution of the guilty person for infringement of copyright and related rights, and Article 232 – for the disclosure of commercial

or banking secrets [4].

Thus, the country has determined which intellectual property rights are protected by national legislation, emphasizing the importance by establishing criminal liability for their violation.

The majority of violations of intellectual property rights are characterized by economic reasons and relevant factors, e.g. violators of intellectual property rights by selling pirated and counterfeit goods, trying to get more profits as a result of dumping price policy. This is an effective method to displace competitors, gain market share and economic benefits, reduce taxes and get future financial growth.

Measures of civil, administrative and criminal legal liability can not give positive consequences without taking into account the effect of economic laws without government response to the processes occurring in the market and the economy as a whole.

Legislation of intellectual property should be comprehensive to regulate the regime of a particular object of intellectual property, including the provision of civil, financial, administrative, constitutional, procedural and other legislation. Intellectual property as a whole and each of its facilities with particular manifestation in different areas of law, carry out mutual influence.

In addition to challenges associated with interdisciplinary ways of ensuring the protection of intellectual property rights, there appeared another one - low standards of such protection. In many ways they are caused by a significant shortage of qualified professionals in the field. Today the possibility of professional education system is inadequate and cannot meet the demand for specialized professionals.

In order to optimize the intellectual development of the country, it is necessary to improve the legal framework of intellectual property rights and protection mechanisms in this field. The need of law-making in this area is related to the need of reformation the management of intellectual property, caused by the need of adaptation national legislation to the legislation of the European Union. Also there is a necessity of strengthening legislative accountability for violations of intellectual property rights, improving the legal regulation of economic aspects of IPR, including the system of payment of duties and taxes for actions related to the protection of intellectual property, improvement of legal regulation mechanisms of economic incentives creativity, etc. If we talk about lawmaking, it should be emphasized that in this direction it is necessary to ensure effective national control and coordination of actions of law enforcement and controlling financial authorities to combat infringements of intellectual property rights. Besides, it is necessary to improve current legislation on copyright and related rights in the promotion of legitimate businesses to legitimization of the services market; legalization of software used in the executive branch and the introduction of open access to the state register of registered copyright through the Internet, etc.

Directions of national work aimed at improvement of standards of intellectual property rights are also connected with financing of introduction of modern technologies of management and infrastructure development in the field of intellectual property protection. There is a need for specialists in all regions of Ukraine in special structures such as the State Customs Service of Ukraine and others, introduction functioning of the State Patent Library, etc.

Another challenge in Ukraine is the lack of an established, efficient market of copyright and related rights. This is due to the lack of a system for collecting and paying remuneration to authors, performers, producers of phonograms, etc.

Commercialization of intellectual property in Ukraine is very appropriate. This has been repeatedly emphasized by scientists. The problem is that most of the national scientific products are not patented. There is a need to improve the scientific and methodological approaches to determination the right of the owner, the consolidation of rights as the results of intellectual work and their commercialization [5].

It is important to create a high international image of Ukraine in the development of intellectual property. This will make possible to influence international processes in this area to ensure national interests. In particular, it will make possible the participation of our country in the governing organs of the World Intellectual Property Organization in international projects which are aimed at the development of small and medium enterprises in the areas of intellectual property, etc. Despite the fact that Ukraine has a system of protection of intellectual property rights, it is necessary to ensure its approximation to EU legislation in the field of industrial property protection in particular areas: prevention of violations of indirect usage of inventions, licensing, cross-licensing, introduction of tax benefits not only for inventors, but also for businesses that ~~will~~ use the invention [6].

Recently, the Verkhovna Rada of Ukraine adopted the Law «On amendments to some laws of Ukraine to establish a national body of intellectual property» [7]. The National Intellectual Property Authority is a national organization that is part of the state system of legal protection of intellectual property, which ensures the formation and implementation of state policy in the area of intellectual property, and has the right to represent Ukraine in international and regional organizations. For this present organ endowed with special powers of the central executive body.

These innovations in the executive authorities is a positive step in forming the image of our country in the international space. It is essential to facilitate the integration of Ukraine into the international legal system, which provides a modern model of building relationships in the field of intellectual property and the formation of the mechanism of protection and security.

Article 2, part 1 of the above law states that the powers of the National Intellectual Property Authority include the implementation of such important functions for the development of this area in Ukraine as signing international agreements on cooperation in the field of intellectual property protection under national law; ensuring the implementation of international programs and projects in the field of legal protection of intellectual property in accordance with international agreements, as well as ensuring the implementation of obligations arising from Ukraine's membership in international organizations in the field of legal protection of intellectual property, etc. This is a positive trend in the development of national intellectual property rights. In any case, the approach of the international community will adopt a positive experience of more advanced and developed countries, implement legal technology that has been tested in other countries and can be analyzed in terms of its effectiveness and suitability for national needs.

Given the market reforms that have been stimulated by global pandemic in 2020, the question of protection of intellectual property rights on the Internet raises quite sharply. This issue is currently devoted to multiple draft laws submitted to the Verkhovna Rada of Ukraine. Ukraine is close to the adaptation of Notice-And-Takedown into national law in respect of which the bill has already been registered [8]. The dynamics of the development of national intellectual property rights protection legislation is evident in this area.

Conclusions. Ukraine has its own system of intellectual property protection that meets international standards, but the system needs to be improved to bring it to the highest European counterparts. However, many issues remain only declared. Law-making in this area should have taken a comprehensive, involving legal, administrative and economic areas. Such a national process should be based on the interests of the society. Among the difficulties of implementing proper protection of intellectual property are the following:

- as part of providing adequate protection, the state responds to violations in this area only establishing legal responsibility, and must also implement comprehensive programs for market regulation, economic and financial processes;
- lack of adequate and sufficient human resources, deficiency of professional education system that would ensure qualified regional experts and absence of the conditions for targeted regulation of protection;
- there is no effective state control and coordination of law enforcement and financial regulatory agencies to combat infringements of intellectual property rights;
- inadequate funding measures in implementation of modern technologies of management and infrastructure development in the field of intellectual property protection;
- lack of a well-established, efficient market of copyright and related rights, which is caused by the lack of the system of collection and payment of remuneration to authors, performers, producers of phonograms, etc.

The solution of all the above mentioned challenges that Ukraine has been experiencing while implementing legislation for protection intellectual property rights is the direction of long-term development of this area, which should be chosen by the leaders of our country.

Significant creative and intellectual potential possessed by our state should be provided with adequate conditions for their disclosure of which would inevitably lead to higher rates in the various fields of private, social and political life.

Optimization of law-making in the field of intellectual property in Ukraine will effectively contribute to the development of scientific and intellectual potential of Ukrainian nation, help to solve the problem of staff shortages in the relevant field, provide effective usage of high technology and innovation in market of copyright and related rights, etc. Such changes will allow Ukraine to become one of the economically well-developed countries. Improving legislation in

the field of intellectual property, eliminating certain gaps and increasing accountability in this area will help prevent crime. The above mentioned transformations will contribute not only to the proper legal protection of intellectual property and development of market relations, but also to enhancing the international image and economic prosperity of our country.

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Abstract

The article examines the current state of legal protection of intellectual property rights in Ukraine. The author identifies problems in domestic legislation that hinder the effective legal protection of intellectual property rights, and clarifies the prospects of its improvement. It is noted that it is necessary to take into account the actions of economic laws, the state responses to processes occurring in the market and in the economy. The article provides an analysis of positive legislative changes in recent years. The processes taking place in the field of protection of intellectual property rights are also considered in view of the situation created by the global pandemic and the active use of digital technoloigies.

Keywords: *intellectual property, protection of rights, protection of rights, copyright and related rights, industrial property rights.*

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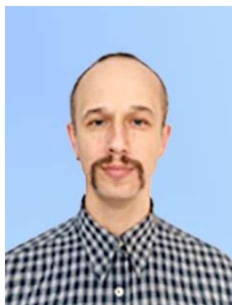

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TRIAGE IN THE CONTEXT OF COVID-19 PANDEMIC: CONFLICT OF LAW AND ETHICS

Роман Марусенко. ТРІАЖ У РОЗРІЗІ ПАНДЕМІЇ COVID-19: КОНФЛІКТ ПРАВА ТА ЕТИКИ. Життя і здоров’я людини є найвищими соціальними цінностями, держава покликана забезпечувати їх збереження і охорону, зокрема за допомогою системи охорони здоров’я. У разі виникнення непередбачуваних ситуацій з великою кількістю постраждалих, система охорони здоров’я може потребувати запровадження механізмів для встановлення пріоритету надання допомоги. Можливість системи залишатись найбільш ефективною за наявних обмежених ресурсів забезпечує медичне сортування. На жаль, Україна на даний момент стикнулась із ситуацією, коли може бути необхідним тріаж пацієнтів, а рекомендацій, які б враховували специфіку пандемії інфекційного захворювання, немає.

У статті автор досліджує особливості наявних у світі моделей тріажу. Аналізуються принципи та критерії, які можуть бути покладені в основу розробки таких рекомендацій в Україні.

Робиться висновок, що до критеріїв медичного сортування у його первинному розумінні, які забезпечують надання ефективної медичної допомоги найбільшій кількості осіб у ситуації обмежених ресурсів, не належать соціальні критерії. Аналізується етична проблема перерозподілу обмежених людських ресурсів та устаткування, зменшення обсягу та припинення надання спеціалізованої допомоги. Робляться висновки щодо принципів правового захисту медичних працівників у разі прийняття рішення щодо тріажу. Обов’язковою складовою психологічного добробуту медичного персоналу та пацієнтів вбачається розподіл обов’язків щодо тріажу пацієнтів та їх лікування, а також надання пацієнтам психологічної, консультативної, паліативної допомоги.

Пропонуються рекомендації щодо правил тріажу на випадок епідемії. Констатується, що правила тріажу мають бути розроблені якнайскоріше, мають бути публічно доступними, основні засади мають бути зрозумілими потенційним пацієнтам та їхнім близьким. Такі правила повинні захищати лікаря при прийнятті рішення, з одного боку, і надмірно не зарегульовувати процедуру тріажу постраждалих – з іншого.

Ключові слова: *медичне сортування, тріаж, медична етика, пандемія, COVID-19, обмеженість медичних ресурсів.*

Relevance of the study. Medical sorting of casualties has been used since the time of Napoleon Bonaparte in both military and civilian medicine. Despite the use of this concept by the medical staff, the average citizen finds this procedure ambiguous. In the case of medical sorting (triage), the state, which must guarantee the constitutional right to life and health as the highest social value under Article 3 and Article 49 of the Constitution of Ukraine [1], faces an ethical and legal dilemma of prioritizing medical care. The problem is exacerbated by the actual lack of resources in the health care system as a whole. This brings triage from situational, local to national level. This is exactly what happened at a certain phase of the COVID-19 pandemic. The Minister of Health of Ukraine said: «[…] no matter how hard we try to increase the number of beds, there is still a limit, if the occupancy reaches 100%, we will have to activate the medical sorting protocol [...] This will be the indication that our medical system does not withstand» [2]. Peculiarities of triage in the country raise moral, ethical and legal issues both

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for doctors [3] and lawyers [4], and for ordinary citizens [5].

Recent publications review. In the national studies the topic of triage is not covered in great detail. The issue of the lack of domestic studies of sufficient depth on the triage nature and procedures and the need to further address the main moral and legal problems of medical choice was raised by R. Y. Grevtsova [6]. Some studies address medical sorting in relation to a specific range of injuries, such as fractures [7], which are difficult to extrapolate to a wider range of triage situations.

From a worldwide perspective, the triage issue has now received much more attention. Ethical issues of providing medical help in an epidemic having scarce resources are disclosed in the study of A. K. Hakan, C. O. Karadag [8]. The authors come to the conclusion that it is necessary to take into account a large number of factors both at the state and local levels to minimize the consequences of this dilemma. At the same time, the current situation requires adjustment of the triage peculiarities post-factum, taking into account exhaustion of medical resources that earlier were considered sufficient. The authors K. Mebuke, S. Moore [9] analyzed some national triage guidelines and argued that the provision of medical help in conditions of lack of resources should not depend on the victim status as a person with disabilities or with previous medical conditions.

A systematic review of the rules of medical equipment (ventilators) allocation in half of the Amrican states in the event of a ventilator shortage is provided in the works of G. M. Piscitello et al. [10], A. H. M. Antommaria and others [11]. It is argued that such regional rules differ and can sometimes provoke an unfair distribution of this resource in the event of a shortage.

A systematic comparison of triage recommendations during the COVID-19 pandemic of different states was conducted by S. Jöbges and others [12]. The paper systematically reveals the differences and features of triage recommendations on the example of different countries, which can be a qualitative basis for further analysis of such features in our domestic situation.

Despite the existing positions, the issue remains controversial both among experts and officials that elaborate and evaluate decisions in the field. In Ukraine, it has not been systematically studied.

The article's objective is to analyze the existing approaches and principles to patients triage through the prism of legal, ethical challenges, taking into account the real purpose of this concept and to formulate conclusions and recommendations that may be useful for developing such recommendations at the national level in Ukraine.

Discussion. Triage emerged as a result of the medical challenges of Napoleon Bonaparte's army in the late 18th century – beginning of the 19th century. The specificity of the wars, other military operations at that time was that a large number of wounded and wounded infantry, unlike the cavalry, were not evacuated from the battlefield. The soldiers died. The system that was used at that time provided medical help depending on the status of the victims. Medical help to the officer was a priority, even if the need for assistance was not urgent. Instead, the corps of soldiers were replenished through new recruitment among the poor local population.

It is believed that the triage model was offered by military surgeon Dominique Jean Larrey. As a surgeon, he was anxious to restore the soldiers' health. Thinking of the principles of providing help with the greatest possible benefit, he noted: «[…] dangerously wounded must be attended first entirely without regard to rank or distinction and those less severely wounded must wait until the gravely hurt have been operated and addressed. The slightly wounded can go to the hospital in the first and second line, especially officers because the officers have horses» [13, p. 1396]. Thus, he introduced the priority rules to provide medical help to those who needed it the most at that time and would most likely benefit from it. Another invention was «flying ambulances», which quickly evacuated wounded to the place of care and complement the model of timely medical help to as many casualties as possible. Some researchers argue that the authorship of the concept of triage probably belongs to Pierre - François Percy and emphasize the need to distinguish between Napoleonic triage, disaster triage and medical triage [14, p. 4].

The need for triage arises when providing help in a resource-constrained environment [15, p. 11]. There is a qualitative difference between triage in military conditions, triage in determining the priority of providing help to several casualties at the scene or in the emergency department, triage in disasters, epidemics, etc. when simultaneous help to all victims is objectively impossible. Triage in the modern sense pursues the goal of obtaining the best effect/result for the largest number of casualties who have a chance of survival. A prerequisite

for triage is the lack of resources for the simultaneous provision of help (which requires priority establishing). The need for triage is determined by the limitations of different kinds: human resources (medical staff), time for effective medical intervention given the condition of the victims, lack of medical equipment/drugs. The chances of survival are a reasonable assumption that taking into account the condition of the patient and the available opportunities for medical help to improve it.

Triage is a zero-sum game [16], because medical help to one patient simultaneously excludes help to another patient. Triage is a medical sorting of patients and is based on the correlation of the individual interest of the sufferer with the common good – providing effective assistance to as many patients as possible. The emphasis of care shifts from the individual to a large group of people as a whole. The individual interest of a particular person may indeed suffer. We remember that the need for triage arises in a situation where it is impossible to provide help to all people who need it at once for one reason or another. That is, objectively, there will be victims who will not receive help in the first place. The question is: who will be that person. For all the harshness of this statement, it is a reflection of objective reality, an attempt to balance individual and group interests. Triage does not avoid the situation of choice, but makes it open, fair and predictable. Thus, in prehospital care, triage is used in two contexts: a) prioritizing assistance or evacuation while having sufficient resources and b) ensuring the survival of the largest number of victims – with insufficient resources [17, p. 131].

Ukrainian legislation mentions the rules of triage in the Orders of the Ministry of Health [18; 19]. In the author's opinion, who dealt with both instructor work and pre-hospital triage in tactical situations [20], in terms of triage, these documents correctly reflect the main purpose and objectives of triage at least at the prehospital stage. The criteria for sorting are the medical characteristics of the victim, not, for example, age, previous medical conditions or the presence of a specific diagnosis, which will be discussed below. However, the scope of these documents does not cover all situations where triage is required.

From a legal point of view, the consequences of triage (giving priority of help to one person instead of another) may come into conflict with Art. 24 and Art. 49 of the Constitution of Ukraine [1], because all patients are equal in their rights. Assigning a person to the group to whom assistance will be provided last may provoke at least a lawsuit for moral and health damage. In a situation where the number of victims is high and medical aid to all of them is not possible, that cause damage to health or death, the likelihood of litigation increases as well as a risk of criminal prosecution under Art. 139 of the Criminal Code of Ukraine [21]. From the criminal law perspective, the life of all patients is equally valuable, which complicates the situation with triage in the absence of transparent rules for its performance. Countries with a more efficient court systems have already faced hundreds of lawsuits against government agencies based on deficiencies and delays in providing medical help to patients in the situation of shortage of medical resources during the COVID-19 pandemic.

It is important to understand that medical personnel is responsible for the proper triage of patients under established norms/recommendations, i.e. for the absence of undertriage or overtriage. However, he cannot be responsible for the final result – the survival/non-survival of the patient, if the medical treatment was provided appropriately and within the available resources.

The ethical principles of care during epidemics and pandemics determine that decisions about prioritizing patients and allocating limited medical resources can be difficult, but must be fair. Depending on the complexity of the situation, not only selective (minimum necessary) medical interventions are considered acceptable. Sometimes the provision of emergency care can be objectively limited, and in this case it is also acceptable [23, p. 16]. It is important that decisions, whatever they are, are made in advance and communicated openly with stakeholders. This will allow both doctors and patients to accept equal and fair rules and know what to expect.

In a tactical situation or a catastrophe, relatives and friends of the victims usually hear about the consequences a bit after triage at the scene takes place. Therefore, the explanation that everything possible was done to save a person is taken for granted. Instead, during a pandemic in peacetime, the victim is constantly in sight and in contact with relatives, family. In this case, the fact that at a particular point in time the doctor is caring for someone else is perceived negatively «here and now» as a lack of care to the patient who is waiting for it.

In this situation, in our opinion, it is extremely important to provide patients with other non-specialized medical, as well as psychological and palliative care within the available re-

sources. This helps to relieve stress as well as clarify the objective nature of the triage situation.

It is also important that the healthcare professional who conducts triage decision making is legally protected against the possible consequences of his or her objectively determined choice. Relatives and friends of the patient in the search for the causes of deterioration of health or death of this patient may associate these negative consequences with the conscious decision of the doctor on triage, as well as influence to him emotionally in the process of making such decisions. The approach described in some recommendations for creating a group of specialists who will make such decisions collectively and on a professional basis seems rational. This will unify approaches to the triage of patients, help to understand clearly who is competent to make such a decision, and help to get rid of pressure from family and friends on a particular doctor who treats the patient. Ideally, such a group of specialist should be able to sort patients imperatively and not perform other roles in the hospital at the same time [24, p. 276].

Triage rules define a set of decision parameters, which, however, are not always able to take into account all the variety of situations. With this in mind, there will be cases when decisions in situations that look similar to a bystander, but situations will differ: «[…] what is most just in a particular situation may depend upon the availability of resources and the fairest and beneficial way of using and distributing those resources in that specific case» [17, p. 43].

From a legal perspective, the protection of medical personnel involves clear, transparent, publicly available and publicly known triage rules, which will ensure it. World practice shows that even imperfect rules remove the burden of responsibility from the physician and allow to avoid major disputes. Many states already have appropriate recommendations for the triage in the COVID-19 pandemic, as they took into account the experience of the SARS epidemic. Other countries have developed them in a short time. For example, the U.S. plan for pandemic influenza, which has been improving since 2005 [25], has taken into account both A (H1N1) and SARS epidemics and certainly at the time of the pandemic helped the state to be a few steps ahead. Numerous specialized national and regional recommendations were developed in parallel [26]. Unfortunately, Ukraine is not on the list of such countries. Indeed, a procedure for medical sorting of patients with A (H1N1) was approved by the order of the Ministry of Health of Ukraine dated 13.11.2009 №830. However, it regulates only the distribution of patients according to the peculiarities of the necessary care.

The lack of clear rules of the game can provoke lawsuits. For example, in the United States, lawsuits regarding the use of ventilators, which in the event of a shortage may be forcibly redistributed in favor of certain patients [27] were brought. Many consider the existing rules, which set different priorities in different states, discriminatory against certain groups [10, p. 9]. Another example is the effective claims for unpreparedness to respond to critical situations [28]. These and many other examples raise questions about the effectiveness of the response of the domestic health care system. While many countries are implementing new and adjusting existing triage algorithms, no changes have been made to existing rules in Ukraine throughout the pandemic year (relating to a specific category of cases), and no new triage-specific rules have been adopted. Both the practice and the opinions of experts in other countries indicate that triage procedures for a specific category of similar cases, such as pandemics, chemical accidents and others require specific recommendations [29, p. 1378].

When developing triage rules, it is important to understand what criteria will be chosen to prioritize care. Recently, in addition to medical criteria, such rules have included other criteria. For example, some US recommendations regulate triage rules in case of shortage of specialized equipment (ventilators), and provide assignment of the patient to a certain group based on concomitant conditions such as dementia, intellectual disabilities, complex neurological problems and more. They are reasonably being criticized [9]. Another example of triage recommendations reveals the assignment of a patient to a specific group on a non-disease-related basis (age, previous health status). Experts logically point out the inconsistency of such provisions with anti-discrimination and legislation in the field of civil rights protection [30]. Another example is the recommendations of Italian triage experts: «[…] it may become necessary to establish an age limit for access to intensive care» [31]. Thus, an age requirement had to be introduced. Such examples illustrate a not-so-successful approach to avoiding discrimination.

Another important factor is the need to unify the rules at the state level, because regional differences (as the case of the US) can lead to a situation where different rules will give a patient in one region more opportunities to receive higher priority care than the same patient will receive in another region.

In the case of a large-scale pandemic, the probability of a situation in which the doctor

will have a large number of victims and will decide whom to care for increases. Patients will not have an obvious difference in their condition, and triage rules will force to include such patients into one group. In this case, a full-fledged moral problem of choice will emerge: a young patient or an elderly patient, a man or a woman, a child or a pregnant woman, etc. The mechanism of such a moral choice can hardly be normalized.

For example, in Maryland state, priority is given by age, in five U.S. states priority is determined by the principle of first-come, first-served [10, pp. 3-4]. Experts state that without transparent rules, the system will always be skewed in favor of the wealthy or, for example, those who have links [16]. While an age limit criteria borders on discrimination in triage procedure, the principle of first-come, first-served actually means the absence of any triage. If a patient whose life is in danger waits for help until it is given to those who might wait, such a patient may be permanently harmed. A patient who could be saved will die only because he is «last in line.» We believe that the introduction of such a principle in conditions of limited medical resources is very dangerous.

Sometimes triage protocols take into account long-term consequences, such as the life expectancy of the patient after a successful intervention. In such protocols, the indicator of «expected» death within 5 years or «expected» life for more than 5 years will affect the order of medical treatment based on the results of triage [32, p. 6]. The introduction of this criterion is like a kind of artificial selection – the stronger one will always have more chances. This is a form of discrimination prohibited by Ukrainian law, which does not comply with the principle of providing help to those who need it most.

In some cases, experts suggest using the principle of the lottery, which they suggest should help distribute the insufficient medical resources, drugs among a large group of victims [33]. For example, this idea is the basis of a draft protocol currently being developed in the UK in connection with a new wave of the disease: «[…] or patients with a similar prognosis, who cannot be separated in other ways (e.g. by all four parts of the assessment), a random allocation, such as a lottery, may be used» [34]. Note that such a mechanism, although it provides a selection procedure and is used in some recommendations [11, p. 4], but has nothing to do with triage in its original meaning. Random selection of patients for care removes the medical criterion from the medical care procedure. The patient, who could normally have a better chance of surviving, may be unjustifiably removed from the line and die.

Some recommendations do not preclude the establishment of privileges for groups of patients based on economic criteria, which, in our opinion, again raises the question of ethics. Priority for young people, preference for patients who have past merits of a certain grade or belong to a certain professional community, etc. are also applied. Evidently, these ideas have little to do with the model of medical triage of casualties. Rather, they reflect a desire to resolve ethical conflict and meet the current needs of a particular society at the same time – for example, to save the lives of doctors, to preserve the health of young and productive citizens, to spend resources on the healthy instead of the chronically ill, etc. This is an attempt to introduce a kind of «priority» in favor of patients of one quality compared to all others.

From a psychological point of view, lobbying the approach of the need to prioritize age, profession, previous merits, and so on is a desire to satisfy one's interest. Often it is caring for loved ones belonging to the particular group. On the other hand, it can be caring for society as a whole, for example by giving priority to treatment to doctors. They, in turn, are a resource that will help society to cope with the influx of patients. This is a kind of system of «privileged» access to a limited medical resource based on various considerations. Such non-medical criteria provide that the priority is not to provide help to more people but to help those identified by society and those who are «more useful» to that society.

Practice shows that there is no unity in the choice of such «additional criteria». In every society they will be different. According to a classic experiment on such moral choices in a global sample of more than 40 million respondents, the moral choices of different cultures and countries as to who will live and who will have to sacrifice differ [35]. In our opinion, this denies the possibility of direct copying of foreign experience on additional selection criteria when sorting patients by medical staff.

Some researchers indicate that the distribution of patients is impossible without such additional criteria and solely on medical facts because we need solutions that take into account ethical and value components [36, p. 1]. At the same time, a detailed analysis of such criteria shows that they alone create a de facto discriminatory system, and attempts to balance them complicate the triage system. Also, this makes it difficult to reach a public agreement on a par-

ticular system. The World Medical Association points out that in conditions of insufficient medical resources «[…] choice must be based on medical criteria and made without discrimination» [37, sec. 1], «[…] the physician should consider only their medical status and predicted response to the treatment, and should exclude any other consideration based on non-medical criteria» [38, sec. 8.3.1].

When creating triage rules, it is also important not to cross the line when the bureaucratization of the process becomes detrimental to decision-making flexibility. Experts note that the criterion for assigning a patient to a certain group (for example, expectant) in different conditions that lead to the triage (lack of equipment, medication, doctors, etc.) may differ [24, p. 276]: «[…] triage protocols cannot account for every unique situation encountered. Therefore, a basic understanding of the principle of justice can be helpful for situations in which «in the moment» triage decisions need to be made» [17, p. 47].

Another important issue is the possibility to suspend specific care due to reassessment of patient/patients and to redistribution of medical equipment. For the relatives and friends of the patient, this may mean the termination of care, and therefore will be an important ethical and legal issue «that is probably the most horrible of all decisions for a doctor or nurse», – experts say [39]. The doctor must be protected in case of such a decision because it inevitably leads to deterioration of the patient's condition. On the other hand, the rejection of such a decision also inevitably leads to similar consequences, but for another patient. In the eyes of the relatives of one of the patients, such a doctor will be the savior. For the relatives of another patient to react to the situation with understanding (as far as possible), it is essential to have transparent and publicly available rules of triage, as well as deliver psychological support for such patients.

Sometimes the question arises as to the correlation between the well-being of one patient and the well-being of several. Is it «the greatest good for many» to stop helping one patient if this can save several? The question is complex, at first glance the answer may be «yes». Experts give a hypothetical example: the removal of many organs of a healthy person, which will cause his death, to help several patients [40, p. 285]. Whether this can be considered an acceptable sacrifice by one patient for the sake of many is a rhetorical question. The answer becomes not so simple.

The situation is complicated by the fact that the pandemic of the disease, which cannot be controlled, does not allow to unambiguously predict the effectiveness of treatment. It may happen that a patient whose state worsened will survive without a ventilator, or the condition of someone who has allegedly started to recover will deteriorate irreversibly. Many triage recommendations contain provisions on the need for palliative care, as they provide that the patient may initially get into the group that will receive care the last, or his condition may deteriorate in the absence of resources and a decision to reallocate medical resources to benefit of other patients will be made [12]. Besides, recommendations often explicitly indicate that the decision to reallocate resources is not equivalent to killing the patient, and therefore is ethical [41, p. 2053]. The World Medical Association also notes: «[…] despite triage often leads to some of the most seriously injured receiving only symptom control such as analgesia, such systems are ethical provided and they adhere to normative standards. Demonstrating care and compassion despite the need to allocate limited resources is an essential aspect of triage» [38, sec. 8.1].

As shown above, the basic tenets of fair medical triage based on medical indicators have long been developed. Triage based on evidence-based medicine [42] answers is the best both for the legal issues that will inevitably arise and for the ethical challenges. Of course, triage is a psychologically difficult mechanism to perceive. It is a rigid, sometimes brutal, efficiency-oriented system. That is why in part ideas about its «rethinking» in favor of a particular group of people evolve. In our opinion, the system of psychological support, counseling and palliative care should help to make and perceive psychologically complex decisions. These types of care usually require specialists of another category, freeing up the time of medical staff, as well as the limited resource of medical equipment.

As we suggest, the only correct solution to triage patients does not exist, which is demonstrated by the worldwide practice. At the same time, a sufficient and necessary solution to the problem is the harmonization of rules that will be public, clear, understandable and will contain at least main tenets. And, of course, for this purpose formalized rules of triage should be developed in due time since lack of triage rules in the situation of limited medical resources in Ukraine does not promote the fair and efficient decision of the considered ethical and legal

questions.

Conclusions. We can summarize the above statements as follows.

1. Triage in its primary sense can include rules for providing medical care to as many casualties/patients as possible with greater predictable benefits. Other seemingly similar models that take into account social factors or the choice of patients based on the lottery in the presence of a social contract can be used as additional criteria to pursue a goal pre-agreed by this society. But they hardly can substitute a triage or be considered as medical sorting.
2. The development of triage rules should take place as soon as possible after the relevant need arises. Unfortunately, such documents are missing in Ukraine a year after the beginning of the pandemic. Given the experience of other states, to avoid the potential situation of inequality of patients' rights, triage rules should be created. This should be done at the national rather than the local level.
3. The principles and values on which the medical triage system should be based, in particular, are: maximizing benefits for the largest number of patients, equity, equality, non-discrimination, including patients with diseases other than COVID-19.
4. The rules of triage should be transparent and «pervasive» concerning victims of different population groups and with different diseases. The treatment of one disease should not be prioritized over other conditions/diseases that are equally or more life-threatening or health-threatening.
5. Triage rules should be clear and unambiguous for their understanding and interpretation by medical staff, lawyers, relatives and friends of the patients.
6. The protection of medical personnel from stressful situations and the legal consequences of decisions made under the triage recommendations should take place by distinguishing the roles of triage providers and medical professionals, as well as by transparent and unambiguous description of criteria for triage decisions.
7. The rules of triage should contain criteria, the procedures of redistribution of limited human and material resources in case of reassessment of the condition of patients, termination of providing the patient with specialized medical care.
8. The triage procedures should be supported by psychological, counseling, palliative care because the choice between the lives of two patients will always generate complex reactions. Psychological protection and support should be provided for both medical staff and patients, their loved ones.

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Abstract

In the article the author explores the features of the world's existing triage models. The principles and criteria that can be used as a basis for the development of such recommendations in Ukraine are analyzed. It is concluded that the criteria of triage in its primary sense, which ensure the provision of effective medical care to the largest number of people in a situation of limited resources, do not include social criteria. The ethical problem of redistribution of limited human resources and equipment, reduction of volume of medical care and termination of specialized assistance is analyzed. Conclusions are made on the principles of legal protection of medical staff in the case of a decision on triage. Author substantiates, that a mandatory component of the psychological well-being of medical staff and patients is the division of responsibilities for patient triage and treatment, as well as the provision of psychological, counseling, palliative care to patients.

Keywords: *medical sorting, triage, medical ethics, pandemic, COVID-19, limited medical resources.*

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CERTAIN ASPECTS OF THE LEGAL REGULATION OF JOINT INVESTMENT INSTITUTIONS OPERATION IN THE EU

Кристина Резворович. ДЕЯКІ АСПЕКТИ ПРАВОВОГО РЕГУЛЮВАННЯ УПРАВЛІННЯ КОМПАНІЯМИ СПІЛЬНОГО ІНВЕСТУВАННЯ У ЄС. Одним із пріоритетних завдань, які стоять перед Україною на сучасному етапі, є збільшення темпів економічного зростання, що потребує залучення якомога більшої кількості інвестицій у різні галузі національної економіки. Однією з найбільш значущих форм інвестиційної діяльності в теперішній час в масштабах світового фінансового ринку є спільне інвестування, яке відбувається з використанням механізмів інвестиційних фондів. Важливість розвитку цієї сфери інвестиційної діяльності для економіки обумовлює необхідність здійснення комплексного та детального дослідження світового досвіду правового регулювання інститутів спільного інвестування.

Спеціалізовані організації, що управляють активами багатьох інвесторів, існують у більшості країн у різних формах. Переважно вони представлені інвестиційними компаніями та інвестиційними фондами. Головною метою створення інститутів спільного інвестування є ефективне використання заощаджень населення шляхом залучення їх до інвестиційної діяльності. Це сприяє утворенню значних коштів для капіталовкладень в економіку. Таким чином, інвестиційні компанії пропонують механізм, за допомогою якого дрібні інвестори об'єднуються, щоб мати переваги від великомасштабного інвестування. Інвестиційні компанії здійснюють значний вплив на економіку, що виявляється у їхній ролі на ринку цінних паперів. Інвестиційні компанії, вкладаючи кошти в акції, сприяють зростанню їхньої ціни, а отже, у такий спосіб забезпечується ліквідність цінних паперів і фондового ринку.

У статті проаналізовано особливості правового регулювання інститутів спільного інвестування Євросоюзу. Надано визначення поняття та видів інститутів спільного інвестування, здійснено аналіз та визначення особливостей правового режиму інвестиційних фондів та інвестиційних компаній на ринку цінних паперів Євросоюзу, а також питання організації управління та контролю за діяльністю інститутів спільного інвестування в цих країнах.

Ключові слова: *інститут спільного інвестування, інвестиційні фонди, трасти, компанія з управління активами.*

Relevance of the study. One of the priorities faced by Ukraine at the present stage is the increase in economic growth, which requires attracting as much investment in various sectors of the national economy as possible. One of the most significant forms of investment activity at the present time on the scale of the global financial market is a joint investment, which takes place using the mechanisms of investment funds. In particular, in the United States, the population actively participates in joint investment, its share reaches 70% of the country's financial assets and is five times higher than the share of the state [4, pp. 341-349]. The importance of developing this sphere of investment activity for the economy determines the need to conduct a comprehensive and detailed study of the world experience within legal regulation of joint investment institutions.

Recent publications review. A lot of domestic and foreign scientists studied the problems of joint investment institutions operation. Such scientists as T. Bilovus, O. Vynnyk, O. Harahonych, M. Dykha, O. Zinchenko, M. Kotova, O. Kryvenda, S. Krynytsya, N. Kuznetsova, V. Mamutov, L. Mashkovska, A. Mertens, O. Mykhailyk, S. Naumenkova, P. Perkonos, V. Polyukhovich, V. Reznikova, O. Slobodian, O. Sushch, L. Furdychko, N. Shapran, Yu. Shemshuchenko, H. Shovkoplyas, O. Shcherbyna, etc. addressed these issues in their investigations.

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The article's objective is to analyze and determine the peculiarities of the legal regime of investment funds and investment companies in the securities market of the European Union, as well as to explore the organization of management and control over the activities of joint investment institutions in these countries.

Discussion. Specialized organizations that manage the assets of many investors exist in various forms in most countries. They are mainly represented by investment companies and investment funds.

The main goal of creating joint investment institutions is the effective use of the population's savings by involving them to investment activities. This contributes to the formation of significant funds for investment in the economy. Thus, investment companies offer a mechanism by which small investors unite to benefit from the large-scale investment. Investment companies have a significant impact on the economy, which is manifested in their impact on the securities market. Investment companies, investing in shares, contribute to the growth of their prices, and therefore, in this way, the liquidity of securities and stock market is ensured.

It should be noted that individual investors receive significant advantages by investing money in securities of investment funds:

– due to the placement of investments among the maximum number of industries and companies, investment funds achieve diversification of investment risk;

– professional managers work on a permanent basis in investment funds, so individual depositors are deprived of the need to monitor the movement of courses every day and make current decisions;

– in most countries, the activities of investment funds are subject to strict supervision by regulatory bodies;

– investment funds create special risk management systems that ensure a high level of protection of the investor's rights and interests;

– investment funds offer some additional services to clients, including automatic reinvestment of dividends, convenient withdrawal schemes, the possibility of exchanging shares of one fund for shares of another, etc.

On the basis of the research of the history of development and formation of investment funds in the USA, EU, countries of Asia and Eastern Europe O.Shcherbyna identifies two ways of creating investment funds in each particular country. The first method is evolutionary, when, as a result of historical development, entrepreneurs intuitively found the appropriate organizational and legal forms of joint investment, which gave them a number of advantages that are unattainable for an individual small investor. So there were prototypes of future investment funds, there was a class of investors who learned to invest in the securities market, and, accumulating experience on it, contributed to the formation of rules related to joint investment through investment funds. Subsequently, these rules were fixed by law. For decades, the legislative framework for the functioning of the joint investment institutions has been formed. The first way of investment funds' evolving, finding their most relevant forms is typical for the United States and a number of European countries [8, p. 38].

Another way to create investment funds — in the Asian-Pacific region, Eastern Europe, including Ukraine, – is to import joint investment institutions. Along with a new set of investment rules, which differs from the rules of investing in traditional bank deposits, the financial systems of countries have acquired legislation containing the best standards of joint investment worked out for decades in countries where this type of financial intermediation arose evolutionarily. As a result, investment funds appeared in a number of countries for a short period of time, as forms of joint investment [8, p. 38].

Investment funds acquired the largest development in industrialized countries (USA, Canada, Japan, Great Britain, and Germany).

Investment companies first appeared in Belgium in 1822, in the U.S. they appeared in the late nineteenth century. After the establishment of FRS (Federal Reserve System) in the United States in 1913, which served as a central bank and influenced almost all institutions of the financial system, the monetary system of the country began to develop, which served as a prerequisite for the rapid development of the securities market. In 1924, the first in US open type investment company (mutual fund) was established in Boston, but the development of these institutions was prevented by the Great Depression (1929-1933). Most companies went bankrupt in the early 1930s, and it was only after the adoption of the Law on Securities (1933), the Law on Stock Exchange (1934) and the Law on Investment Companies (1940) that the basis for restoring investor confidence in joint investment institutions appeared.

After the Second World War, interest in investing into investment companies arose. Offering professional management and diversification of the portfolio of investments to small and medium-size investors, open investment companies were able to raise significant funds for investments in the growing stock market.

Exploring Article 1 paragraph 2 of Directive 85/611/EEC of 20 December 1985 «On coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities», joint investment institutions are understood as institutions, the only area of activity of which is joint investment in securities subject to circulation and/or other liquid financial assets specified in Article 19 (1) of the Directive, which belong to the funds borrowed from citizens working on the principle of risk distribution and; certificates of which, at the request of the owners, resold or redeemed, directly or indirectly, from the assets of these institutions [2].

In addition, European law in providing investment activities operates several other related concepts: an investment company and an investment firm. From the relevant provisions of Directive 2004/39/EC of 21 April 2004 «On markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC», it is clear that these two concepts basically coincide in their meaning and mean any legal entity whose permanent activity consists in providing one or more investment services to third parties and/or carrying out one or more types of investment activities on a professional basis [3].

In accordance with Part 2 of Art. 1 Directive 2009/65 EC of 13 July 2009 «On the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities» [10] UCITS fund is an enterprise whose sole purpose is a joint investment of capital received from the public, in securities or other financial assets defined in Art. 50 (1) of this Directive, acting on the principle of distribution of risks, as well as an enterprise with shares that, upon request of the owners, must be redeemed or repaid directly or indirectly from the assets of this enterprise.

UCITS can be established in the following traditional organizational and legal forms mentioned above: 1) common fund, whose assets are managed by the management company — contract form; 2) unit trust (the concept of trust law in common law systems); 3) investment company – corporate form [9, p. 577]. The peculiarity of UCITS funds is that UCITS funds can be different in their organizational form.

Another important subject of collective investment is depository. In accordance with Part 1 of Art. 2 Directive 2009/65, Depositary is an institution that has been entrusted with the obligations listed in Articles 22 and 32, as well as set out in Chapter 4 and Chapter 3 of Chapter 5 of this Directive. Based on these provisions, it is found out that the depository is an independent institution from the UCITS fund itself and the investment manager of the UCITS fund, whose main task of which is to store investors' assets. It is important to note that neither the manager nor any ordinary brokers acting as the so-called «counterparts» of the fund, can not be depositories. To protect the rights of investors and more detailed regulation of relations between the depository and the management company, Directive 2010/43/EU «On organizational requirements, conflicts of interest, conduct of business, risk management and the content of the agreement between a depository and a management company» was adopted [10].

The European Social Entrepreneurship Funds (EuSEF) are governed by Regulation (EU) No. 346/2013 of the European Parliament and of the Council of 17 April 2013 «On European Social Entrepreneurship Funds» [11]. Its norms establish uniform requirements and conditions for joint investment funds managers who intend to use the «EuSEF» designation in relation to social entrepreneurship funds in the EU, thereby contributing to their functioning in the EU domestic market. The concept of social entrepreneurship funds provides funds that are aimed at achieving positive social consequences and solving social problems and setting them their as corporate goals, unlike conventional investment funds, in which the main goal is to accumulate profits.

EU legislation, introducing several types of investment funds, thus allows agreeing on the possibility of raising funds in the economy and, with which it is necessary to agree, at the same time allows small investors to invest under extremely flexible conditions [7, p. 513].

So, as S. Hlibko proves, existing regulations and current trends in regulation of joint investment institutions in the EU law indicate diversification of opportunities for investors in terms of placing their investments in various assets depending on the purpose of placement, types of assets, varying degrees of investment risks, terms of placement, which, on the other

hand, allows recipients of various sectors of the economy and social groups to have access to low-cost non-bank financing. However, the regulation does not abolish the sustainable forms of supervision, including prudential, over the operation of joint investment institutions and other participants in the joint investment system, including the right of investors to access relevant information and independent risk assessment [1].

The wide popularity of joint investment institutions around the world is explained by the fact that this type of business effectively combines the interests of all parties involved in the operation of joint investment institutions. It would not have become so widespread if it did not offer money owners prospects more interesting compared to the alternative ways of placing funds.

Thus, joint investment institutions offer a wide range of investment directions, and investors' rights are protected by special laws and regulations for investment funds, the execution of which is strictly controlled. Joint investment institutions provide their participants with a sufficient degree of liquidity of securities, which is especially characteristic of open type investment funds.

The state, in which the appropriate conditions for the operation of investment funds are created, has an effective mechanism for the development of the securities market, which plays a significant role in the intersectoral redistribution of capital, increase the stability of the stock market, stimulate both the internal investment process and foreign investment, contribute to the empowerment of the state for domestic borrowing. The positive role of joint investment institutions in macroeconomic terms confirms the preferential nature of investment funds taxation (or lack thereof), which is typical for national legislation of the vast majority of countries.

Conclusions. Summing up the above, it should be noted that in the world practice activity on trust management of investors' funds is carried out by investment companies and funds, thus for each country there is a specificity. Joint investment institutions play an important role in the stock market of developed countries, creating competition for banking institutions, insurance companies and pension funds. Through investment funds, households can realize their investment opportunities, and corporations, government and local governments mobilize significant investment capital. Thus, the economic growth of the country, the increase in the capitalization of the stock market and the development of the middle class contribute to the formation of active portfolio investors – investment funds.

Regardless of the national specificity, names and peculiarities of formation, modern regulation by the national legislation of such institutions, one can distinguish the features by which they can be classified. JII can exist in the form of both legal entities and without the establishment of a legal entity. In the first case, investment funds are created as joint-stock companies or limited liability companies. The alternative to them is JII of a contractual type when capital exists in the form of a monetary complex — joint ownership of investors and is managed by a third party on a trust basis.

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Abstract

The scientific article analyzes the peculiarities of the legal regulation of the joint investment institutions of the European Union. The concepts and types of joint investment institutions have been defined, the legal regime and the peculiarities of their activity have been analyzed.

The state in which the right conditions for investment funds are created has in their person an effective mechanism for the development of the securities market, which play a significant role in the cross-sectoral redistribution of capital, enhance the stability of the stock market, stimulate both the internal investment process and foreign investment, promote empowering the state with regard to domestic borrowing. The positive role of co-investment institutions in the macroeconomic context is confirmed by the preferential nature of investment funds taxation (or lack thereof), which is characteristic of the national legislation of the vast majority of countries.

Keywords*: joint investment institutions, asset management company, investment funds, trusts.*

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PENSION SUPPORT OF POLICE OFFICERS IN UKRAINE

Лілія Тимченко. ПЕНСІЙНЕ ЗАБЕЗПЕЧЕННЯ ПОЛІЦЕЙСЬКИХ В УКРАЇНІ. Стаття містить аналіз законодавства України та інформаційних джерел щодо пенсійного забезпечення працівників Національної поліції Україні та інших країн. Автор зазначає, що пенсійне забезпечення поліцейських та населення в цілому є досить важливим в нашій країні, що їх належне забезпечення регулюється первинним і вторинним законодавством, зокрема статтями Закону України «Про Національну поліцію», Закону України «Про пенсійне забезпечення осіб, звільнених з військової служби, та деяких інших осіб». Основну роль у призначенні пенсії працівникам поліції України відіграє рівень прожиткового мінімуму. Саме від розміру цього показника, згідно із законодавством, визначаються мінімальні пенсійні виплати цим працівникам.

Автор, наводячи показники пенсійного забезпечення поліції інших країн робить висновок, що у значній кількості країн Європейського Союзу та у Сполучених Штатах Америки, рівень пенсійного забезпечення правоохоронців значно відрізняється від рівня у країнах СНД.

Національне законодавство для поліцейських одним із видів пенсійного забезпечення передбачає пенсію за вислугу років. Також для поліцейських передбачені пенсії за вислугу років, які призначаються в таких розмірах: а) за вислугу 20 років – 50 процентів, а звільненим у відставку за віком або за станом здоров'я, особам, звільненим зі служби в поліції на підставі пунктів 2, 3 частини першої статті 77 Закону України «Про Національну поліцію» – 55 % відповідних сум грошового забезпечення; за кожний рік вислуги понад 20 років – 3 % відповідних сум грошового забезпечення; б) поліцейським, які мають страховий стаж 25 років і більше, з яких не менше 12 календарних років і 6 місяців становить військова служба, служба в органах внутрішніх справ, поліції, державній пожежній охороні, Державній службі спеціального зв'язку та захисту інформації України, органах і підрозділах цивільного захисту, податковій міліції чи Державній кримінально-виконавчій службі України: за страховий стаж 25 років – 50 % і за кожний повний рік стажу понад 25 років – 1 процент відповідних сум грошового забезпечення.

Але, враховуючи сучасний розмір грошового забезпечення поліцейських, ці виплати не зможуть забезпечити гідного життя у старості, а тому сучасне соціальне забезпечення поліцейських призводить до постійного відтоку кваліфікованих кадрів. На сучасному етапі варто переглянути всю систему пенсійного забезпечення громадян і особливо працівників поліції. Автором запропоновані зміни до пенсійного законодавства, які покликані вдосконалити соціальне забезпечення поліцейських.

Ключові слова: *поліцейські, національна поліція, громадський порядок, соціальне забезпечення, пенсійне забезпечення, пенсії; державне управління.*

Relevance of the study. The functioning of the state is based on the efficiency of law enforcement agencies and their communication with society as a whole. A key issue in law enforcement is the increased risk to privacy and health. Based on this statement, for all risks, police officers should be paid decent pension benefits after retirement. At present, the level of pension provision for Ukrainian police officers cannot provide them with a decent life in old age, and therefore the task for the authorities is to increase the level of this social security for law enforcement officers. Because ensuring law and order is impossible without a strong law enforcement system, and an important part of this system is the national police. Unfortunately, the staffing of the police is not satisfactory, and one of the reasons for this fact is the insufficient pension provision of police officers.

Recent publications review. Leading scientists, in particular: M. I. Inshin,

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V. S. Venediktov, K. Yu. Melnyk, M.V. Vitruk, S.V. Vyshnovetska studied the problems of aspects of legal regulation of social security of police officers.

The article's objective is to analyze the pension legislation and formulate proposals for improving the pension provision of police officers.

Discussion. A policeman is a person who monitors the maintenance of public order, protects the peace and health of all citizens of our state. A characteristic feature of this profession is an increased level of personal danger. When meeting with perpetrators, every police officer, regardless of the situation, is in a state of increased danger to his life, health and psychological state.

The main tasks of the police in accordance with the current Law of Ukraine «On the National Police» are to ensure public safety and order; protection of human rights and freedoms, as well as the interests of society and the state; fight against crime; providing, within the limits established by law, services to provide assistance to persons who, for personal, economic, social reasons or in connection with emergencies, need such assistance [1]. That is, the role of the police at the present stage is not limited to law enforcement and the search for criminals, the police becomes the state institution through which a high legal culture and legal consciousness of citizens are contributed to civil society in Ukraine. To play such an important role, police officers must have decent social security.

Pensions are considered to be one of the types of social security. As V.B. Savostyanov noted the constitutional consolidation of the state's responsibility for the organization of pensions and the formation of a developed legal framework, which establishes guarantees of social assistance in the form of pensions, is one of the most important results of the legal systems of all developed countries [9, p.78]. According to M.O. Buyanova, Z.A. Kondratieva and S.I. Kobzeva, pensions are the most common and characteristic type of social security for the elderly or disabled, which is the basis of the entire social security system. All other types of care and services for the elderly and disabled are designed to meet their specific needs, usually in addition to pensions (prosthetics, various free or discounted services, etc.), and sometimes as a part instead [5].

In a sense, we may disagree with this view, as there is a type of pension, as in years of service, that does not apply to the elderly or the disabled. The main feature of the old-age pension is the presence of a special term of service, called «seniority». Unlike other pensions, old-age pensions not only provide a source of livelihood, but also use this source to encourage or prematurely abandon certain activities at the risk of premature aging or attracting labor to certain sectors of the national economy [8, p.233].

Analyzing the Law of Ukraine «On the National Police», we can pay attention to paragraph 5 of part 10 of Article 62 of this Law, according to the last, police officer is fully provided with social and legal guarantees, i.e. a police officer fully enjoys the guarantees of social and legal protection provided by this law and other legislative acts [1]. Based on the consideration of this provision of the law, the question may arise: «Does our state provide full social and legal support to employees of this important and responsible profession?». To answer this question, it is necessary to refer to the Law of Ukraine «On Pension Provision for Persons Released from Military Service and Certain Other Persons» of April 9, 1992.

This law determines the conditions, norms and procedure for receiving a pension by citizens of Ukraine working in the internal affairs bodies, the National Police, the military and other services, as well as some other persons entitled to receive a pension in accordance with this Law. The state guarantees a decent pension to persons entitled to receive a pension in accordance with this Law, setting for them a pension level not lower than the subsistence level established by the legislation of Ukraine. The basis for the recalculation of pensions for police officers may be an increase in the level of cash benefits, the provision of statutory state social guarantees or the adoption of measures at the state level for their social protection. Article 1 of this law states that officers who have served in the police and the National Police are entitled to a lifetime pension if they have served for many years [2]. It is necessary to calculate the minimum pension to be paid to a retired police officer. As stated in the law, a police officer's pension cannot be below the subsistence level. The subsistence level, according to the Law of Ukraine «On the State Budget for 2020», as of May 10, 2020, is 2027 hryvnias. Thus, it can be concluded that the police pension cannot be lower than 2027 hryvnias [3].

National legislation for police officers provides a pension for years of service as one of the types of pension provision. Yes, in accordance with Art. 12 of the Law of Ukraine «On pensions of persons discharged from military service and certain other persons» from

09.04.1992 № 2262-CP pension for years of service is assigned: a) police officers, regardless of age, if they are dismissed from service: until September 30, 2011 and on the day of dismissal have a service of 20 years or more; from October 1, 2011 to September 30, 2012 and on the day of retirement have a service of 20 calendar years and 6 months or more; from October 1, 2012 to September 30, 2013 and on the day of retirement have a service of 21 calendar years or more; from October 1, 2013 to September 30, 2014 and on the day of retirement have a service of 21 calendar years and 6 months or more; from October 1, 2014 to September 30, 2015 and on the day of retirement have a service of 22 calendar years or more; from October 1, 2015 to September 30, 2016 and on the day of retirement have a service of 22 calendar years and 6 months or more; from October 1, 2016 to September 30, 2017 and on the day of retirement have a service of 23 calendar years or more; from October 1, 2017 to September 30, 2018 and on the day of retirement have a service of 23 calendar years and 6 months or more; from October 1, 2018 to September 30, 2019 and on the day of retirement have a service of 24 calendar years or more; from October 1, 2019 to September 30, 2020 and on the day of retirement have a service of 24 calendar years and 6 months or more; from October 1, 2020 or after this date and on the day of retirement have a service of 25 calendar years or more;

b) police officers if they reach the age of 45 on the day of dismissal if they have insurance experience of 25 years or more, of which at least 12 calendar years and 6 months is military service or service in the internal affairs bodies, the National Police, the state fire service, the State service of special communication and protection of information of Ukraine, bodies and divisions of civil protection, tax militia or the State criminal executive service of Ukraine [2].

It is impossible to agree with K. Yu. Melnyk, who notes that in the system of the Ministry of Internal Affairs of Ukraine there are categories of positions where young age and physical abilities of the employee are not crucial in the performance of their duties and powers (district inspectors, investigators, employees of duty units, headquarters, departmental educational institutions). In view of this statement, K. Yu. Melnyk believes that increasing the length of service of these categories of employees will not cause significant harm to the interests of the service itself [8, p. 233].

Pensions for years of service to police officers are assigned in the following amounts: a) for 20 years of service – 50 percent, and dismissed by age or health, persons dismissed from the police on the basis of paragraph 2 part 1 of Article 77 of the Law of Ukraine «On National Police» – 55 percent of appropriate amounts of cash security; for each year of service over 20 years – 3 percent of the relevant amounts of cash security; b) police officers with insurance experience of 25 years or more, of which at least 12 calendar years and 6 months is military service, service in the internal affairs bodies, police, state fire service, State Service for Special Communications and Information Protection of Ukraine, bodies and subdivisions of civil protection, tax police or the State Penitentiary Service of Ukraine. As for insurance experience of 25 years – 50 percent and for each full year of service over 25 years – 1 percent of the respective amounts of cash security [2].

Article 13 of the Law of Ukraine «On Pension Provision for Persons Released from Military Service and Certain Other Persons» established the maximum amount of pension for years of service. This amount may not exceed 70 percent of the relevant amounts of cash security for police officers, and persons who during their service participated in the liquidation of the consequences of the Chernobyl disaster and are classified in the manner prescribed by law to category 1, – 100 percent, to category 2, – 95 percent [2].

To determine the adequacy of police pensions in Ukraine, we compare Ukrainian pension legislation with foreign legislation. Giving an example of the situation with the pension provision of police officers in the United States, we present data from the article «New York Post» from August 6, 2019.

«According to the think tank, three-quarters of the 242 police districts of Nassau and Suffolk, which retired last year, receive annual pensions of more than $ 100,000. Former Yonkers officers are also well-off, as two-thirds of the 39 Westchester police officers who applied for retirement in 2018 receive a six-figure amount in retirement benefits, according to the Center for Public Policy. The report says the suburban police officer with the largest pension, who retired last year, is 52-year-old Nassau County employee Jeff Fabre, who went on vacation with a $ 221,086 package. According to payroll reports, Fabre's total profit in 2017 was $ 326,950. But according to records previously published by Newsday, his base salary was 122,514 US dollars. He more than doubled his income due to overtime and other additional payments and benefits. Another Nassau officer, Thomas Papaccio, 59, has retired with a pen-

sion of $ 179,440. Papaccio also had a base salary of $ 122,000, but in 2017 he earned $ 85,246 for overtime, as well as other additional payments that increased his total salary to $ 234,903. His salary in 2018 was $ 254,991. The new state law, approved in 2012, provides for a 15 percent overtime payment that can be used to increase pensions. But employees hired before 2012 can reap significant benefits to increase their final salary and pension. An observer from the District of Nassau said that officers also receive a one-time payment of $ 100,000 for retirement» [7, p. 57].

Police officers in Germany can take a well-deserved rest 20 years after working in law enforcement. They receive more than 2.5 thousand dollars. Therefore, many elderly people spend time for fun – learning foreign languages, dancing, relaxing in foreign resorts or sitting with grandchildren. In the Czech Republic, police officers who have served for more than 15 years can go on a well-deserved vacation. However, their pension will then be 20% of salary. If a police officer has served more than 30 years, the state will deduct 50% from him. That's about $ 450. The longest working police officers in Japan – up to 65 years. In addition to the basic pension, which is paid to everyone, they are entitled to additional benefits. As a result, the former police officer's income is about $ 1,500. By the way, Japanese retirees are distinguished by the fact that they travel around the world more often than others, volunteer and keep themselves in excellent physical shape [7, p. 58].

In the Republic of Poland, retired police officers can receive up to 75% of their cash benefits, but even this does not help increase the number of police officers on duty.

With regard to the provision of housing for Ukrainian police, there is a certain regulatory framework in the legislation governing these issues. One of such normative legal acts is the Resolution of the Cabinet of Ministers of Ukraine «On approval of the Procedure for providing the State Mortgage Institution with police officers and members of the rank and file of the Civil Protection Service with housing on financial leasing terms». This resolution specifies the procedure that determines the mechanism of providing the State Mortgage Institution with police and members of the rank of the Civil Defense Service on the terms of financial leasing and compensation of part of lease payments from the state budget and other sources not prohibited by law. In order to provide housing on financial leasing terms, a police officer or a person of the rank or senior staff of the civil protection service shall, in accordance with this Procedure, submit an application for housing on financial leasing in accordance with the form specified by the State Mortgage Service indicating the specification of the housing he wishes to obtain [7, p. 58].

A police officer or a person of the rank, or senior staff of the civil protection service (hereinafter – the employee) may enter into financial leasing agreements with the State Mortgage Institution on the terms of compensation for the purity of lease payments, if the applicant: is registered for the improvement of living conditions; has a service of at least two years (except for participants in hostilities); has at least five years before retirement. Such agreements are valid for five to twenty years. Housing that is in operation for 20 years or reconstructed for 10 years or less before the conclusion of the lease agreement is leased. Housing must in accordance with the regulatory area be: 31.5 square meters of total area per 1 applicant or in an annex with 1 family member; an additional 21 square meters for each subsequent family member, but not more than 73.5 square meters [7, p. 58].

To obtain housing under a lease, the applicant must first submit an application to the housing office at the place of service, indicating the name of the settlement in which the housing is located, the total area and number of premises, and other characteristics, including access to housing (for example, for people with special needs). The documents are considered within 10 working days, and in case of their approval, the National Police Department receives information about the applicant, housing requirements and the date of age restriction of the person's service. After that, the departments submit generalized information about the employee, about housing and competent authorities to the State Mortgage Institution, which, in turn, reviews the information received within 30 calendar days. The housing authority, having received information about the availability of housing, the amount of rent and other essential terms of the lease agreement of the State Mortgage Institution, informs the applicant within 5 working days. The cost of housing set by the contract will not change during its entire term. Police officers who are legally recognized as in need of improved living conditions are given priority living space.

Persons dismissed from the police service and recognized as disabled by group I as a result of trauma, concussion, trauma received during the service in the police, or illness received during the service in the police, and recognized by law as persons in need of improvement liv-

ing conditions, receive housing first. Family members of a police officer who has died in the line of duty who are deemed to be in need of improving housing and are registered as in need of improving living conditions in the locality at the time of the police officer's death shall be provided with emergency accommodation [6].

Conclusions. Thus, modern social security for police officers does not increase the human resources of law enforcement agencies, but on the contrary leads to a constant outflow of qualified personnel and a significant reduction in the number of police officers in the country in general. The latter can lead to delays in the investigation of crimes, slow search for criminals and in general to systematic violations of the law and marginalization of society. At the present stage, many Eastern European countries face the problem of staffing law enforcement agencies. In an attempt to solve this problem, some countries are increasing their length of service (Poland), while others are adding allowances to their salaries and pensions for each additional year of service (Lithuania). As Ukraine, due to the difficult economic situation and military actions in the east of the country, is not able to pay high salaries to all law enforcement officers, it is necessary to improve social security system, including pension provision, for employees of this very important area of civil service. In order to encourage police officers to stay in the civil service longer, pensions for years of service should be increased. Thus, pensions for years of service for police officers should be increased to the following amounts: a) for 20 years of service (dismissed for age or health) – 70 percent; persons dismissed from the police on the basis of paragraphs 2, 3 of part 1 of Article 77 of the Law of Ukraine «On National Police» – 75 percent appropriate amounts of cash security; for each year of service over 20 years – 10 percent of the relevant amounts of cash security; b) police officers with insurance experience of 25 years or more, of which at least 12 calendar years and 6 months is military service, service in the internal affairs bodies, police, state fire protection, State Service for Special Communications and Information Protection of Ukraine, bodies and subdivisions of civil defense, tax police or the State Penitentiary Service of Ukraine – 60 percent and for each full year of service over 25 years – 5 percent of the respective amounts of cash security. These changes, together with improvement of the conditions of service in the police, improvement of housing for police officers will increase the human resources of law enforcement agencies.

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Abstract

The article is devoted to the analysis of the legislation of Ukraine and information sources on the pension provision of employees of the national police of Ukraine and other countries. The author notes that the pension provision of police officers and the population in general is very important in our country, that their proper provision is regulated by primary and secondary legislation, in particular articles of the Law of Ukraine «On National Police», the Law of Ukraine «On pensions of persons discharged services, and some other persons. «Level of the subsistence minimum plays a key role in assigning pensions to Ukrainian police officers. It is from the size of this indicator, according to the law, that the minimum pension payments to these employees are determined.

At the present stage, it is necessary to review the entire pension system of citizens and especially police officers. The author proposes changes to the pension legislation, which are designed to improve the social security of police officers.

Keywords: *police, national police, public order, social welfare, pension provision, pensions, governance.*

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PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

Анастасія Лапко, Марина Поліщук. ЗАХИСТ ПРАВ ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ. Стаття містить аналіз законодавства та наукових праць щодо способів захисту прав інтелектуальної власності. Матеріальна власність існувала задовго до розбудови першої держави, тому її захист вже давно закріплений у багатьох нормативно-правових актах, достатньо вивчений та випробуваний на практиці. Інтелектуальна власність набула своєї важливості набагато пізніше – з появою демократичного суспільства.

Цивільно-правові відносини супроводжують особу протягом усього її життя і ми самі не помічаємо, як повсякчас стикаємося з інтелектуальною власністю: читаємо книжки, слухаємо музику, дивимось фільми. На жаль, в Україні навіть самі науковці та розробники не володіють достатніми знаннями щодо захисту власних прав, а споживачі, прагнучи якомого заощадити, уникають легального способу отримання об'єкта інтелектуальної власності. Споживачі повинні розуміти, що будь-яка робота є оплачуваною, і коли ми користуємось інтелектуальною власністю нелегально, автор, винахідник, творець не отримує дохід за свою діяльність.

З розвитком комп'ютерних технологій стало простіше заволодіти результатами чужої праці. Безліч різноманітних ресурсів пропонують як оплатно, так і безкоштовно отримати тексти будь-яких художніх творів, наукових статей, монографій та підручників, але коли праць стало надто багато, а думки у них були ідентичін, світове товариство виробило низку засобів виявлення плагіату та відвертого переписування.

Визначальною є наявність не лише цивільної відповідальності за порушення прав інтелектуальної власності, а й адміністративної, господарської та кримінальної, у яких найм'якішим видом відповідальності є попередження, а найтяжчим – позбавлення волі.

У статті досліджується юридичний зміст інтелектуальної власності. Визначено, хто є суб'єктами цього права та що належить до об'єктів права інтелектуальної власності. Розкривається визначення цього поняття у цивільному праві України у суб'єктивному та об'єктивному значенні, надане різними науковцями. Розглядається законодавча база, що регулює право інтелектуальної власності. Аналізуються форми і способи захисту результатів інтелектуальної діяльності, у тому числі самозахист (неюрисдикційна форма захисту). Висвітлюється проблема відсутності структурованого переліку дій, що визнаються порушеннями прав інтелектуальної власності.

З використанням методів пізнання, таких як узагальнення та синтез, у роботі здійснено аналіз наукових праць і нормативно-правової бази України та міжнародний досвід, визначено перелік протиправних дій, спрямованих на порушення прав інтелектуальної власності та є поширеними на сьогодні. У ході аналізу та отриманих даних виявлено розбіжності нормативно-правової бази та методології України з міжнародним законодавством та проблему практичного застосування певних норм.

Ключові слова: *право інтелектуальної власності, захист прав інтелектуальної власності, суб'єкти права інтелектуальної власності, об'єкти права інтелектуальної власності, правопорушення.*

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Relevance of the study. According to Article 54 of the Constitution of Ukraine, everyone has the right to freedom of literary, artistic, scientific and technical creativity, protection of intellectual property, their copyright, moral and material interests arising in connection with various types of intellectual activity. But more and more often, with the development of information technology, the creative possessions of people who become objects of intellectual property suffer from the encroachment of persons aimed at illegal enrichment and appropriation of the achievements of others.

This issue is relevant because one of the most important aspects of human life is creative activity. In European countries, this issue plays a key role in economic development and accounts for the lion's share of national wealth. It is creative activity that creates intangible, spiritual goods that can acquire a certain material, economic value. Such products of intellectual activity are, for example, a literary work or a painting by an artist.

Therefore, ensuring proper protection of objects and subjects of intellectual property rights, namely modern legislation and effective mechanisms for the implementation of legal norms, will help Ukraine to reach a new level of development in the field of intellectual property and secure a place among European leaders.

Recent publications review. Legal aspects of intellectual property protection in Ukraine have been studied in scientific publications of V. O. Zharova, L. Doris, Ray Patricia, T. M. Shevelyova, R. B. Shishka, O. B. Pihurets, I. E. Vasнlenko, B.C. Drobiazko, A. I. Kubah, O. D. Svyatotsky, I. I. Dakhno, O. M. Melnyk, O. A. Pidoprigorф, Yu. M. Kapitsa and others.

The article's objectives is to study the issues of intellectual property rights, disclosure of the main provisions of the legislation governing and protecting the results of intellectual activity.

Discussion. In the general definition, *intellectual property* is considered as the right to the results of human intellectual activity in scientific, artistic, industrial and other areas, which are the object of civil relations in terms of the right of everyone to own, use and dispose of their intellectual, creative activities.

Civil law allocates intellectual property rights to a separate institution, its rules are specified in the fourth book of the Civil Code of Ukraine. The definition of the concept of intellectual property rights is given in Part 1. Art. 418 of the Civil Code of Ukraine (hereinafter – CCU), which states that intellectual property rights – is the right of a person to the result of intellectual, creative activity or other object of intellectual property rights, defined by the Civil Code and other law [1]. Also, the concept of intellectual property and its objects, defined in national law on the basis of the Convention establishing the World Intellectual Property Organization, signed in Stockholm on July 14, 1967 [2, p. 258].

The intellectual property right in the subjective sense is identical to the real property right and consists in belonging to the owner of intellectual property rights to own, use and dispose the corresponding object. However, due to the difference between the objects of property law and intellectual property rights, the relevant rights are transformed into slightly different categories of law. Thus, a characteristic feature of the right of ownership of intellectual property is the creative origin of these objects and the exclusivity of rights to them, which is the exclusive right of the subject (owner) to allow the use of intellectual property to others; prevent the misuse of the object of intellectual property rights, including the prohibition of such use [3, p. 26].

Objects of intellectual property rights include: literary and artistic works, computer programs, data compilations (databases), performances, phonograms, videograms, transmissions (programs) of broadcasting organizations, scientific discoveries, inventions, utility models, industrial designs, layout (topography) of integrated circuits, innovation proposals, plant varieties, animal breeds, commercial (brand) names, trademarks (signs for goods and services), geographical indications, trade secrets, etc.

Subjects, according to the legislation, are the creator (creators) of the object of intellectual property rights (author, performer, inventor, etc.) and other persons who own personal non-property and (or) property intellectual property rights in accordance with the Civil Code, other law or contract [1].

The results of intellectual activity were first recognized as property in Ukraine in 1991 as a result of the adoption of the Law of Ukraine «On Property». However, the main sources of intellectual property rights, which formed the basis of special legislation on intellectual property, were the Laws of Ukraine: «On protection of rights to inventions and utility models», «On

protection of industrial design rights», «On protection of trademark rights for goods and services», which were adopted by the Verkhovna Rada of Ukraine on 15.12.1993 [2, p. 258].

In domestic law the results of intellectual activity are protected by various branches of law. Thus, the rules of criminal, administrative, labor law also protect the intellectual property rights of these entities. Also, the norms of international law need considerable attention.

The need to protect and defend the rights of intellectual property is due to the following:

ensuring the interests of creators by granting them time-limited rights to control the use of their own works;

stimulating creative intellectual work, encouraging creative activity and implementing its results in the interests of socio-economic progress of society;

intensification of investment and innovation activities, introduction of scientific and technological progress and innovations in all spheres of public life;

creation of a civilized market environment, reliable protection of business entities from unfair competition associated with the misuse of intellectual property;

protection of economic security of states in the context of globalization of world economic development, creation of favorable conditions for the transfer of new technologies;

dissemination of information, avoidance of losses due to duplication of efforts aimed at finding ways to solve urgent scientific, technological and socio-economic problems;

protection of society's interests in free access to the world's intellectual treasury.

The special legislation of Ukraine on intellectual property provides a definition of the state system of legal protection of intellectual property – an «Institution (the central executive body for legal protection of intellectual property) and a set of expert, scientific, educational, informational and other relevant specialization of state institutions within the scope of management of the Institution».

Today this system consists of the Ministry of Education and Science of Ukraine, the Ukrainian Agency for Copyright and Related Rights, the state enterprise «Ukrainian Institute of Industrial Property», the branch «Ukrpatent», the Ukrainian Center for Innovation and Patent Information Services, the state enterprise «Intelzahist» and Research Institute of Intellectual Property, State Intellectual Property Service.

The main purpose of protection of intellectual property rights is to create mechanisms of legal prevention of the possibility of free use of this intellectual property by third parties for commercial purposes.

The concept of «protection of intellectual property rights» includes the activities of the relevant state bodies provided by law for the recognition, restoration of rights, as well as the removal of obstacles to the realization of the rights and legitimate interests of intellectual property rights. Protection of intellectual property rights and legally protected interests is carried out in the manner prescribed by law, i.e. with the use of appropriate forms, means and methods of protection [2, p. 259-260].

Special laws of Ukraine on intellectual property, with some exceptions, do not determine which specific actions are recognized as infringement of intellectual property rights in relation to a particular object of these rights. An offense is any encroachment on intellectual property rights in relation to the relevant object of these rights, provided by law. These laws define actions that are recognized as the use of an object of intellectual property rights. And an offense is any act taken without the consent of the owner that are recognized as the use of the object of intellectual property [4, p. 52].

I. M. Korostashova in her work draws attention to such types of offenses as counterfeiting and piracy, falsification, plagiarism [5].

In the Customs Code of Ukraine, the legislator defined the concept of «counterfeit goods» as goods containing objects of intellectual property, the import of which into the customs territory of Ukraine or export from this territory is a violation of intellectual property rights protected by law [6].

The concept of «falsification» is defined as: 1) forgery of something; deterioration with the selfish purpose of quality of something at preservation of appearance; 2) intentional distortion or misinterpretation of certain phenomena, events, facts; 3) a counterfeit thing that is pretended to be real; fake; a substitute for something [5, p. 32].

Piracy is an act aimed at the illegal use of intellectual property rights belonging to other persons, intentionally committed by a person who understands the illegal nature of these acts, in order to obtain material benefits. A characteristic feature of this concept is that it is usually used in relation to infringements of intellectual property rights committed in the field of copy-

right and related rights.

In the New Dictionary of the Ukrainian language, *plagiarism* is defined as the attribution of authorship to someone else work of science, literature, art or someone else discovery, invention or innovation proposal, as well as the use of someone else work without reference to the author [5, p. 34-35].

Copyright infringement by plagiarism in Ukraine has become so widespread and almost uncontrollable that plagiarism in some areas of intellectual activity is seen not as an offense but as an «integral part of science.» Thus, some researchers of intellectual property law note that: «elementary copying in the preparation of dissertations, monographs, textbooks, articles is becoming almost the norm, and, consequently – low quality PhD and doctoral dissertations, lack of real responsibility for plagiarism, devaluation of scientific degrees and academic titles, the decline of the prestige of science, etc.» [7].

Relatively new concepts for Ukrainian legislation are «academic integrity» and «academic plagiarism» introduced by the Law of Ukraine «On Education» № 2145-VIII of September 5, 2017. Academic integrity in accordance with Part 1 of Art. 42 of this Law is a set of ethical principles and rules defined by law, which should guide the participants of the educational process during training, teaching and conducting scientific (creative) activities in order to ensure confidence in learning outcomes and/or scientific (creative) achievements. Part 4 of this Article establishes that one of the types of violation of academic integrity is academic plagiarism, which is the publication of (partially or completely) scientific (creative) results obtained by others as the results of their own research (creativity) and/or reproduction of published texts (published works of art) by other authors without indication of authorship.

For violation of academic integrity, the law provides for bringing to academic responsibility:

a) refusal to award a scientific degree or confer a scientific title;

b) deprivation of the awarded scientific (educational and creative) degree or the awarded scientific title;

c) refusal to assign or deprivation of the assigned pedagogical title, qualification category;

d) deprivation of the right to participate in the work of statutory bodies or to hold statutory positions [10].

The legislation provides for two forms of protection of intellectual property rights: *jurisdictional and non-jurisdictional.* The non-jurisdictional form is simpler and provides for the protection of property rights without the intervention of the court and other defense bodies, i.e. self-defense. The chosen means of self-defense of rights should not contradict the law and the moral principles of society. At the same time, the methods of self-protection of rights must correspond to the content of these violated rights, the nature of the actions by which they are violated, as well as the consequences caused by this violation. Methods of self-defense can be chosen by a person or established by a contract or acts of civil law [4, p. 54].

The jurisdictional form of protection provides for two ways: general protection and special. In general, the protection of intellectual property rights and legally protected interests is carried out by the court. The bulk of such disputes are heard by local courts. If both parties to the disputed legal relationship are legal entities, the dispute that arose between them is subject to the commercial court. With the consent of the parties to the legal relationship in the field of intellectual property, the dispute between them may be referred to arbitration. Disputes between individuals are considered by local courts. A special form of protection of intellectual property rights is the administrative procedure for their protection. It is used as an exception to the general rule, i.e. only in cases expressly provided by law. According to the law, the victim may apply for protection of his violated rights to the authorized state body, in particular, to the Antimonopoly Committee of Ukraine, the Ministry of Internal Affairs of Ukraine, the State Customs Service of Ukraine, the State Intellectual Property Department of the Ministry of Education and Science of Ukraine, which can provide such protection if necessary.

The jurisdictional form of protection of intellectual property rights provides for civil, criminal and administrative protection of infringed rights.

Under the civil protection of intellectual property rights means the statutory substantive measures of a coercive nature, through which the recognition or restoration of infringed intellectual property rights, termination of the offense, as well as property influence on the offender. Along with the civil law protection of intellectual property rights in the modern legal literature distinguish economic and legal protection of infringed intellectual property rights of enter-

prises, institutions, organizations, other legal entities (including foreign), and citizens – business entities.

The main purpose of civil and economic liability is not punishment for non-compliance with the established law and order, but compensation for damage. The case is initiated in court on the basis of a statement of claim, which is filed in writing by the person whose rights have been violated.

General civil law methods of protection of rights, which also apply to the protection of intellectual property rights are: recognition of rights; invalidation of the transaction; termination of an action that violates rights; restoration of the situation that existed before the violation; forced performance of duty in kind, etc. [4, p. 55].

Also, it should be emphasized that the current civil legislation of Ukraine on intellectual property regulates contractual relations in the field of intellectual property at an insufficient level. Active intellectual activity and the scale of use of its results – intellectual property – require a more perfect and effective system of contracts in the field of intellectual activity and intellectual property.

Criminal liability for infringement of intellectual property rights occurs if the right holder has suffered material damage in a significant, large or particularly large amount. Yes, according to Art. 176 of the Criminal Code illegal reproduction, distribution of works of science, literature and art, computer programs and databases, as well as illegal reproduction, distribution of performances, phonograms, videograms and broadcasting programs, their illegal reproduction and distribution on audio and video cassettes, diskettes, other media, camcording, cardsharing or other intentional infringement of copyright and related rights, as well as the financing of such actions, if it caused material damage in a significant amount – are punishable by a fine from two hundred to one thousand tax-free minimum incomes or correctional labor for up to two years, or imprisonment for the same term. Also in Art. 177 provides for penalties for infringement of the rights to an invention, utility model, industrial design, topography of an integrated circuit, plant variety, innovation proposal [7].

A special form of protection of intellectual property rights in Ukraine is the administrative procedure for their protection. It is used as an exception to the general rule, i.e. only in cases expressly provided by law. According to the law, the victim may apply for protection of his violated rights to a certain public administration body, the highest body of the defendant or the Antimonopoly Committee of Ukraine. The means of protection in this case is not a claim, but a complaint or application, the procedure for submission and consideration of which are regulated by administrative law.

As for administrative methods of protection of intellectual property rights, they are in accordance with Articles 23 and 24 of the Code of Administrative Offenses of Ukraine applied in the form of administrative penalties, which are a measure of responsibility to educate the person who committed an administrative offense, in compliance with Ukrainian laws, rules of cohabitation, as well as prevention of new offenses by the offender and other persons. These types of administrative penalties can be: warnings; fine; paid confiscation or confiscation of an object that has become an instrument of commission or a direct object of an administrative offense; confiscation of money received as a result of committing an administrative offense; correctional work or administrative arrest [4, p. 148].

Also, equally important issue related to the protection of intellectual property rights is the payment of remuneration for the use of relevant objects. According to the Accounting Chamber of Ukraine, the state annually collects only about 30 million hryvnias in remuneration, which experts estimate is 3% of the potential amount of revenue. This is due to the fact that in Ukraine only 7% of users pay fees for the use of copyright.

For example, broadcasters and cable operators refuse to recognize the collective rights management mechanism and pay remuneration for the use of copyright and related rights, as different collective management bodies, of which 14 are registered with the State Intellectual Property Department, collect remuneration for the same primary subsidiaries objects of copyright and related rights.

Such statistics give grounds to assert that today in Ukraine there is no effective system of collection and payment of remuneration to authors, performers, producers of phonograms [9].

Conclusion. The progress of the XXI century leads humanity to the fact that further development will be determined by the intellectual activity of man. Therefore, the state is obliged to provide all the conditions for the proper development of this activity. It is equally important for the rule of law to create modern, effective, systemic legislation that will regulate and

protect the rights of subjects to intellectual property.

Thus, the protection of intellectual property rights always requires confirmation and proof of ownership of the full range of rights of the owner to the object of creative activity. Such confirmation, by obtaining a permit (certificate, patent), always precedes the protection of intellectual property rights in any field of use. Based on the role and importance of intellectual activity for the socio-economic progress of Ukraine as one of the forms of socially useful activity, it should be officially declared a priority at the state level and one that determines the successful development of all other forms of socially useful activity.

At the moment, there are such types of violations as piracy and counterfeiting, falsification, plagiarism. If the rights of the person who is the owner of the results of intellectual activity are violated, he can go to court with a claim or resolve the issue independently. The state determines the laws that ensure the protection of various intellectual property.

At this stage of development, Ukrainian legislation on intellectual property rights is sufficient, but there are difficulties with its implementation and differences with international law.

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Abstract

This article is devoted to the analysis of legislation and scientific works on ways to protect intellectual property rights. Material property existed long before the development of the first state, therefore, its protection has long been enshrined in many regulations, sufficiently studied and tested in practice. Intellectual property gained its importance much later – with the advent of a democratic society.

Using methods of cognition, such as generalization and synthesis, the analysis of scientific works and legal framework of Ukraine and international experience is carried out, the list of illegal actions aimed at infringement of intellectual property rights and currently taking place is determined.

The analysis and the obtained data revealed discrepancies between the regulatory framework and methodology of Ukraine with international law and the problem of practical application of certain rules.

Keywords: *intellectual property law, protection of intellectual property rights, subjects of intellectual property law, objects of intellectual property law, offenses.*

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BANKRUPTCY OF THE ENTERPRISE AND ITS REHABILITATION

Олена Нагорна. БАНКРУТСТВО ПІДПРИЄМСТВА ТА ЙОГО САНАЦІЯ. Висвітлено сутність та зміст процесу банкрутства, а також санації як основного засобу подолання кризового становища підприємства. У зв'язку зі складною економічною ситуацією, що склалася в Україні за сучасних умов, окремим питанням удосконалення та виходу з економічно нестабільного становища суб'єктів господарювання є вжиття санаційних заходів. Здійснено аналіз нормативно-правової бази, якою регламентується цей процес. Окреслено основні прорахунки виконавчої та законодавчої влади під час побудови стратегії дій у разі виникнення складного становища підприємств. Проведено паралель між системою ефективних заходів, котрі проводять на Заході для запобігання банкрутству, та слабкими заходами вітчизняного законодавства. Надано визначення поняття санації та заходів, котрі повинні бути присутні під час її реалізації. Основну увагу приділено відсутності конкретної стратегії та порядку дій для ефективного відновлення платоспроможності та стабільності суб'єктів господарювання, а також запропоновано можливі шляхи його вдосконалення. Практичне значення отриманих результатів полягає в тому, що вони можуть бути використані в діяльності підприємства у процесі вжиття антикризових заходів.

Ключові слова: *банкрутство, підприємство, санація, криза, процедура, суб'єкт господарювання.*

Relevance of the research. Taking into account today's working conditions of enterprises, opportunities for their development and economic opportunities against the background of the global crisis, we can say that this period has become the biggest challenge for entrepreneurship for the entire period of activity. Analyzing the processes of entrepreneurship in Ukraine, we can see significant mistakes in building strategy and tactics by the legislature and the executive. First of all, for the future development of Ukrainian business it is necessary to have an effective mechanism of state regulation in this area.

Previously, the world implemented two different models of bankruptcy law. The first, so-called American, was based on the principles the essence of which was rehabilitation, as a means of revival and rehabilitation of the enterprise. As for another model, the British, bankruptcy became the only option for a business entity to be able to settle with creditors at the expense of the debtor's funds. So far, developed countries have learned to integrate these two models.

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Recent publications review. With the growth of instability in the economic market, in the political arena and the spread of post-crisis panic among the population, the level of interest among researchers in ways to address negative phenomena in enterprises, methods and ways to overcome the crisis, including rehabilitation. Western research is mainly aimed at the reincarnation of enterprises and providing conditions for further stable work compared with domestic experience. The phenomenon of remediation, and its individual aspects have been the subject of a number of studies, reflected in the works of such scientists: Becker R., Skull A.V. , Makarenko P.M., Langendorf D., Ben T. G., Chupisa A. V., Kristena U., Karpun I. M., Sazonets I.L., Sabluk P.T., Layko P.A., Tereshchenko O.O., Blank I.A. and others. Their work has made a significant practical contribution to the study of bankruptcy and financial recovery of enterprises.

The subject of research was also the institution of bankruptcy in general. Special scientific literature consists of theoretical foundations for economics, the structure of its system, positioning in matters of state regulation – all these issues were dealt with by such scientists as Dehtyar A., Dudin T., Yurchyshyn V., Motrenko T., Amosov O., Guberna G., Dorofienko V., Varnaliy Z., Radysh J. and others.

The article's objective is to scientifically and theoretically substantiate the importance of effective and well-established work of the bankruptcy institution, the problems of reincarnation of the economy of bankrupt enterprises, the mechanism of state regulation of market relations, as well as the development of basic areas for reorganization.

Discussion. According to the provisions of domestic law, bankruptcy is the activity of the debtor, which is recognized by the commercial court, which consists in the impossibility of restoring its solvency and satisfaction of creditors' claims determined by the court through the liquidation procedure [1]. In addition, it can be defined as an economic situation that has occurred in an entity as a result of a crisis caused by internal or external factors that have caused a systemic crisis. It is important to remember that the inability of the enterprise to make payments in accordance with the debt to creditors must be expressed [2, p. 110].

Bankruptcy proceedings in Ukraine are regulated by the Commercial Court, the Code of Ukraine on Bankruptcy Procedures and the Law on Enforcement. Bankruptcy proceedings originate when the undisputed claims of a creditor or the claims of several creditors amount to at least three hundred minimum wages [3]. The status of the debtor as a bankrupt is granted by the Arbitration Court when there are no proposals for reorganization or disagreement of creditors with its terms. It would be appropriate to define the phenomenon of bankruptcy as the way in which businesses are «filtered». For a market economy, this phenomenon is common, but the condition of fair competition is possible only in the case of a transparent procedure, an effective mechanism and equal rights of participants in the procedure.

As world practice shows, bankruptcy is a problematic and difficult process, like any other disintegration, but from which it is clear that the fact of unproductiveness does not always mean turning the producer into a bankrupt.

Participants in bankruptcy proceedings are state structures and bodies provided by current legislation:

– the body conducting the case itself (Arbitration Court);

– the structure, which in case of the bankrupt enterprise is state-owned, will be authorized to temporarily dispose of its property (State Property Fund);

– organizations and citizens who have expressed a desire to participate in the restoration of the enterprise;

– firm that confirms the insolvency of the debtor company (audit firm);

– the commission appointed by the Arbitration Court after the debtor is confirmed bankrupt, in which the administrator of the property (liquidation commission) must participate [1].

The goal set by the institution of bankruptcy is expressed in ensuring the requirements of the state and creditors, and not the liquidation of the enterprise. That is why bankruptcy is one way to solve problems in economic relations, which is an effective means of state regulation, the substantive part of which is to create a business environment on a civilized basis, the formation of state protection of all market participants, settlement of disputes between market participants [4].

The problem of financial recovery of enterprises depends on several factors:

- the legislator did not clearly define the aspect of determining creditors during the competitive selection, as well as the limits of their rights, in particular the competence of the

creditors' committee. Thus, the process of debt repayment determines the inequality of creditors' conditions, when priority is given to creditors who have made a pledge, than secured their claims;

- for debtors, the legislator did not provide for the possibility of restoring solvency. There is too little time for the reorganization procedure, and there is no independent mechanism for its implementation for a longer period. The initial amount of debt due to the non-extension of the moratorium on creditors' conditions, which arises at the time of approval of the decision to introduce it, is constantly growing, which jeopardizes the process of restoring the economic viability of such an enterprise. Also, the number of times for appealing the agreements concluded by the debtor is not specified, which significantly slows down the reorganization procedure;
- Ukrainian industry is «unattractive» to external investors, who could restore the financial capacity of enterprises, and this is largely due to the impossibility of rehabilitation because of the strong resistance from creditors whose actions comply with the law.

For Western countries, the application of the above schemes is becoming increasingly difficult, the European Union at the legislative level has identified such a procedure as such the implementation of which is impossible. This is expressed in actions to promote the recovery of bankrupt enterprises, as well as creating a mechanism for «transparent» transfer of rights and responsibilities to the investor-senator. Legislation in Ukraine also defines the basic provisions on bankruptcy, but it is currently characterized by «shadow privatization» and legal inequality, where the creditor is higher than investors, the state and the debtor company itself.

The concept of «rehabilitation» is a set of measures aimed at preventing the bankruptcy of enterprises or large industrial, government, business, banking and other structures. As a rule, either the debtor, the creditor, or the new owner is engaged in the reform and restoration of the bankrupt enterprise.

The severity of the crisis situation of the debtor company and certain conditions of external assistance helps conditionally divide the rehabilitation into two types:

• in the case when the crisis situation of the enterprise is temporary, reorganization without changes in the charter of the legal entity of the given enterprise is generally applied;

• the type in which the company needs to change the charter of the legal entity of the company. This method is used in case of a serious crisis and the need to reorganize the company [5].

Effective recovery of the enterprise is possible only with the selection of the right strategy and precise tactical actions, expressed by different types of remediation measures, which include the following: the use of various financial sources of recovery, their mobilization, improving the organizational level of the enterprise, focusing on organizational and legal form of business, development and modernization of production potential, improvement of product quality, creation of conditions for retraining, diversification and improvement of product range, improvement of personnel search system [6, 7]. Taking into account the economic content of reorganization, the following division can be made according to the following features: methods of recovery process, scale, relationship with the bankruptcy of the enterprise, support from public authorities, attracting additional investment, completeness of responsibilities until remediation. The goal pursued by the company becomes fundamental for the phenomenon of reorganization, and bankruptcy is only one of the goals, as well as increasing the level of solvency, reducing production costs, increasing competitiveness and improving capital structure [8].

Despite the fact that the task of rehabilitation is to improve the situation, it is not in great demand in the domestic enterprise. The process of financial recovery in Ukraine is hampered mostly by national legislation, lack of effective government regulation, ineffective mechanism and lack of funds for rehabilitation, a complex process to attract external investors, inexperience and low qualifications of staff to carry out the process of enterprise recovery. The provisions of the Ukrainian legislation on the bankruptcy procedure trace the orientation and the main function of its mechanism, which is the liquidation of the enterprise, and not the improvement of the financial situation and the return of solvency to business entities.

Conclusion. Thus, the crisis situation in the world has become a new challenge for entrepreneurial activity, which has affected the Ukrainian entrepreneur in the form of a difficult economic situation, as well as the record liquidation of enterprises in our country. Therefore, the issue of reforming the legal regulation of the bankruptcy process, the search for an effective mechanism for prevention and regulation of this area has become urgent and requires quality research. This is due to the fact that the provisions of domestic law do not provide

opportunities and conditions for overcoming the economic crisis of enterprises in the international scenario, which in most cases leads to their complete elimination. It is also important to emphasize that one of the effective means of anti-crisis activities of the company is reorganization, which should prevent bankruptcy, reducing the negative effects of various domestic enterprises and the economic potential of the country as a whole.

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Abstract

This paper highlights the essence and content of the bankruptcy process, as well as reorganization, as the main means of overcoming the crisis of the enterprise. An analysis of the regulatory framework governing this process, main mistakes of the executive and legislative branches in building a strategy in case of a difficult situation of enterprises are outlined. A parallel was drawn between the system of effective measures taken in the West to prevent bankruptcy and weak measures of domestic legislation. The definition of the concept of remediation and the measures that must be present during its implementation are given. The main focus is on the lack of a specific strategy and procedure for the effective restoration of solvency and stability of economic entities, as well as possible ways to improve it.

Keywords: *bankruptcy, reorganization, business entity, enterprise, strategy, system, reorganization measures, crisis situation.*

COMBATING CRIME: CRIMINAL-LEGAL, CRIMINOLOGICAL, CRIMINAL-PROCEDURAL, FORENSIC, TACTIC AND INFORMATION ASPECTS

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THE PRINCIPLE OF PUNISHMENT FAIRNESS

Костянтин Марисюк. ПРИНЦИП СПРАВЕДЛИВОСТІ ПРИЗНАЧЕННЯ КРИМІНАЛЬНОГО ПОКАРАННЯ. Принципи призначення покарання є окремою категорією кримінального права. Думки науковців щодо визначення поняття принципів призначення покарання та їхніх видів різняться. Конкретний вичерпний перелік видів таких принципів сформулювати неможливо. Їх може бути безліч. Проте в кримінально-правовій літературі всі дослідники проблеми призначення покарання до видів принципів призначення покарання обов'язково відносять принцип справедливості.

Принцип справедливості призначення покарання – одне з найважливіших вихідних положень, закріплених у нормах кримінального закону, яке вимагає забезпечення мети покарання через урахування судом усіх обставин, що стосуються кримінального правопорушення та особи, яка його вчинила.

Не залишається сумніву, що в Україні принцип справедливості в судочинстві та праві загалом посідає одне з найважливіших місць і тісно пов'язаний із такими категоріями, як «верховенство права», «рівність усіх перед законом» тощо. Він є критерієм чесного вирішення справи, ідеалом, до якого треба прагнути та яким потрібно керуватися одночасно із законом.

Принцип справедливості відіграє важливу роль у правовому регулюванні різних сфер суспільних відносин, проте найтісніше він пов'язаний з інститутом призначення покарання.

Особливість принципу справедливості полягає в тому, що він органічно входить до змісту всіх інших принципів призначення покарання – законності, гуманізму, рівності перед законом, відповідальності за вину, індивідуалізації – та зводить їх до певної системи. Питання правового механізму реалізації принципу справедливості призначення покарання було і продовжує залишатися таким, що потребує наукового дослідження.

Реалізація принципу справедливості в покаранні повинна проявитися відповідно до злочину та покарання. Кримінальний закон повинен відображати таку відповідність. У цьому випадку кримінальний закон буде справедливим – і це залежить від правотворчої діяльності, а реалізація принципу справедливості у меті покарання залежить від правозастосовної діяльності. Недотримання принципу справедливості у правотворчій діяльності тягне за собою його порушення у процесі застосування норм кримінального права.

Ключові слова: *справедливість, принцип, покарання, правопорушення, кримінальне право, кримінальний закон.*

Relevance of the study. Punishment is an important and necessary mean of protection of public relations from criminal offenses and an effective mechanism for their prevention. Since ancient times, the legal system of each state has paid great attention to the types of punishment and the rules of sentencing.

As a measure of state coercion, punishment must meet certain requirements and be im-

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posed in accordance with the relevant principles. It should not be cruel, it should be used only as a last resort to ensure the legality, it should be used only for the crime committed and meet other legal requirements and moral principles of society. The effectiveness and legality of sentencing, as an important element of the court's activities in criminal proceedings, depends on compliance of the relevant principles of its imposing.

The principles of sentencing are a separate category of criminal law. Views of scholars on the definition of the principles of sentencing and their types differ. It is impossible to formulate a definite exhaustive list of types of such principles. There could be a lot of them. However, in the criminal writing, all researchers of the problem of sentencing necessarily include the principle of justice to the types of principles of sentencing.

In the process, we turned to a number of methods of scientific cognition, including: the dialectical method, which provided the objectivity, comprehensiveness, complexity and specificity of cognition; method of systematic analysis, which allowed to determine the place of the principle of justice in the system of principles of sentencing. Different types of interpretation of legal norms were used in the research process.

Recent publications review. Research on the principles of criminal punishment has been carried out by many researchers, for example, V. Poltavets, K. Klymenko, O. Zagursky, O. Kuchynska and others.

The article's objective is to study the essence of the principle of fairness of criminal punishment in the theory and practice of criminal law of Ukraine.

Discussion. The term «principle» comes from the Latin word «principum», which means the most general initial provision, which defines the nature and social essence of the phenomenon, its meaning and the most significant features. In explanatory dictionaries, the principle is defined as «the inner conviction of man, the view of things», «the basic starting point of any theory, provision, doctrine, science, worldview and so on» [1, p. 7]. The word «principles» expresses a guiding commencement, a guiding provision of a particular idea or theory [2, p. 118].

In clarifying the legal meaning of the term «principles», it should be noted that they reflect the legal nature of law. Guided by the relevant principles, the state performs its functions, including pursuing a purposeful criminal policy. Principles of law – are expressed in the law guidelines that characterize its essence.

The concept of the principle of law does not coincide with the generally accepted concept of law, as the most important normative regulator of social relations, which is created and provided by the state. The principles of law, as its fundamental ideas, arising from the law, constitute its essence, are directly part of its content. They are framed in law in the form of norms, actually expressed and enshrined in them. Legal principles are specified in the Constitution of Ukraine, as well as in other regulations [2, p. 94].

In the legal system of Ukraine, the principle of justice plays a special coordinating and unifying role. Justice is an instrument for achieving a balance between the rules of natural law and positive (state) law. The principle of justice substantiates other principles of law in certain historical conditions.

The decision of the Constitutional Court of Ukraine of November 2, 2004 №15-rp/2004 states that justice is one of the basic principles of law, is decisive in defining it as a regulator of public relations, one of the universal dimensions of law. Justice is usually considered as a feature of law, expressed, particularly, in the equal legal scale of behavior and in the proportionality of legal responsibility to the crime committed.

The analysis of justice from the point of view of law presupposes, at least, its interpretation through the comprehension of the content of at least the categories «law as the embodiment of justice» and «justice as a moral determinant of legal relations» [3, p. 46].

The principle of fairness in law enforcement is important, which is, particularly, the court's sentencing activities. The implementation of legal norms is the adoption of decisions on the basis of the norms of law in specific cases. From the point of view of formal logic, it is a process that aim at bringing a specific life case under a general legal norm, as well as the adoption on this basis of a special act – an act of application of legal norms. Law enforcement is one of the means of ensuring social justice, which, in its turn, is a mean of expressing the social value of legal norms and without taking it into account, the law will not be able to effectively perform its regulatory function. For example, unjust court sentences cannot be considered as justice.

The principle of justice is the basis of all law-enforcement agencies. The implementation of the principle of fairness in law enforcement ensures not only the equality of participants

in the process, under the law and law-enforcement agencies, but also the correspondence between the rights and responsibilities granted [4, p. 12]. In particular, it is important to ensure the choice of punishment within the statutory sanction, taking into account the nature of the act and personal qualities of the actor, as well as the correct ratio of law and morality, which are implemented in law enforcement.

The question of the appropriateness of punishment for a crime is a separate manifestation of the principle of justice in law enforcement. In the field of law enforcement, justice is manifested, particularly, in the equality of all before the law, the conformity of crime and punishment, the goals of the legislator and the means chosen to achieve them [5, p. 100].

The principles of law are reflected in the principles of sentencing.

S. Veliyev believes that the principles of sentencing are the basic ideas that are enshrined in the criminal law or arise from its interpretation, which determine the whole nature of the punishment system and which use the courts in sentencing in a particular criminal case [2, p. 113].

In legal science, there are also other definitions of this concept:

- according to L. Prokhorov, the principles of sentencing are «guiding ideas that embody one or another characteristic feature of all the norms of the Criminal Code governing the procedure of sentencing»;

- M. Bazhanov under these principles, understood those initial, most important provisions enshrined in the norms of criminal law, which determine all the activity of courts concerning the application of punishment to persons, which are guilty of a crime. The principle of fairness of sentencing is related to guaranteeing a person the right to a fair trial. Ensuring the right to a fair trial is an important prerequisite for the establishment of the judiciary as an effective and just mean of protecting human rights and freedoms.

The right to a fair trial take a central place in the system of global values of a democratic society [6, p. 129]. Article 10 of the Universal Declaration of Human Rights requires that independent and impartial tribunal should comply with all requirements of justice. In its judgment of 30 January 2003 №3-rp / 2003, the Constitutional Court of Ukraine stated that justice is essentially recognized as such only if it meets the requirements of justice and ensures effective restoration of rights.

In Ukraine, it is necessary to comprehensively reform the judiciary in order to ensure the sepremacy of law, to achieve a fair, independent, efficient and accessible judiciary in accordance with international norms. At the heart of the reform must be the individual and his or her right to a fair trial, not the interests and desires of the various authorities [7, p. 179].

The system of elements that form the right to a fair trial consists of:

1) organic elements that ensure the effective usage of this right and its implementation (the right to access to justice and the right to enforce court decisions);

2) institutional elements that form the criteria with which must comply the judicial system of the state as a whole and each judicial institution separately (creation of a court and formation of its staff on the basis of law, sufficient term of office of judges and their immutability during the term of office, independence and impartiality of judges);

3) procedural elements that ensure the real participation of an individual

in the process, the adversarial nature of the process, the equality of the parties at all stages of the trial and a reasonable time for proceedings;

4) special elements that are additional guarantees for the criminal process (presumption of innocence, the right to defense, the right to an interpreter, etc.) [8, p. 8-9].

The real ensuring for an individual the right to a fair trial contributes to the implementation of the principle of fair sentencing. On the contrary, if the sentencing is unfair, the person cannot be considered to have fully implemented his or her right to a fair trial.

The content of justice as a principle of sentencing, or the assessment of the fairness of the court decision, covers the attitude to the sentence of the convict, victim, population, etc. Convicts feel when they are given a just punishment and have a positive attitude towards that. Unjust punishment they perceive negatively [2, p. 311]. Failure to comply with the principle of justice in sentencing always causes dissatisfaction and results in quashing of sentences [1, p. 25].

The principle of justice is reflected in the sanctions established by law for a particular type of crime. The legislator, establishing sanctions, means the nature of the public danger of the act, the damage caused by the crime, the prevalence of this act, the typological features of the offender. All individual features – both the circumstances of a particular crime and the identity of the perpetrator must be taken into account by the court when preparing a sentence [9, p. 182]. The fairness of sentencing should not be understood as the exact correspondence of

the measure of punishment to the damage caused, but as the sentencing within the limits established by law and taking into account the circumstances established by law, that is, it's relative [10, p. 167].

According to the judge of the Constitutional Court of Ukraine V. Ivashchenko, justice in the criminal law consists, first of all, in the restoration of the violated rights of the victim and the inevitability of an adequate (fair) punishment of a person whose guilt has been legally proved and established by a court conviction.

The principle of justice is directly manifested in the recognition of the essence of punishment as a measure of coercion, in the proclamation of penalty as one of the components of the purpose of punishment, in determining the type and size of punishment depending on the gravity of the crime, stages of crime, recidivism and etc. [1, p. 25].

Thus, taking everything into consideration, it can be concluded that the principle of fairness of punishment is one of the most important starting positions enshrined in criminal law, which requires ensuring the purpose of punishment by taking into account by the court of all the circumstances relating to the criminal offense and the person who did it.

There is no doubt that in our country the principle of justice in the judiciary and law in general occupies one of the most important places and is closely related to such categories as «supremacy of law», «equality before the law» and so on. It is a criterion for a fair decision, an ideal to be pursued and guided simultaneously with the law.

The principle of justice plays an important role in the legal regulation of various spheres of public relations, but it is most closely related to the institution of sentencing.

The principles of sentencing are guiding ideas and all legal norms, which regulate sentencing, should comply with them. These principles form a certain system and interact with each other.

S. Veliyev believes that the principles of sentencing are divided into general principles and a special principle, which is derived from the general ones. Such a special principle is the individualization of punishment. Thus, the system of general principles of sentencing includes: 1) legality; 2) justice; 3) humanism; 4) equality before the law; 5) liability for fault; 6) individualization of punishment [2, p. 124].

Since all the principles of sentencing are in a unified system, they have a common purpose – to establish the basis, conditions, procedure, nature and scope of application of penalties by the court in accordance with its purpose and tasks of criminal law. The principle of justice in this system is interrelated with other principles of punishment.

V. Maltsev notes that justice is a set of two principles: equality and humanism. He substantiates this statement by the fact, that, in justice the principles of equality of citizens before the law and humanism are combined as elements. The first of them is expressed in the exact correspondence of responsibility to the public danger of the crime. The second one, in a more humane approach to the perpetrators of crime, whose socio-individual characteristics preclude the application of a single scale of responsibility. Legislative definition of the principle of justice can be made through normative definitions of the principles of equality and humanism. Its expression through the content of these principles, as the experience of socio-philosophical and legal doctrines shows, is the most effective way to convey the idea of justice to its perception in the public consciousness [9, p. 184].

A. Nikitin notes in his study that the Criminal Code of Ukraine does not say anything about the principles of sentencing, but they can be formulated independently, based on the provisions of the section of the Criminal Code of Ukraine on sentencing; In addition, many researchers, along with the common grounds of sentencing, identify a number of principles of sentencing, including the principle of justice, which is, first of all, that punishment should correspond to universal values, moral principles of society, convince citizens of the correctness of criminal policy, in general [11, p. 189-190].

The principle of equality before the law, which is associated with the principle of justice, according to the judge of the Constitutional Court of Ukraine V. Ivashchenko, means that the imposition of a penalty on persons for wrongdoing cannot be made on the basis of race, color, political, religious or other beliefs, sex, ethnic or social origin, property status, place of residence, language or other characteristics. Moreover, the same norm of criminal law must be applied to a certain (defined by law) circle of persons without any discrimination.

The principle of justice is closely linked to the principle of individualization of punishment.

Correlation between justice and the individualization of punishment consists in:

- justice is a moral and legal category, and individualization – a legal category;

- justice is a broader concept, because it covers other rules;
- if the principle of individualization indicates what should be taken into account when sentencing, the principle of fairness shows how these factors should be taken into account [2, p. 308].

The individualization of punishment has its limits, determined by the sanctions of the articles of the Special Part and the provisions of the General Part of the Criminal Code of Ukraine. The principle of fairness will be observed if a circumstance concerning the nature and degree of public danger and identity of the accused is either positive or negative, as neutral circumstances do not matter in the individualization of punishment. In addition, the same circumstances cannot be both positive and negative individual characteristics.

The decision of the Constitutional Court of Ukraine of 2 November 2004 №15-rp / 2004 states that in the field of law enforcement justice is manifested, particularly, in the equality of all before the law, the conformity of crime and punishment, the legislator's goals and the means chosen to achieve them. A separate manifestation of justice is the question of the conformity of punishment to the crime committed; the category of justice presupposes that the punishment for a crime must be commensurate with the crime. Fair application of legal norms is, first of all, a non-discriminatory approach, impartiality. This means not only that the statutory corpus delicti and the scope of punishment will be commensurate with each other, but also that the punishment must be in fair proportion to the gravity and circumstances of the offense and the person of the perpetrator. The adequacy of punishment for the severity of the crime follows from the principle of the rule of law, from the essence of constitutional rights and freedoms of man and citizen, particularly, the right to liberty, which can not be limited, except, as provided by the Constitution of Ukraine.

Since a crime is a socially dangerous culpable offence, an important principle of sentencing is responsibility for guilt.

Understanding the concept of guilt contained in article 23 of the Criminal Code of Ukraine, and which is based on the psychological theory of guilt, extended by the provisions of article 62 of the Constitution of Ukraine – «A person is presumed innocent of committing a crime and cannot be subjected to criminal punishment until his guilt is proved in a lawful manner and established by a court conviction». In this context, guilt is understood more broadly.

The presumption of innocence is a fundamental principle of criminal justice, which is a continuation of the principle of criminal justice. Any reasonable doubt in the evidence must be interpreted in favor of the accused [10, p. 235]. The presumption of innocence should be expressed both in the statements of officials appearing in the course of the trial, and in the actions of the judge during the trial, and in the treatment of the person after the acquittal or termination of the proceedings.

Some scholars emphasize the need to establish in criminal law the presumption of rightness and priority of the rights of the victim, which will be contrary to the constitutional principle of the presumption of innocence.

The legal definition of guilt obliges to establish in any corpus delicti the presence of a person's mental attitude to the consequences of his actions, although the construction of the relevant corpus delicti does not provide for any consequences of the offense as a mandatory feature of the latter [12, p. 144].

The peculiarity of the principle of justice is that it has a complex nature, accumulates all other principles. If they are violated, the principle of justice is violated [9, p. 180].

It will be unfair to impose a sentence if the requirements for sentencing provided by the norms of the criminal law are not complied with; if sentencing violates a person's right to honor and dignity, it will also be unfair; if a person is punished based on his or her political beliefs or social status, it is also unfair; sentencing a person who has not committed a crime is a violation of the principle of justice; if the sentencing does not take into account the identity of the defendant, mitigating or aggravating circumstances and other mandatory factors – in this case, in addition to violating the principle of individualization of punishment, also violates the principle of justice.

Conclusions. From the above it can be concluded that the principle of fairness of punishment is one of the most important starting points enshrined in the criminal law, which requires ensuring the purpose of punishment by taking into account by the court all the circumstances relating to the criminal offense and the perpetrator.

There is no doubt that in Ukraine the principle of justice in the judiciary and law in general occupies one of the most important place and is closely related to such categories as «rule

of law», «equality of all before the law» and so on. It is a criterion for an honest decision of the case, an ideal to be pursued and guided by the law.

The principle of justice plays an important role in the legal regulation of various spheres of public relations, but it is most closely related to the institution of sentencing.

The peculiarity of the principle of justice is that it is organically included in the content of all other principles of sentencing – legality, humanism, equality before the law, responsibility for guilt, individualization and reduces them to a certain system. The question of the legal mechanism for the implementation of the principle of fair sentencing has been and continues to be in need of scientific research.

The implementation of the principle of justice in punishment must be manifested in the conformity of crime and punishment. Criminal law should reflect such compliance. In this case, the criminal law will be fair – and it depends on lawmaking, and the implementation of the principle of justice for the purpose of punishment depends on law enforcement. Failure to comply with the principle of justice in lawmaking entails its violation in the application of criminal law. However, the existence of a fair criminal law does not mean that the principle of fair sentencing will not be violated in the process of its application. This principle is most often violated in the law enforcement activities of state bodies and their officials.

In law enforcement, the principle of justice, first of all, is manifested in the optimal ratio of general and special criminal law. The person who committed the crime should be sentenced to ensure that the convict is corrected to prevent new crimes. Only in this case can the punishment be considered fair.

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Abstract

The principle of punishment fairness is one of the most important starting points enshrined in the criminal law, which requires ensuring the purpose of punishment by taking into account by the court all the circumstances relating to the criminal offense and the perpetrator.

The implementation of the principle of justice in punishment must be manifested in the conformity of crime and punishment. Criminal law should reflect such compliance. In this case, the criminal law will be fair – and it depends on lawmaking, and the implementation of the principle of justice for the purpose of punishment depends on law enforcement. Failure to comply with the principle of justice in lawmaking entails its violation in the application of criminal law. However, the existence of a fair criminal law does not mean that the principle of fair sentencing will not be violated in the process of its application. This principle is most often violated in the law enforcement activities of state bodies and their officials.

Key words: *justice, principle, punishment, offense, criminal law, criminal law.*

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PENITENTIARY PROSECUTOR IN UKRAINE

Валерій Марчук, Ольга Богатирьова. ЗАПРОВАДЖЕННЯ ПЕНІТЕНЦІАРНОГО ПРОКУРОРА В УКРАЇНІ. Розглянуто питання щодо впровадження в Україні інституту пенітенціарного прокурора. Здійснено порівняльний аналіз діяльності пенітенціарного прокурора у зарубіжних країнах. Зроблено висновок, що введення інституту пенітенціарного прокурора до органів прокуратури України, має на меті забезпечити на високому професійному рівні дотримання в установах виконання покарань норм кримінально-виконавчого законодавства, включаючи і міжнародні правові акти у сфері захисту прав засуджених та ув'язнених та персоналу місць несвободи.

Зазначено, що у зарубіжних країнах термін «Пенітенціарний прокурор» законодавчо не закріплений, хоча його діяльність у кожній країні має свою видову характеристику. Здійсненене авторами

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опрацювання зазначеного сегмента праць вітчизняних та зарубіжних вчених, аналіз законодавчого закріплення діяльності прокурора у сфері виконання покарань демонструє, що найкращим взірцем тут може стати досвід країн Європейського Союзу щодо вдосконалення національної системи органів прокуратури.

Водночас це дозволить не тільки запропонувати закріпити у Законі України «Про прокуратуру» посаду пенітенціарного прокурора, а й визначити його правовий статус, функціональні обов'язки та розширити загальний кругозор працівників прокуратури з даного питання, оскільки активізація співпраці з зарубіжними країнами у сфері виконання покарань вимагає нового погляду на дану проблему.

Саме тому важливим завданням для пенітенціарного прокурора є не тільки засвоєння основних європейських принципів та стандартів, але й розроблення специфічних заходів і засобів, необхідних для позитивного впливу на порядок і умови виконання та відбування засудженими кримінального покарання.

При цьому, як вважається, вся подальша його діяльність в XXI столітті має ґрунтуватися на загальнолюдських цінностях, а саме: захисті прав людини і громадянина, рівності усіх перед законом і справедливості громадянського суспільства, демократії, плюралізмі поглядів і верховенстві права в усіх сферах суспільного життя, що важливо з огляду змісту прокурорського нагляду у сфері виконання покарань.

Доведено, що введення інституту пенітенціарного прокурора до органів прокуратури України має на меті забезпечити на високому професійному рівні дотриманн5я в установах виконання покарань норм кримінально-виконавчого законодавства, включаючи і міжнародні правові акти у сфері захисту прав засуджених та ув'язнених та персоналу місць несвободи, а також забезпечення відшкодування завданих злочином збитків потерпілим, ухвалення рішень, що стосуються заходів спрямованих на підвищення рівня ефективності процесу виконання та відбування кримінальних покарань.

Ключові слова: *інститут, пенітенціарний, прокурор, покарання, виконання, відбування, засуджений, зарубіжний досвід.*

Relevance of the research. It is worth noting that in foreign countries the term «Penitentiary Prosecutor» is not legally enshrined, although its activities in each country have their own specific characteristics. We conducted a segment of scientific works of domestic and foreign scientists, an analysis of the legislative consolidation of the prosecutor's activities in the field of the execution of sentences shows that the best example here can be the experience of the European Union countries in improving the national system of prosecutor's offices.

At the same time, this will allow not only to propose that the post of penitentiary prosecutor be fixed in the Law of Ukraine on the Prosecutor's Office, but also to determine its legal status, functional duties and expand the general outlook of prosecutors on this issue, since increased cooperation with foreign countries in the field of the execution of sentences requires a new vision on this problem.

Recent publications review. Domestic scientists A. Borovyk, A. I. Butovych, E. M. Blazhivskyi, L. R. Hrytsayenko, O. H. Kolb, N. S. Naulik, Yu. V. Novosad, A. R. Klitynska, Yu. P. Krysyuk, L. V. Omelchuk, V. F. Kryza previously highlight unresolved parts of the general problem. To date, the Public Prosecutor's Office has been regarded as an extremely effective institution of the State for the protection of human rights and freedoms. Although the level of development and functioning of the prosecutor's office in different countries is different, the requirements for it are the same everywhere: ensuring supervision of the observance of human rights and freedoms, the interests of society and the state in the execution of penalties and other measures of a coercive nature related to the restriction of personal freedom in accordance with the laws of Ukraine, international treaties, consent to the binding of which was granted by the Verkhovna Rada of Ukraine. However, research on the subject shows that all this is impossible without an optimal and effective legislative framework, and a mechanism for regulating this type of activity.

The article's objective. The purpose of this article is to emphasize the attention of scientists and practitioners on the introduction in Ukraine of the institution of a penitentiary prosecutor on the basis of studying the experience of foreign countries.

The novelty of the article consists in providing a proposal for the establishment in the Law of Ukraine on the prosecutor's office of the institution of a penitentiary prosecutor.

Discussion. There is no consensus among domestic prison law scholars, politicians and civil servants on the introduction of foreign experience into the activities of the prosecutor's office when referring to foreign legislation on the prosecutor's office. So, the domestic scientist L. Omelchuk believes that the foreign model of the prosecutor's office has both positive aspects of its activities and negative [1, p. 199].

Sharing the position of the researcher, we believe that it is not worth introducing a for-

eign model into the domestic practice of the prosecutor's office, ignoring those developments that have proven themselves positively in the activities of the prosecutor's office since the independence of Ukraine. The above-mentioned corresponds to the opinion of the domestic scientist Yu. Novosad, who in his study studying foreign experience in the activities of the prosecutor's office came to the conclusion that the practice of state construction and legal reform in Ukraine, for a number of reasons, both objective and subjective, information about foreign experience is often presented in a distorted form, since it adapts to individual departmental thoughts and assessments.

At the same time, according to the scientist, the real practice of foreign countries to form the institution of a penitentiary prosecutor occurs in a long historical period, often in conflicting conditions, which leads, as domestic scientists note, to the existence in our time of several main models of its organization and activity [2, p. 88].

In particular, this concerns the legal status of the penitentiary prosecutor's functions and powers, as well as the criteria for the ratio of prosecutorial supervision of the activities of penal institutions, which is currently the most debatable in legal science. This happened especially after the adoption of the Code of Criminal Procedure and the adoption in 2014 of a new version of the Law of Ukraine «On the Prosecutor's Office». It was the adoption by the Verkhovna Rada of Ukraine of these regulatory legal acts that caused a certain discussion in Ukrainian legal science. In particular, a number of scholars propose to learn from the legal systems of a number of countries in Western Europe and the USA, in which the functions of the prosecutor are limited to the conduct of criminal prosecution and procedural leadership of investigative bodies, as well as the maintenance of the prosecution in court [3, p. 73–74.].

Others insist on preserving the model, which was founded back in Soviet times [4, p. 76]. By the way, it is this proposal that has more supporters, because it returns the prosecutor's office to general supervision, including the activities of penal institutions. Along with this, the domestic scientist Yu. Novosad in his own study proves that neither in Europe nor in the world as a whole there is a single and universal model of the prosecutor's office – this, in particular, is evidenced by the results of this scientific work, namely: There are no «uniform standards» for both the participation of the prosecutor in criminal proceedings in general and the prosecutor's supervision in penal institutions abroad, in particular [2, p. 90].

In this regard, the position of another domestic scientist A. I. Butovich is interesting, who believes that the time has come to shift the focus from the supervisory function of the prosecutor to his human rights activities in the field of protecting the rights and freedoms of citizens and monitoring the implementation of the law by law enforcement agencies in compliance with the principles of objectivity, justice, legality and impartiality [5, p. 129].

Thus, the proposal to introduce a penitentiary prosecutor into the office of the prosecutor's office of Ukraine does not mean a violation of a single model of prosecutorial activity. Moreover, it is worth noting the work of the Council of Europe, which at one time developed for member States unified basic principles for the activities of the prosecutor's office (recommendations No. 19 (2000) of the Committee of Ministers of the Council of Europe to the member States of the Council of Europe, No. 1604 (2003) of the Parliamentary Assembly of the Council of Europe). In particular, Recommendation No. 19 (2000) states that prosecutors, as representatives of public authorities, must guarantee the application of the law if its violation leads to criminal sanctions, taking into account both the rights of an individual and the effectiveness of the criminal justice system.

Attention should be drawn, however, to certain provisions of that international instrument. Thus, paragraph 1 of Recommendation No. 19 (2000) states that prosecutors, as representatives of public authorities, must guarantee the application of the law if its violation leads to criminal sanctions, taking into account both the rights of an individual and the effectiveness of the criminal procedure system. That is, this provision clearly defines only one area of the prosecutor's office – criminal procedure.

The Recommendation further refers to the list of powers held by prosecutors in Council of Europe member countries, sometimes with different criminal justice systems, divided into powers inherent in all systems (three options in total, for example, deciding to initiate and continue criminal proceedings; maintaining criminal charges in court, etc.) and only some of them (in particular, conducting, managing and supervising the investigation; supervision of the execution of court decisions, etc.), and such a list of the latter is not exhaustive.

In addition, the Recommendation contains a section on the relationship between the Public Prosecutor's Office and the police, as well as both cases where the police or the police

are under the procedural direction of the Public Prosecutor's Office or the police are investigated by the Public Prosecutor or supervised by the Public Prosecutor, and cases where the police are independent of the Public Prosecutor's Office on these matters.

Thus, there are no mandatory requirements in the recommendations, both for the place of the prosecutor in the law enforcement or public authorities system and for the specific powers of the prosecutor in criminal proceedings. Especially in the penitentiary sphere, which is not mentioned in this international document at all.

Therefore, the penal laws of certain foreign countries refer to the prosecutor as a subject of criminal justice, and not as a supervisory authority. For example, Art. 26 of the Law of Germany «On the execution of punishment in the form of imprisonment, as well as related corrective and security measures» of 1976 allows convicts to meet with a lawyer, prosecutor and notary [6, p. 6]. But an analysis of the provisions of the criminal enforcement legislation of Germany did not find norms in which the prosecutor would be entrusted with supervisory powers in the field of execution of sentences.

At the same time, the fact cited by Professor A. Ya. Grishko in a study on the implementation of sentences in Germany is interesting, namely: «preliminary detention is carried out, as a rule, by the prosecutor's office, which manages the proceedings in the case» [7, p. 11].

The specific powers of the prosecutor's office in the field of the execution of sentences were identified in Canada. As noted by foreign researchers A. V. Korostyleva and K. A. Kunash, the Parole Board is an administrative court that, in accordance with the Canadian Law «On the Correctional System and Conditional Release,» has exclusive powers to grant, refuse, cancel, suspend and revoke parole and impose certain conditions on persons released under the law.

In addition, the Council decides whether to extradite, grant, refuse or revoke the parole act in accordance with the Criminal Record Act and issues recommendations to the Attorney General on granting pardon (commutation, «clemency»), who submits these recommendations to the Cabinet of Ministers.

The Council consists of citizens of Canada who have experience and knowledge in psychology and law, social and social work, as well as the exercise of remedial effect on persons subject to conditional release [8, p. 67–68]. In the Scandinavian countries (example of Finland), the prosecutor's office, although it does not take such a significant part in the criminal enforcement process as in Ukraine, is one of the entities with which the prison administration interacts for operational and criminological reasons.

For example, the penal principles of the principle of interaction are contained in chapter 19 «Informing the authorities about certain facts when executing and serving a sentence» of part V «Discipline, supervision and reviews» of the Finnish Law «On Deprivation of Liberty». In this area, the prison administration interacts with the police, the prosecutor's office, other authorities depending on the facts during the execution and serving of the sentence (medical, social services, etc.) [9, p. 321].

There is also a position of the European Court of Human Rights on the penitentiary role of the Prosecutor's Office. So, I. S. Yakovets and A. Chevgan, justifying the need to introduce the institution of a penitentiary judge, Note that the ECHR established that in Ukraine the prosecutor responsible for overseeing the observance of the law during the stay of persons in places of non-freedom, is not an effective and sufficient remedy, since its status as an official, Under national law, it investigates criminal offences and performs the function of «maintaining public prosecution» in criminal proceedings, does not provide sufficient safeguards to ensure that complainants' complaints are dealt with independently and impartially. Moreover, the Government has not shown that under Ukrainian law the applicant has the opportunity to lodge a complaint about the conditions of detention (decision in the case of Melnik vs. Ukraine, paras. 68-74 and 115) [10, p. 190].

Therefore, in order not to make a mistake in reforming or adjusting the activities of the prosecutor's system in Ukraine and achieve success in this matter, it is important that any innovation meet the requirements of the times, be discussed among the scientific community and the public. Moreover, this system should be adopted by the society in which it operates, taking into account the positive foreign experience.

In particular, as noted by the domestic researcher N. S. Naulik in continental Europe, the prosecutor's office occupies an intermediate place between the executive and the judicial branch of government. For example, in Italy, Romania, Poland, prosecutors are part of the judiciary formed under the courts, but there is a hierarchically organized system, chaired by the

Minister of Justice, that is, it is subordinate to the executive branch of state power» [11, p. 58]. In countries of the continental legal family, the presence of a prosecutor's office is characteristic, and in Romance countries the institution of a prosecutor's office is most often called a «public ministry» [12, p. 340].

The experience of the French prosecutor's office is also interesting from the point of view of the title of the article. Domestic scientists believe that the activities of the French prosecutor's office took place over a long historical period often in conflicting conditions, which led to the existence in our time of several main models of its organization and activities [13, p. 65]. In terms of other important aspects, in modern France, the prosecutor's office is organizationally part of the Ministry of Justice, although the structure of the prosecutor's office coincides with the structure of the judicial system.

At the same time, as noted by foreign scholar F. M. Reshetnikov, the peculiarity of the legal status of the French prosecutor's office is that the norms of the Constitution regulate only certain fundamental foundations of its activities, while the main rules regarding the functioning of the prosecutor's office are laid down mainly in acts of procedural law [14, p. 218].

Moreover, as the domestic scientist Yu. V. Novosad notes in his study, the functional subordination of the prosecutor's office to the executive or judicial authorities can destroy the system of «checks and balances» established in the state and upset the balance between the branches of government, both the executive bodies and the judiciary somehow apply laws.

Thus, if a circular mandate occurs, according to the researcher, in fact, the state will be deprived of an independent control mechanism, in addition, without independent prosecutor's supervision from the courts and without creating a mechanism for responding to violations of laws by the courts, as well as leaving the prosecutor's office in the executive power corps, the image of a «blind observer» will be created, since supervision will be carried out within the limits determined by the executive branch of government. And, although world experience shows the positive aspects of such subordination, Ukrainian mentality, as historical experience shows, seems to be unable to act independently even with freedom of choice [2, p. 104].

Apparently, therefore, in the scientific circles of Ukraine and among practitioners, the problem remains of returning or not returning to the prosecutor's office general prosecutor's supervision, including in the field of execution of sentences. So, M. Yakymchuk, general prosecutor's function proposes to transform into a representative function of protecting the interests of a citizen or state in court [15].

In turn, I. Marochkin believes that the functions of the prosecutor's office should be optimized by removing the function of monitoring compliance with and application of laws and giving priority to functions that provide a human rights orientation [16, p. 378].

These approaches seem to have a solid foundation, since the individual is the focal point of the entire European system of protection, so his rights, interests and freedoms should become a priority in the legal system and in Ukraine.

That is why the important task for the penitentiary prosecutor is not only to assimilate the basic European principles and standards, but also to develop specific measures and means necessary to positively affect the procedure and conditions for the execution and serving of criminal sentences by convicts.

However, it seems that all its follow-up activities in the twenty-first century should be based on universal values, namely, the protection of human and civil rights, equality of all before the law and the justice of civil society, democracy, pluralism of views and the rule of law in all spheres of public life, which is important given the content of prosecutorial supervision in the field of the execution of sentences.

The latter, in particular, relates to the obligations that Ukraine assumed when it entered into force in 1995. To the Council of Europe, including (a) the adoption of a new CPA and CPC; b) rejection of the Soviet model of construction and activities of prosecutor's offices; c) review of the role, functions and powers of the prosecutor's office of Ukraine, with the subsequent transformation of this institution into a body that will comply with European principles. It is in this context that the Law of Ukraine «On the Prosecutor's Office» is formulated in a new version of 2014.

Conclusion. On the basis of the foregoing, we believe that the introduction of the institution of a penitentiary prosecutor into the bodies of the prosecutor's office of Ukraine, With the aim of ensuring, at a high professional level, compliance in penal institutions with the norms of penal enforcement legislation, Including international legal instruments for the protection of the rights of convicted persons and prisoners and personnel of places of non-

freedom, and ensuring that victims are compensated for the damage caused by the crime, and that decisions are taken, Measures aimed at improving the efficiency of the execution and serving of criminal sentences.

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Abstract

The article raised the issue of the introduction of the institution of a penitentiary prosecutor in Ukraine at the scientific level. A comparative analysis of the activities of the penitentiary prosecutor in foreign countries has been carried out. It is concluded that the introduction of the penitentiary prosecutor's office in the Ukrainian prosecutor's office is aimed at ensuring, at a high professional level, compliance in penal institutions with the norms of penal enforcement legislation, including international legal acts in the field of protection of the rights of convicts and prisoners and staff of custodial settings.

Keywords*: institution, penitentiary, prosecutor, punishment, execution, serving, convicted, foreign experience.*

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OBJECTIVES OF CRIMINOLOGY AT THE CURRENT STAGE OF DEVELOPMENT OF UKRAINE AND IN THE PERSPECTIVE

Віталій Примаченко, Володимир Шаблистий. ЗАВДАННЯ КРИМІНОЛОГІЇ НА СУЧАСНОМУ ЕТАПІ РОЗВИТКУ УКРАЇНИ І В ПЕРСПЕКТИВІ. У статті констатовано, що важливим завданням кримінології на сучасному етапі розвитку державності в Україні є запровадження в діяльність уповноважених державних органів та громадських організацій генеральної лінії розуміння того, що рівень правопорушень можна знизити двома шляхами: шляхом мінімізації причин протиправної поведінки і шляхом посилення заходів, у тому числі кримінальної репресії. Набагато легше усунути причину, ніж потім боротися із наслідками. Злочинність не можна побороти чи викорінити, можна лише на декілька показників її знизити до соціально терпимого або краще соціально прийнятного рівня. Саме тому слід приділяти основну увагу кримінологічному прогнозуванню та індивідуальній профілактиці правопорушень з тими особами, які схильні до їх учинення.

Акцентовано, що кримінологія є наукою, яка постійно розвивається та дуже тісно пов'язана із життям людей, функціонуванням суспільства і держави. Відповідно одним із головних її завдань є забезпечення належної якості та балансу роботи саме цих сегментів цивілізації. Широко використовуючи досягнення інших наук, зокрема соціології, психології, кримінального права, кримінального процесу, кримінально-виконавчого права кримінологія створює свої теорії, які відносяться виключно до її предмету і методу. Вона певним чином визначає стратегію і тактику кримінальної політики, сприяючи таким чином гармонійному розвитку як країни в цілому, так і окремих її складових. Загалом науки кримінально-правового напрямку основним своїми завданнями проголошують удосконалення відповідного законодавства та практики його застосування. Кримінологія у свою чергу повинна бути максимально адаптованою до всіх процесів, що полягають у модернізації правової системи нашої держави, та мати реальний вплив на формування ефективної кримінальної політики України.

Ключові слова: *людина, права і свободи, кримінологія, злочинність, загроза, профілактика правопорушень.*

Relevance of the research. Criminology is a science that is constantly evolving and is very closely related to the lives of people, the functioning of society and state. Correspondingly, one of its primary objectives is to ensure appropriate quality and balance in the work of these particular civilizational domains. Extensively employing the achievements from other scientific fields, specifically sociology, psychology, criminal law, criminal procedure and criminal executive law the criminology devises its own theories related exceptionally to its subject and methodology. In a particular way it determines strategy and tactics of the criminal policy thus contributing to the harmonious development of the country as a whole as well as its indi-

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vidual constituents. Overall, the sciences related to criminal and legal fields declare among their primary objectives the improvement of the corresponding legislation and its enforcement practices. Criminology in its turn must be maximally adapted to all processes involved in the modernization of the legal system of our state and must have a real impact upon the formulation of an effective criminal policy in Ukraine.

Recent publications review. Among notable criminologists of contemporary Ukraine, the works of which lay the groundwork for our research, it is worth to note O.M. Bandurka, V.V. Golina, V.S. Batyrgareyeva, B.M. Holovkin, V.M. Dryomin, O.M. Dzhuzha, A.P. Zakalyuk, O.M. Kostenko, O.M. Lytvynov, P.L. Fris et al.

The article's objective is to determine the objectives of criminology both at the current stage of development of the Ukrainian state and in the perspective.

Discussion. In considering the primary objectives of criminology in their entirety it proves expedient to identify two levels within them. The first provides for:

- analysis of existing concepts and programs in the field of criminology with the purpose of optimizing their quality;
- formation of an in-depth substantiated analysis of the current situation with criminality and its trends, identification of particular criminogenic determinants;
- evaluation of corresponding normative legal acts for the purpose of determining their criminological substantiation and the likely impact on the change in the crime rate.

The second level of objectives:

- obtaining reliable knowledge, primarily the one which constitutes the subject of criminology;
- systematic identification and analysis of occurrences, facts, processes, situations, circumstances which determine the criminality;
- clarification and studying of contradictions and conflicts that lead to the emergence and realization of criminal intents and influence the process of development of the asocial, anti-social and socially dangerous behavior of certain individuals;
- elaboration of scientific recommendations with regard to eliminating, neutralizing or minimizing the consequences of events which contribute to the criminal activity of an individual.

The presented objectives of the criminology are static i.e., they almost always remain the same. However, the world is quite dynamic in its changes, societies transition from one stage of development into another, consequently the science must respond adequately to the new challenges in any sphere. Taking into consideration such a consistent process, in the current stage of development of the society the scholars most commonly include the following among the objectives of criminology:

- studying the factors, causes and conditions which promote or prevent criminality, influence its current state, rate, structure, regularities of its existence and development; determining the causes behind the increase in specific types of crime;
- conducting a comprehensive study of particular types of crime, the mechanism of committing them in order to determine efficient methods of counteraction to them;
- studying and classifying personality types of an offender, drawing up his social and psychological profile, defining the correlation between the individual and his environment, the interrelation and mutual influence of a biological and a social factor in identifying the perpetrator of an offence;
- determining principal directions and measures of crime prevention;
- investigating and summarizing foreign practices of crime prevention;
- developing a strategy to combat criminality with consideration for those social changes that occur in a particular society and across the globe, in general;
- improving the crime forecasting.

It is therefore worth to follow the viewpoint of Y. I. Hilinskyi who emphasized that history of criminology is comprised of several stages:

1. Classical school of criminology (18th century). The development of criminological concepts and ideas are connected with the names of C. Beccaria (1738-1794) and J. Bentham (1748-1832).

The main methodology: philosophy, social philosophy, law.

2. The Positivism (19th-20th century) incorporates biological (anthropological) positivism starting from C. Lombroso (1835-1909) and until present; psychological positivism starting from G. Tarde (1843-1904) and sociological positivism with its numerous schools and theories.

The main methodology: methods of natural, «positive» sciences (observation, interview, survey, experiment, etc.)

3. Critical criminology and postmodernist school (end of 20th- 21st century)

The main methodology: negative aspect – rejection of all past concepts and developments; positive aspect – methods from modern natural sciences (catastrophe theory, chaos theory, synergetics, «strange attractor», bifurcations, etc.)

Critical (radical) and postmodern criminology are characterized by:

- critical attitude to all previous theories;
- harsh criticism of contemporary public, economic, political and power structures;
- relativistic approach to the notions of «criminality» and «crime» as social constructs;
- assurance that social and economic inequality is the principal cause of crime;
- critical attitude to traditional methods and means of social control over criminality; acknowledgement of the «crisis of punishment»;
- updating of methodological tools [1].

The results of the study by I.I. Hylynskyi published in 2011 correlate with the research conducted by O.M. Lytvynov and Yu.V. Orlov in 2019 where the authors indicate that the postmodern interpretation of place, role and significance of the criminological science is realized within a context of those particular transformations that have occurred in the modern science, its methodology and philosophy. One of such radical transformations is a different interpretation of thinking which is henceforward perceived as a non-linear process that incorporates not only gaps but also sudden «breakthroughs» in understanding. Contrary to a classical perception of thinking as a linear chain of thoughts and reflections (conveyed in the most evident form through axiomatic-deductive method of presentation, primarily in Euclidean geometry, which is prevalent in modern middle school) the thinking starts to be treated as a non-linear arrangement of acts of thought embodied within a discourse – a new unit of analyzing the acts of reflection and comprehension of various meanings [2, p. 7].

At the same time, criminology possesses its own specific range of issues in every country. Providing solutions to problems that a particular science faces stipulates corresponding objectives for it. In 2002 the Coordination Bureau for Criminology of the National Academy of Legal Sciences of Ukraine developed and adopted the Concept for development of criminological science in Ukraine at the beginning of the 21st century which addresses major problems and challenges of Ukrainian criminology, namely:

- ensuring an adequate understanding of the nature and scope of criminality in Ukraine;
- elaborating a more profound treatment and modern interpretation of an identity of the criminal, determination and mechanism of manifestations of criminality;
- establishing correlation and interconnection between manifestations of criminality and non-criminalized (background) conduct, preventing criminalization of the latter and extending its determining impact upon criminality;
- determining the causes and conditions of crimes and manifestations of criminality;
- creating a steady groundwork for modern scientific elaboration on the issue of prevention of crimes and criminality;
- self-improvement of criminological science [3, p. 366].

It is obvious that the identified issues are characteristic of the domestic criminology and solving those determines its present objectives. However, in order to formulate a more precise and complete picture that would reflect the objectives of criminology in contemporary Ukraine it is essential to further define what is referred to as special objectives of criminology which denote the directions for prevention and counteraction to the most dangerous manifestations of criminality within our society.

For instance, special objectives of Ukrainian criminology currently consist in the development of appropriate measures for prevention and counteraction to:

- terrorism;
- separatism;
- organized crime;
- corruption;
- illegal trafficking of arms;
- illegal trafficking of drugs;
- economic crimes;
- serious violent crimes;
- cybercrime.

Furthermore, back in 2013 V.I. Shakun emphasized – in order not to once again lag behind social and economic processes the criminological science by its own specific means must ensure high quality of functioning of networked information economy. A criminological paradigm of preventing crimes in this sphere is still being formulated and requires extensive research. In order that such approach would have an objective foundation for its realization it is imperative to use modern forms of organization of scientific research related to the information sphere in its diverse manifestations. It is certain that the obtained theoretical models of crime prevention in this sphere must be formalized by means of concepts, monographs, theses, legislative proposals. It is also worth taking into account the global dominants of cybercrime prevention which display intrinsic features and peculiarities in means and mechanisms of solving the problems that the criminological science is facing. A targeted, scientifically substantiated system of crime prevention is non-existent in Ukraine. The scope of shadow economy poses a threat to national security and promotes illicit behavior within the society while such a behavior, in its turn, triggers criminality. Shadow economy, inefficient government and imperfect legislation enable the development of the «shadow law» which undermines the legal system of Ukraine [3, p. 375].

Proceeding from the fact that the essence of criminology still lies in the development of corresponding recommendations aimed at prevention of criminality and negative social phenomena it is apparent that this, namely, represents criminology's principal objective. As noted by V. V. Golina the practical realization of the constitutional provision concerning Ukraine as a law-based state, where affirming and ensuring human rights and freedoms is the main duty of the State, stipulates in the first place the creation therein of a dependable system for prevention of criminal offences in various spheres of material and spiritual life of the people [4, p. 12].

The text of the Constitution of Ukraine contains five instances of the phrases «preventing crime» or «preventing disturbances» in the context that such prevention serves as grounds for restricting rights and freedoms of a human and a citizen thus guarding against arbitrary interference of the state into the activity of its primary subject – its citizen that must acquire a new property in the 21st century. The concern is about a long-overdue necessity to leave behind the presumption of a human as a sentient being and to dwell solely upon the presumption of a responsible human – rights and freedoms without duties and responsibilities is a mere fiction.

Nonetheless, the Fundamental Law of our state contains the statement of a formally principal objective of criminology – prevention of crimes whereas crime is only one of the most dangerous forms of illicit behavior of an individual. It is apparent that preventive activity must encompass an entire range of offences in the country, particularly taking into consideration that the number of their varieties in Ukraine is expected to increase in the near future due to the introduction of the concept of criminal misdemeanor. It is furthermore viable to accept the view of those criminologists (Batyrgareyeva V. S., Holovkin B. M., Dzhuzha O. M., Lytvynov O. M., Tytarenko O. O., Shakun V. I., et al.) who emphasize that the prevention of offences in Ukraine must be programmatic in its form and occur within the framework of law. The current programme for crime prevention as a constituent element of state policy in the corresponding sphere must be aimed at comprehensive security assurance and effective safeguarding of national interests against any encroachment, proactive functioning rather than reacting to a criminal or any other type of offence that has already been committed.

Therefore, at the current stage of Ukraine's development and in the near term the objectives of criminology must come to include a qualitative study of overall crime rates countrywide with account for their regionality and transnationality, establishing the peculiarities of offenders and victims in each type of offence and their determinative complex in order to elaborate scientifically grounded prevention measures at general social, special criminological and individual levels. A particular importance in this case must be attached to victimological prevention of crime and criminological activity of the state in temporarily occupied territories of Donetsk and Luhansk regions and annexed Autonomous Republic of Crimea.

For instance, one of the doctrines of criminological science is the statement that crime prevention is carried out at three levels – general social level (within the society as a whole), special level (with regard to particular types (groups) of offences) and individual (with a specific offender). Some of the scholars distinguish a fourth level of crime prevention – regional, or branch-related. Various scholars have somewhat differing titles for these levels however, their contents are approximately the same and most importantly they are all ultimately aimed at the development of the sense of security in each individual against violations of legal norms, morality, traditions, etc.

Obviously, all of these measures are employed as a complex whole, however the most efficient is namely the individual prevention given that it consists in the direct interaction between an authorized official and an offender. Types of such measures are as well diverse: from interviews and clarification of existing legislation (predominantly educational activities) to adoption of a formal decision to institute the preventive supervision for offenders. It is without doubt that such activity is restrictive in terms of rights therefore it must be precisely regulated by acts of legislation and other subordinate normative legal acts.

It must be further emphasized that only under the condition of formulation and implementation into the law-enforcement of new approaches to the activity of law enforcement and judicial authorities and, most importantly – new approaches to the assessment of their performance, will it become possible to ascertain the achievement of a particular level of sense of security for each individual in Ukraine. Crime prevention must become a similarly substantial performance indicator for corresponding entities as the number of identified offences and individuals who committed them, and the quantity of individuals against whom various forms of legal action were instituted, etc.

Further implementation is required for the forms of primary recording of offences related to the information about the victim – education, family status, relations with the perpetrator, commission of crimes against the victim in the past, – what would additionally expand the opportunities for the purpose of presenting the population with comprehensive information related to the place and ways of searching for a victim that the offender may utilize, defining the characteristics of victims and manifestations of the victimity behavior and formation of certain measures for victimological prevention. The identity of the victim must be studied to the same extent as the identity of the offender.

Naturally, the formula of efficiency of law enforcement agencies should primarily be derived not by means of statistics and quantitative indicators but through qualitative indicators the thorough analysis of which would result in understanding the essence of problems related to obtaining a certain required level of such efficiency. The quality of preventive activities relies upon effectiveness, impartiality and professionalism of government authorities and their officials whose work furthermore impacts the level of confidence in government institutions on the part of citizens.

The declared objectives can be realized in conjunction with the adoption by the Verkhovna Rada of Ukraine of the laws of Ukraine, namely «On prevention of offences», «On statistical recording of offence» and «On criminological expertise of projects of normative legal acts» the contents of which to a significant extent depend on the participation of representatives from the Ukrainian criminological science. It must be separately noted that scientific provisions for fulfilling the objectives of criminology in Ukraine may be entirely accomplished by a sufficiently high quality of network of corresponding entities and institutions involved in such activity, for instance the National Academy of Legal Sciences of Ukraine, Academician Stashis Scientific Research Institute for the Study of Crime Problems of the National Academy of Law Sciences of Ukraine, the Criminological association of Ukraine, the Ukrainian Association of Criminal Law, higher legal educational institutions and others.

In conclusion, it is once again viable to accept the viewpoint of those scholars who consider that the modern-world criminology is characterized by the following:

1. The majority of criminologists have no doubt in the social nature of criminality and regard it as a product of society, culture, whereas criminology is regarded as a sociology of criminality.
2. Criminality is in essence a social construct, which is «devised» by the legislator partly in view of a real social danger of unlawful acts, partly – in fulfillment of political intents and to the benefit of authority structures, political regimes.
3. Commonly, criminology studies criminality as one of the varieties of deviant activities along with other offences as well as drug addiction, suicide, prostitution, alcohol abuse and other negative deviant manifestations.
4. Further development is granted to theories which consider the principal cause of criminality and its particular types to be in the very structure of society, in social and economic inequality, in culture. Structural deficiencies are further augmented by globalization leading to an objective division of people, groups, classes, states into those «included» into modern economic, social, political and culturological processes or those «excluded» from them.
5. Criminology is increasingly involved in particularly thorough studies of such «novel» criminal phenomena as «hate crimes», «stalking», computer-related crimes (cybercrime).

6. Over the past two decades an increasing attention is given to the problems of social control over the criminality. Traditional measures proved their inefficiency. Prevention, which raised so much hope, is also not always efficient. The «crisis of punishment» becomes increasingly evident [1].

Another «trend» among the objectives of criminology in the near term must be a complete rejection against use in the studies of vestiges of soviet legal legacy represented by legal norms adopted in the times of the Soviet Union or in the times of independent Ukraine which, despite continuing to formally regulate and protect social relations, exert negative impact upon doctrinal, law-making and law-enforcement levels altogether. One obvious instance of such vestiges is the concept of «social danger», the formalization of which enabled to implement a criminal law by analogy with the Criminal Code of the Ukrainian SSR of 1922 with its main objective being declared as the legal protection of workers' state against crimes and socially dangerous individuals (article 5), while in article 6 the notion of crime was defined as any socially dangerous act or omission which poses a threat to the foundations of the soviet system and rule of law established by workers'-peasants' authorities for the period of transition to the communist system [5, p. 98-99].

Conclusions. Taking into consideration the above-presented, it must be acknowledged that the important objectives of criminology at the current stage of development of Ukraine's statehood consist in the implementation into the activities of authorized government authorities and public organizations of a major guideline related to understanding of the fact that there exist two ways in which the crime rate can be decreased: by minimizing the causes of illicit behavior and by intensifying measures including the criminal repression. It is far easier to eradicate the cause than to combat its consequences. Criminality cannot be defeated or eradicated, it can only be decreased by a certain degree to reach a socially tolerable or, far better, a socially acceptable level. Therefore, it is essential to place major emphasis on criminological forecasting and individual prevention of offences with regard to individuals predisposed to crime.

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Abstract

Taking into consideration the above-presented, it must be acknowledged that the important objectives of criminology at the current stage of development of Ukraine's statehood consist in the implementation into the activities of authorized government authorities and public organizations of a major guide-

line related to understanding of the fact that there exist two ways in which the crime rate can be decreased: by minimizing the causes of illicit behavior and by intensifying measures including the criminal repression. It is far easier to eradicate the cause than to combat its consequences. Criminality cannot be defeated or eradicated, it can only be decreased by a certain degree to reach a socially tolerable or, far better, a socially acceptable level. Therefore, it is essential to place major emphasis on criminological forecasting and individual prevention of offences with regard to individuals predisposed to crime.

Keywords: *man, rights and freedoms, criminology, crime, threat, crime prevention.*

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PROBLEMS OF COUNTERING RAIDING IN THE REPUBLIC OF KAZAKHSTAN

Гульнар Шушикова, Бахитжан Сагимбеков. ПРОБЛЕМИ ПРОТИДІЇ РЕЙДЕРСТВУ В РЕСПУБЛІЦІ КАЗАХСТАН. Забезпечення економічної безпеки є одним із пріоритетних напрямів державної політики у сфері національної безпеки. Одним із проблемних питань в даному напрямку є протидія рейдерству як негативноve явище в підприємницькій сфері.

Вивчення окремих звернень показує, що дії державних органів, органів кримінального переслідування (накладення арештів, обшуки, виїмки, перевірки і ін.) і банківських організацій (позасудова реалізація майна на торгах, нарахування пені та ін.) щодо суб'єктів підприємництва, населення розцінює як факти рейдерства.

Основні думки зводяться до визначення рейдерства як недружнього поглинання майна, земельних комплексів і прав власності, яке здійснюється із використанням прогалин у правовій базі та з корупційним використанням державних, адміністративних і силових ресурсів.

Сучасні тенденції еволюції рейдерства характеризуються різноманіттям форм прояву. Зарубіжний досвід свідчить, що в кримінальному законодавстві більшості країн відсутнє поняття і окремий склад рейдерства.

На підставі викладеного, з урахуванням аналізу міжнародного досвіду та проблем правозастосовчої практики, з метою протидії рейдерству та незаконним діям правоохоронних і контролюючих органів авторами пропонуються такі заходи законодавчого характеру: розглянути питання про запровадження кримінальної відповідальності суддів за винесення неправомірного рішення, що спричинило або сприяло неправомірному заволодінню юридичною особою; запровадити кримінальну відповідальність посадових осіб (державних (контрольно-наглядових) органів за зловживання повноваженнями спричинили або сприяли неправомірному заволодінню юридичною особою, органів кримінального переслідування (слідчих, дізнавачів, прокурорів і їх керівників) за незаконне досудове розслідування, що спричинило або сприяло неправомірному заволодінню юридичною особою).

Ключові слова: *рейдерство, Казахстан, власність, неправомірне заволодіння, протидія.*

Relevance of the study. The article's objective. Ensuring economic security is one of the priorities of the government policy in the field of national security.

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One of the issues in this field is the counteraction to raiding as a negative phenomenon in the business sphere.

Business protection issues have been raised by the business community throughout Kazakhstani independence.

The first step towards legislative regulation of anti-raiding was the order of the First President of the Republic of Kazakhstan N.A. Nazarbayev in 2009 to develop a law against raiding.

In 2019, the Head of state, K.K. Tokayev, in his Annual Message to the people of Kazakhstan, equates raiding with a threat on a national scale. He states that not only large and profitable companies, but also small and medium-sized businesses are now subject to raider attacks.

Discussion. In the media, there are numerous complaints of business owners on the illegal seizure of their property and assets.[1,2,3]

The study shows that people consider some actions of government, criminal prosecution authorities (arrests, searches, seizures, inspections, etc.) and banks (extrajudicial sale of property at auction, accrual of penalties, etc.) as facts of raiding.

Moreover, some entrepreneurs use these methods in order to evade the fulfillment of contractual obligations and responsibility.

However, analysis of statistical data on Article 249 (Raiding) of the Criminal code of the Republic of Kazakhstan (hereinafter – CC RK) indicates a low level of registration.

Thus, according to the report of the Committee on legal statistics for the period from 2015 to 2019 only 16 crimes were registered under Article 249 of the CC RK (in 2015 – 9, 2016 – 3, 2017 – 2, 2018 – 0, 2019 – 2) (tabl. 1).

Table 1

Raiding						
	2015	**2016**	**2017**	**2018**	**2019**	**Total**
Registered	9	3	2		2	**16**
sent to the court	2		1			**3**
deadlines interrupted	6	3			1	**10**
ceased on non-rehabilitative grounds			1			**1**
ceased on rehabilitative grounds	1					**1**
cases still under investigation					1	**1**

Such statistics are explained by the lack of a clear definition of raiding in the legislation, as a result of which most of the facts are considered by court as a civil dispute without making a record in the Unified register of pre-trial investigation.

It should be noted that since 2015, only 2 out of 16 criminal cases have been sentenced by the court.

The first criminal case against the leader of the organized criminal group Mr. «E» is one of the clearest examples of «black» raiding.[4]

In 2018 Specialized Interdistrict criminal court of Aktobe region Mr. «E» together with other individuals found guilty under Article 226-1 of the part 3, paragraph «a» of the CC RK (previous versionadopted 16.07.1997), that is, in a hostile takeover and embezzlement of property of LLP «T» made by illegal control of a legal entity and other illegal methods (using forged documents and stamps) that resulted in a significant violation of the rights and legitimate interests of individuals.

The second criminal case against Mr. «A» contains all the signs of «gray» raiding.[5]

In 2016 Abay district court of Shymkent city in South Kazakhstan region found guilty Mr. «A» under Articles 384, 385, 416, but found not guilty under Article 249 of the CC RK for

[1] In Kazakhstan, businessmen complain about raider attacks.https://kursiv.kz/news/vlast-i-biznes/2019-05/v-kazakhstane-biznesmeny-zhaluyutsya-na-reyderskie-zakhvaty.

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[4] «Black raiding» – defined as a violation of criminal law.

[5] «Gray» raiding» – defined as a in violation of civil law.

absence in his actions the elements of the crime. It was confirmed the existence of the contract for sale 50% of LLP «O» dated 13.02.2014.

Thus, raiding is a direct obstacle to the development of the institution of private property and investment attractiveness.

In this regard, one of the main priorities of the government in countering raiding is the need to define its definition and essence in criminal law.

The main points of view are reduced to the definition of raiding as an unfriendly takeover of property, land complexes and property rights, carried out using gaps in the legal framework and with the corrupt use of authority power and resources.

Thus, modern trends in the evolution of raiding are characterized by a variety forms.

Currently, Article 249 of the CC RK defines raiding as the illegal acquisition of the right of ownership of the legal entity, as well as property and securities of the legal entity or establishing control over a legal entity which is the result of a deliberate distortion of results of voting by amending the minutes of a meeting of the session and other documents of false information, inaccurate counting of votes, blocking or limiting the actual access of a shareholder to vote, the failure to communicate information about a meeting, reports of false information about the time and place of the meeting, deliberate creation of obstacles to the exercise of the right to pre-emptive purchase of securities, or other illegal methods that caused significant harm to citizens or organizations.

The criminal law analysis of this article shows its imperfection and complexity of construction due to excessive detail of the objective side of the crime.

This circumstance leads to the fact that the specified norm does not allow to cover other forms and methods of illegal acquisition of property and assets of a legal entity.

It should be noted that the objective side of raiding intersects with a number of other elements of the CC RK (fraud, extortion, banditry, coercion to make a transaction, embezzlement of property, violation of property rights to land, forgery, use of forged documents, stamps, seals, forms, etc.), which causes problems in the qualification of this criminal act and justified criticism from abiding citizens.

Law scientists conditionally distinguish the following forms of raiding:

1) carried out formally within the framework of the current civil legislation – «white» raiding;

2) outside the framework of civil legislation – «gray» raiding;

3) criminal and violent methods – «black raiding».

Ukrainian scientists define raiding as a forceful unfriendly takeover of an enterprise (business entity) against the will of its owner or the owner of a significant participation of the enterprise.[1]

However, there is still no consensus on the definition of «raiding» and the criteria for classifying this phenomenon in modern Ukrainian and Kazakhstani scientific literature.

Most scientists understand the concept of raiding as both friendly and unfriendly takeover of companies, criminal takeover of companies, and sometimes even a merger of companies[2].

Some Ukrainian scientists (B.M. Grek, Z. Varnali, I. Mazur and others) consider raiding an unfriendly takeover of companies through actions that go beyond the current, in particular, civil legislation[3].

At the same time, M.A. Kolesnik believes that the seizure of companies and the establishment of full control over them can also occur by performing actions that are not prohibited by law, that is, within the framework of current legislation[4].

There are a number of other definitions of raiding, but they have a number of common

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features.

First of all, raider's goal is to seize someone's property or corporate control rights.

Secondly, actions of the raider and the tools they use are formally based on the law (appeals to the court, statements to the police, etc.).

Thirdly, raiding is carried out not for the seizure, but for commercial profit.

The ultimate goal of raiding is the illegal appropriation of private property of a legal entity, that is, in the criminal law aspect, the generic object of raiding is public relations in the field of property rights.

Foreign countries experience show that in the criminal legislation of the most countries there is no concept and separate structure of raiding.

In foreign practice (USA, UK, France, Canada, etc.), raiding is explained through the concepts of «hostile takeover», «unfriendly takeover», «corporate takeover», etc.

Criminal operations involving unfriendly takeover of property usually involve directly or indirectly many individuals, including officials, various business structures that control law enforcement and judicial authorities.

In the CIS countries, prosecution for raiding is carried out by establishing criminal liability for certain forms and methods of raiding a legal entity.

For example, the criminal code of the Republic of Uzbekistan does not have a separate raiding structure, however, in 2015 the new chapter has been introduced containing all crimes related to the violation of the rights of business entities.

Criminal liability for illegal possession of a legal entity is established by article 192.1. «Violation of the right of private property» of the Criminal code of Uzbekistan.

The disposition of this norm is formulated as follows:

«Causing damage to private owners by an official or employee of a controlling, law enforcement or other state body or state organization by violating their rights, that is, illegal restriction and (or) deprivation of property rights, encroachment on private property, imposing deliberately unacceptable conditions on the owner, including an unreasonable demand for the transfer of property or property rights, as well as the seizure of property or forcing him to renounce the right to his own property in the absence of signs of theft, committed after the application of an administrative penalty for the same actions».

In Ukraine, the Article 206-2 of the Criminal code of Ukraine – illegal seizure of the property of an enterprise, institution, or organization-is the closest in content to the composition of raiding used in Kazakhstan. Thus, illegal acquisition of the property of an enterprise, institution, organization, including shares, shares, shares of their founders, participants, shareholders, members, by making transactions using forged or stolen documents, seals, stamps of the enterprise, institution, organization, is punishable by correctional labor for up to two years or restriction of liberty for up to three years, or imprisonment for the same period, with deprivation of the right to hold certain positions or engage in certain activities for up to two years.

Conclusion. Thus, taking into account the analysis of international experience and problems of law enforcement practice in order to counter raiding and illegal actions of law enforcement and regulatory authorities, the following legislative measures are proposed.

To decriminalize Article 249 of the CC RK by converting it into separate elements of crimes (according to the experience of Uzbekistan), or simplify the disposition of Article 249 CC RK (according to the experience of Ukraine).

It is also proposed to form a separate Chapter in the criminal code, combining all criminal offenses against the rights and legitimate interests of entrepreneurs (based on the experience of Uzbekistan);

To set criminal liability of officials of:

- government (control and supervisory) bodies for abuse of authority that resulted in or contributed to the illegal acquisition of a legal entity;
- criminal prosecution authorities (investigators, prosecutors and their assistants) for the illegal initiation of a pre-trial investigation that resulted in or contributed to the illegal acquisition of a legal entity.

It should be considered to set criminal liability of judges for making an illegal decision that resulted in or contributed to the illegal acquisition of a legal entity.

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Abstract

Taking into account the analysis of international experience and problems of law enforcement practice, in order to combat raiding and illegal actions of law enforcement and regulatory authorities, the authors propose the following legislative measures: to consider criminalizing judges for wrongful decisions or contributed to the misappropriation of a legal entity; to introduce criminal liability of officials of (state (control and supervisory) bodies for abuse of power caused or facilitated the misappropriation of a legal entity, criminal prosecution bodies (investigators, investigators, prosecutors and their supervisors) for illegal pre-trial investigation, which caused or facilitated the misconduct legal entity).

Keywords: *raiding, Kazakhstan, property, illegal seazure, combatting.*

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DETECTION OF PIMPING BY THE CRIMINAL POLICE

Олег Ємець. ВИЯВЛЕННЯ КРИМІНАЛЬНОЮ ПОЛІЦІЄЮ СУТЕНЕРСТВА. Проституція вважається однією з найдавніших професій, яка і сьогодні продовжує руйнувати долі багатьох людей. Встановлено, що такий вид заробітку завдає значної шкоди психічному та фізичному здоров'ю тих осіб, яких втягують е надання сексуальних послуг, особливо якщо це діти, адже вони ще не повністю можуть усвідомлювати пагубність такої діяльності та існуючі загрози.

Підкреслюється, що сексуальна експлуатація є привабливою сферою діяльності організованих груп, адже приносять високі доходи при порівняно незначному капіталовкладенні в протиправний бізнес. Обґрунтовано, що проблема протидії злочинам проти моральності є актуальною і для сучасної України. На жаль, ситуація загострюється через соціально-економічні труднощі в державі, а також через масове вимушене переселення громадян з зони проведення антитерористичної операції та з тимчасово окупованих територій. Проведений аналіз статистичних даних показав, що у нас щороку виявляються та розслідуються сотні фактів сутенерства та втягнення особи в заняття проституцією.

Доведено, що сутенерство ретельно приховується від сторонніх очей та конспірується, тому підрозділи кримінальної поліції повинні постійно проводити активні пошукові заходи для виявлення злочину з метою його припинення та подальшого розслідування. Цим обґрунтовується поставлена нами мета відносно вироблення рекомендацій щодо виявлення підрозділами кримінальної поліції фактів учинення сутенерства з наступним притягненням винних осіб до відповідальності, а також наданням допомоги особам, потерпілим від сексуальної експлуатації, особливо якщо це діти. Проведене дослідження проблеми дозволило нам визначити об'єкти оперативного пошуку щодо сутенерства, а також запропонувати напрями пошуку фактичних даних про подібні противоправні діяння.

Ключові слова: *злочин, кримінальна поліція, проституція, розслідування, секс, сутенерство.*

Relevance of the study. Everyone knows that activities related to the provision of sexual services have long historical roots. Such kind of earnings from ancient times has a devastating effect on the human views on the inadmissibility of certain acts, as well as on the conceptual foundations of society. In addition, significant and often irreparable harm is caused to both the physical and mental health of those who are being taken into prostitution, especially if they are children, since they are not realize disadvantage of this activity and the existing threats. Unfortunately, this problem is very actual for modern Ukraine. The situation is aggravated due to socio-economic difficulties in the state, as well as through massive forced displacement of citizens from the area of anti-terrorist operation and temporarily occupied territories. The analysis of statistical data shows that hundreds of facts of pimping or involvement of a person in prostitution are discovered and investigated annually in the country. So, in particular, police officers arrested a resident of Zaporizhzhya, who organized the provision of sexual business on a call. According to information received, a woman involves women into prostitution, rents an apartment for her, and distributes sexual business announcements on the Internet. Law enforcers conducted authorized searches in the home at the place where the brothel was functioning and the place of residence of the 33-year-old student, which resulted in the removal of material evidence. It was found that a woman leased an apartment in which according to the established schedule four girls worked. The latter provided clients with services of a sexual nature for a monetary consideration in the amount of 800 to 1500 hryvnias. They also provided «services» to customers in saunas. In order to find clients for a brothel, a woman posted ads with phone

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numbers on the Internet. Based on these facts, criminal proceedings have been initiated on the basis of the crime provided for in Article 303, part 3, of the Criminal Code of Ukraine (pimping or taking a person into prostitution) [1].

The particular cynicism of the situation lies in the fact that the most profits from such an illegal business are usually obtained not by the person providing the sexual services, but by the organizer, who is engaged in securing the prostitution of others. In addition, crimes against morality are an attractive area of organized crime, because they bring high profits with relatively insignificant capital investment. Organized groups often commit other offenses along with crimes against morality, as well as spread illegal activities to different regions of the country. For example, an interregional organized criminal group was arrested in Odessa by law enforcement officers, which was engaged in the creation of places of deprivation, bribery and pimping, and the involvement of persons in prostitution. The group had strict hierarchical subordination, a steady organization, with the distribution of the functions of each participant. In addition, members of this organization group systematically expanded their activities, opening new places of deportation and attracting a significant number of people as prostitutes, operators of call centers, moderators of sites on the Internet. Also thieves searched taxi drivers and private cars, brothel administrators. Organizer of the group was a 31-year-old native of Donetsk region, a resident of Kharkiv. Offices acted in Odessa and Kharkiv. There were operators who received phone calls from customers and coordinated the activities of local brothels. In this offices were administrators of the websites that created and placed the relevant advertisement. In the role of co-organizers of sex-business was a couple of comrades – a 38-year-old native of the Sumy region and a 37-year-old native of the Kharkiv region. The husband picked up his pimps, developed schemes, plans, rules and rules of the criminal group, and also reported to the organizer of the profit. His mistress had to control the necessary conspiracy measures for the functioning of places of deportation. In addition, her responsibilities included the selection of brothel and prostitute administrators, the account of the girls' exit to work, financial documentation and discipline supervision. Telephone and call operators and site administrators were identified at the addresses of the criminal group offices in Kharkiv and Odesa. Removed office equipment, dozens of mobile phones, hundreds of sim cards, draft financial documents, passports and prostitute’s questionnaires, business cards of brothels. Almost three dozen prostitutes detained. In Kharkiv, at the place of residence of the main figure of a criminal group, 250 thousand hryvnias were found and seized, office equipment, a machine and a hack to it. In addition, various accessories for brothels have been removed, and in the safe – accounting documentation. In general, according to the addresses of brothels and offices of the criminal group, it was found almost 25 thousand dollars and 50 thousand hryvnia received as a profit. Also removed three cars of the representative class, which moved the main figures of the criminal group. Criminal proceedings were instituted on the grounds of a crime provided for in Article 303, part 3 of the Criminal Code of Ukraine [2].

A typical sign of pimping is the high level of latency, which suggests that if someone from any cause became aware of a crime, then such people do not always report similar facts to law enforcement agencies. It is precisely because of this that the operational units must constantly conduct active search activities to detect pimping in order to terminate and further investigate illegal activities related to the provision of sexual services. The pimping is carefully hidden from third-party eyes and is concealed.

Recent publications review. The following scientists, such as I.O. Bandurka, A.V. Landina, V.V. Kuznetsov, S.G. Kulik, L.S. Kuchans'ka, V.Yu. Mosyazhenko, A.A. Nebitov, A.V. Plotnikov, S.P. Repetsky, T.A. Shevchuk and others, paid special attention to solving certain aspects of the problem of combating crimes against morals. At the same time, taking into account the latest organizational and legal changes in the work of law enforcement agencies, the issue of the continuation of scientific developments in this area for the improvement of law-enforcement activity is becoming increasingly important.

The article’s objective is to set for the development of recommendations for the detection by the units of the criminal police of the facts of making pimping, with the subsequent bringing the perpetrators to responsibility, as well as providing assistance to victims of sexual exploitation, especially if they are children.

Discussion. Laws of Ukraine and subordinate legal acts form the legal basis for law enforcement activities, including the identification of pimping facts. The legislator determines the search and fixing of factual data about unlawful acts of individuals and groups, the responsibility for which is provided for in the Criminal Code of Ukraine [3], as referred to in Article 1 of

the Law of Ukraine «On Operational-Search Activities» [4]. It should also be noted that Article 303 of this Code [3] provides for responsibility for the pimping or involvement of a person into prostitution.

Lawyers for pimping understand the actions of a person to ensure the occupation of prostitution by another person. Here it may be the provision of premises, protection, transportation of prostitutes to customers, bondage, advertising, establishment of corruption ties with law enforcement to ensure non-interference of state bodies, etc. As a rule, such actions are carried out hidden and covered by legal forms: the maintenance of night clubs, massage rooms, dating services, etc. [5, p. 898]. Punish activity may be combined with coercion or involvement in prostitution, and in the future it is expressed in the creation of conditions for the sexual exploitation of these persons, in the supervision and care of the abovementioned persons, in protection from competitors, in the provision of transport, in the prevention of violence or deceit by clients and other actions that ensure conditions for the sexual exploitation of such persons. An offense is deemed to have been completed since the pseudo-action has been committed in securing prostitution by another person, regardless of the actual achievement of his mercenary purpose [6].

Operational search can be represented as a form of operative-search activity, which is a system of reconnaissance-search activities carried out by its authorized agents for obtaining and verifying the primary information about persons, objects and events that constitute operational interests of the operational units for the purpose establishment of signs of a crime or refutation of information about it. The main features of operational search should determine the following [7]:

objects of operational search are persons, objects and events (facts), which are sources of operational information;

the main criterion for assigning a particular person, subject and event to the objects of an operational search is that they constitute operational interest for operational units of law enforcement agencies, and the initial information about them is operatively significant for these units;

an operational search is carried out outside the context of a particular person or fact, the execution of individual tasks, the disclosure and investigation of individual crimes, as well as already known facts and persons;

the realization of an operational search is based on the potential for the recognition of the object of search for previously known features that are inherent in this not yet known specific objects of search (person, subject, event (fact), which are to be set during its implementation;

the main tasks of the operational search are to obtain primary information about persons, objects, events (facts), which constitute operational interests for operational units, as well as verification of this information for the establishment of signs of a crime or refutation of information about it;

the content of the search is constant, active purposeful search work, which is a system of reconnaissance-search activities carried out both personally by the subjects of search (personal search), and with the involvement of appropriate forces and means, including information systems, video and audio recordings, cinema and photography, etc.;

the basis for the commencement of search of primary operationally meaningful information serves as a legislative provision (the search and fixing of factual data about unlawful acts of individuals and groups, the responsibility for which is provided for in the Criminal Code of Ukraine [3]);

for conducting reconnaissance and retrieval activities, only an assumption is made about preparing or committing a crime in the presence of certain features indicating such acts or persons who prepare, commit or commit a crime, and such an assumption may have a version based on certain facts;

operative search is carried out in the places where the search probabilities are most likely to be detected, namely: where crime-making processes tend to repeat, regularity of manifestations in time and space, where it is probable that people who prepare, commit or have committed a crime, and concentration is observed criminogenic contingent;

Time and place of operational search, depending on the circumstances, are determined by the subjects of search and corresponding requirements (functional duties, instructions, plans, etc.).

We draw attention to the fact that law enforcement activities to find evidence of a specific illegal activity has its own peculiarities. Objects of operational search of an individual crime are determined depending on the peculiarities of his commission. As a result of the gen-

eralization of the practice of combating pimping, we believe that the search work to identify the units of the criminal police of the facts of making pimping be aimed at establishing:

persons who have the intention to commit pimping in order to study the possibility of preventing a crime or documenting further illegal actions;

persons preparing for pimping;

persons already committing or committing a pimping;

persons who are engaged in prostitution and are already involved in the provision of sexual services;

persons who help the pimp to provide prostitution by another person, regardless of whether they know the criminal purpose of his actions;

persons who use sex services of persons who provide prostitution by the pimp;

witnesses and eyewitnesses for pimping or giving sexual services;

premises used for the provision of sexual services;

money and values that were spent on the organization of criminal activities, sources of their receipt, as well as documentary confirmation of settlements (documents on money transfers, checks with settlements for renting premises, etc.);

illegal income, that is, money and values received by the pimp during the illegal activities. In addition, measures should be taken to establish other material values of persons involved in such crimes, with a view to possible future claim for damages caused by them;

objects and documents having operational-search and proof value. These may be contracts for the lease of premises, details (printouts) of telephone connections involved in illegal activities of individuals, debt receipts, especially those who are taken into prostitution, electronic media with recordings of surveillance cameras in the premises where sexual services were provided or parking lots, nearby, etc.

circumstances and conditions conducive to pimping;

concrete facts of committing a pimping;

other pimping facts.

The work of criminal police units to detect pimping cases should be offensive and provide for the constant active work of operational personnel in accordance with the requirements of the current legislation. We have the following areas of activity for law enforcement officers in this area:

receipt and verification of applications and notifications of pimping from citizens who became aware of such facts;

work with unofficial regular and freelance employees, aimed at establishing concrete facts and circumstances of pimping;

search for pimping data on the Internet;

interaction with other law enforcement and public authorities and foreign colleagues in order to obtain from them and further verification of information about the pimping;

interaction with non-governmental organizations whose activities include counteraction to trafficking in human beings and crimes against morality, as well as the protection of victims of sexual violence or exploitation in order to obtain relevant information from them and to further verify it;

monitoring reports in the mass media about pimping, as well as checking the results of journalistic investigations in this area;

monitoring of the activity of massages, tourist and transport companies, employment agencies, hiring, escort agencies and marriage bureau for receiving information about the pimping;

checking the messages that come in hotlines to help victims of trafficking, sexual abuse, etc.;

work with persons previously convicted of a pimping, other crimes against morality or trafficking in human beings for the purpose of obtaining information about pending or not yet established facts and circumstances of pimping;

processing and verification of information received from already known victims of crimes against morality or trafficking in persons, their relatives and relatives, about pending or not yet established facts and circumstances of pimping;

processing information about pending or not yet established facts and circumstances of pimping in the investigation of other criminal proceedings.

Legislation of Ukraine [3; 4] provides that the criminal police units, when establishing evidence of pimping, shall take measures to record evidence of unlawful acts committed by individuals or groups involved. The deployed materials of operative and investigative activities

are used to obtain factual data that can be evidence in criminal proceedings as the reasons for and grounds for initiating a pre-trial investigation, as well as for the prevention, detection, termination and investigation of crimes.

Conclusion. Our research of the problem of detecting the facts of the pimping by the units of the criminal police makes it possible to arrive at certain conclusions. Thus, the analysis of statistical reporting shows that every year police officers detect hundreds of episodes of pimping, with a large part in the composition of organized groups. The dynamics of the detection of pimps is unstable, but in general, the number of registered crimes tends to increase. Ukraine is undergoing the process of reforming law enforcement agencies and updating legislation regulating their activities. Nevertheless, the search for evidence of criminal acts of individuals and groups remains a priority task of operational and investigative activities. Multilateral study of the peculiarities of law enforcement activity in this area allowed us to identify the objects of the operative search for pimping, and also to offer a search for factual data about such unlawful acts. The above recommendations will promote awareness of the employees of the criminal police in the peculiarities of combating crimes against morality, as well as in the problem of the fight against pimping. In addition, the expressed proposals can be used in further scientific developments in this area.

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Abstract

Prostitution is one of the oldest professions, which continues to destroy destinies of many people. It is revealed that sexual exploitation is an attractive sphere of activity of organized groups, because they bring high incomes at relatively insignificant capital investment in this unlawful business. It is proved that hundreds of facts of pimping and the involvement of a person in prostitution are discovered and investigated annually. We have developed of recommendations for the detection by the units of the criminal police of the facts of making pimping, with the subsequent bringing the perpetrators to responsibility, as well as providing assistance to victims of sexual exploitation, especially if they are children.

Keywords*: crime, criminal police, prostitution, investigation, sex, pimping.*

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SUBSTITUTION MAINTENANCE THERAPY – EFFECTIVE PREVENTION OR WAY OF COMMITTING A CRIME?

Ганна Бідняк. ЗАМІСНА ПІДТРИМУВАЛЬНА ТЕРАПІЯ – ЕФЕКТИВНЕ ЗАПОБІГАННЯ ЧИ СПОСІБ УЧИНЕННЯ ЗЛОЧИНУ? У науковій роботі зосереджено увагу на особливостях програми замісної підтримувальної терапії та її профілактичної функції щодо запобігання наркозлочинності. Доведено, що загальнопрофілактичних заходів таких, як виступ у засобах масової інформації, особисті бесіди, публікації фактів розкритих правопорушень, блокування каналів наркотрафіку недостатньо. Проаналізовано міжнародний досвід функціонування замісної підтримувальної терапії. На основі дискусійних думок щодо даної програми, відзначена їх профілактична роль. Серед переваг підтримуючої терапії відзначено: по-перше, вирішення медико-соціальних проблем (зменшення ризиків зараження ВІЛ, вірусними гепатитами, туберкульозом, зменшення кількості ін'єкційних наркоманів). По-друге, попередження вчинення наркотичних та інших злочинів, зокрема, проти власності (крадіжки, грабежі, розбої та ін.).

Виокремлено випадки зловживань і спроб порушень даної програми, які підтверджені практичними прикладами. Розглянуті випадки вживання метадону не для зняття абстинентного синдрому, а з метою отримання наркотичного задоволення шляхом додаткового прийому алкогольних напоїв і незаконних наркотиків, також розглянуто невживання даного препарату особисто, а привласнення його з метою подальшого продажу. Запропоновано змінити форму видачі препарату з таблеток на суспензію, а також ретельно контролювати процес ковтання таблетки особою, зареєстрованій в даній програмі з безперервним відеозаписом того, що відбувається. Проаналізовано переведення пацієнтів на самостійний прийом препаратів, в умовах дотримання карантинних норм. Зазначено, що це може сприяти як окремим пацієнтам вчиняти правопорушення, так і навчати наркозалежну людину керувати болем та самостійно надавати собі допомогу, поступово відмовляючись від заборонених препаратів зовсім. Наголошено на взаємодії правоохоронних органів з різними службами, органами, організаціями, де значну роль відіграють медичні установи.

Ключові слова*: метадон, замісна підтримувальна терапія, наркозлочинність, опіоїди, профілактика злочинів.*

Relevance of the study. The fight against crime in general and drug crime in particular involves not only the detection and investigation of crimes, but also mandatory prevention activities. The current state and scale of this topic indicate that general preventive measures such as appearance in the media, personal interviews, publication of facts of detected offenses, blocking drug trafficking channels are not enough.

Thus, according to the World Health Organization, about 0.5 million people worldwide die from the effects of drug use. In 70% of cases, death is related to opioid use, where more

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than 30% of these deaths are the result of overdose. Despite the availability of effective treatments for opioid dependence that reduce the risk of overdose, less than 10% of those who need it receive such care [13].

Categories of patients vary. Among them are not only people at high risk, but even teenagers, elderly women and the elderly. The Ukrainian Center for Statistics notes that in Ukraine there are 61335 people on the dispensary register, 25619 persons on the prophylactic register, including 166 teenagers. persons, 26 – teenagers.

Recent publications review. The fight against drug trafficking, their use in medical practice, their impact on the body and treatment of drug addiction have been covered in scientific works by the following scientists: H.H. Vedornikova, R.S. Dugashev, A.O. Gabiani, I.S. Evstigneev, B.B. Lakin, A.G. Lukyanenko, N.I. Molchanov, L.P. Nikolayeva, I.M. Pyatnytska, E.V. Rasyuk, O.M. Striltsiv, V.A. Sorokin, V.I. Timofeeva, E.Kh. Chekushev, V.V. Cherney, M.L. Khomenker, A.I. Maysky, V.V. Chistyakov and others. At the same time, the introduction of new ways and methods of preventing drug crimes, the spread of HIV, tuberculosis, viral hepatitis, socialization of drug addicts requires additional research.

The article's objective is to study the features of the program of substitution maintenance therapy and its preventive function for the prevention of drug crime.

Discussion. In the fight against drug crime, many countries around the world and the European Union, in particular, are supporters of supportive substitution therapy. In the United Kingdom, Australia, Germany, Switzerland, the Netherlands and Canada, the threat of an HIV epidemic has necessitated the creation of various services called «harm reduction programs», which include both substitution therapy and prevention work with people who are not use drugs [4, p. 28].

As in countries with humane treatment of their citizens, Ukraine also has a substitute support program that uses methadone to relieve drug addicts. That is, the use of a banned drug at the legal level at the expense of the state and taxpayers is used not to give a euphoric effect to drug addicts, but to keep their health at such a level that they can fully participate in public life and not commit crimes.

Methadone substitution maintenance therapy aims to socialize addicts and discontinue intravenous drug use. The WHO and the UN consider substitution therapy to be an effective method of combating drug addiction, the use of which reduces mortality among drug addicts several times [12].

There are different opinions and numerous discussions about this program, but it is impossible not to mention their preventive role. Earlier, we noted that the timely detection of opioid addicts, their registration and maintenance therapy have a number of advantages, including: first, the solution of medical and social problems (reducing the risk of HIV, viral hepatitis, tuberculosis, reducing the number of injectables). addicts). Secondly, prevention of drug and other crimes, in particular, against property (theft, robbery, robbery, etc.) [7].

As practice shows, there are often cases of abuse and attempts to violate this program, although there are strict rules for participation under the supervision of medical staff. In the process of interviewing medical and law enforcement officers, it was found that there are cases of methadone use not to relieve the withdrawal syndrome, but to obtain narcotic pleasure through additional alcohol consumption – 68% and illegal drugs – about 32%. It should also be noted the non-use of this drug in person, and its misappropriation for resale.

Approximately in January 2017 in gr. K. had a criminal intent to smuggle methadone, which he received under a substitution maintenance therapy program in the Odessa region. Over time, he formed a criminal group, searched for permanent sources of drug acquisition and sale, and directly stored and sold the drug, distributing the proceeds of crime among the members of the group.

On the basis of the decision of the Babushkinsky district court of Dnipropetrovsk the authorized search on a residence of gr. K., during which were found and seized: pills in the amount of 63 pcs., 15 pcs., Which contain the drug, weighing 0.0630 g., 0.00375 g. According to the expert, submitted for examination pills, contain a narcotic drug – methadone, the circulation of which is limited. The mass of methadone is 0.0630 g, 0.00375 g, respectively, and only 0.06675 g.

In addition, during the search of the place of residence of gr. K. were found and seized: substances with masses of 0.3320 g, 4.4017 g, 0.6967 g, which, according to the expert's opinion, in real masses with 0.3320 g, 4.4017 g , 6967 g was found a drug, the circulation of which is limited – methadone (phenadone), the mass of which is 0.0816 g.

These tablets and substances containing the drug «methadone» are similar in weight, shape, size and color, in quantitative content of the main component.

As we can see, the release of methadone in tablet form has negative consequences. In order to prevent illegal actions in these ways, it is advisable to change the form of the drug for suspension, or carefully monitor the process of swallowing the tablet by a person registered in this program (for example, grinding the tablet, drinking it with water in the presence of a medical institution), with continuous video recording happens.

However, in practice there are cases of abuse of crushed methadone. So, 04.02.2020, approximately at 18 hours 30 minutes, gr. O., intending to illegally acquire, store and transport for sale, as well as the sale of a narcotic drug – «methadone», committed repeatedly, acquired, as a drug – «methadone», white lumps, packaged in nine paper rolls, with a total weight of at least 1.2981, which were rolled into foil, together with a fragment of stone, for sale to an unidentified person during the pre-trial investigation, who is serving a sentence in the State Institution «Igrensky Correctional Center №133».

Submitted for examination crystalline substances in the form of lumps of white color, weighing 0.2106 g, 0.2126 g, 0.2072 g, 0.2096 g, 0.2008 g, 0.2009 g, 0.2373 g, 0.2169 g and 0.0581 g contain a narcotic drug, the circulation of which is limited – methadone. The weight of methadone, respectively, is 0.1658 g, 0.1458 g, 0.1465 g, 0.1583 g, 0.1483 g, 0.1430 g, 0.1837 g, 0.1638 g and 0.0429 g The total weight of methadone is 1.2981 g, which in accordance with the order of the Ministry of Health of Ukraine «On approval of tables of small, large and especially large sizes of narcotic drugs, psychotropic substances and precursors in illicit circulation» №188 from 01.08.2000 year exceeds the small size of drugs [6].

Practice shows that during forensic research, methadone occupies a leading position along with cannabis, methamphetamine, acetylated opium.

It should be borne in mind that when transferring patients to self-administration of drugs, as well as in compliance with quarantine standards, the banned substance is issued for several days. On the one hand, it helps individual patients to commit offenses, on the other – a drug addict needs to be taught to manage pain. For example, if you have a headache or neck pain, try to relieve it by applying ice, walk for at least 30 minutes, lie down in a dark room, the next step is to take ibuprofen, and only then – take a drug from substitution therapy.

In this regard, rightly noted RS Belkin: «the task of prevention is not the complete eradication of crime, but the effective reduction of its quantitative and qualitative indicators, reducing its impact on society and the state, increasing the level of personal security of citizens, protecting their legitimate rights and interests» [1, p. 964].

Although the Criminal Code of Ukraine provides for liability for theft, misappropriation, extortion of drugs, their analogues and precursors or their acquisition by fraud for further sale, the risk of exclusion from this program performs a more significant preventive function. To this end, as well as to assess the progress of treatment and decide whether the patient can take the drug on their own, regular randomized testing is performed.

For patients who continue to use other psychoactive substances or show negative tests for prescribed medications, the Public Health Alliance recommends increasing the frequency of testing. The need for testing for each patient is determined individually, but at least eight times a year [5, p.106]. At the same time, Ukrainian legislation provides for mandatory testing of urine of new patients during the first six months of treatment once a week with the possibility of reduction, but not less than once a month [10].

To successfully solve the tasks, emphasis should be placed on the interaction of law enforcement agencies with various services, bodies, organizations. Medical institutions play a significant role in this perspective. According to the Strategy of State Drug Policy, the Cabinet of Ministers of Ukraine provides for measures aimed at prevention of drug addiction and prevention of illicit drug use, the implementation of which is entrusted to the Ministry of Internal Affairs and the Ministry of Health [9].

Their interaction occurs not only in the implementation of the approved plan. Thus, the management of the narcological dispensary of Dnipropetrovsk region is developing the issue of creating mobile teams, the purpose of which is to identify people with drug addiction, their registration and implementation in the program of substitution therapy with gradual reduction of methadone dose to a minimum. At the same time, joint work with precinct and operational staff will bring the greatest results.

Volunteers also fruitfully cooperate with narcological dispensaries. Currently, a number of public organizations are conducting preventive work in this direction, for example, RC

«City without Drugs», Center for Resocialization «Success», public organization «Parents Against Drugs» and others [2]. Most of them are religious, in their methods use Gestalt therapy, family therapy, art therapy, occupational therapy, client-centered therapy and more. Be sure to work with relatives.

Conclusions. Thus, it should be noted that the scale of illicit opioid use cannot go unnoticed and requires mandatory preventive measures. With the use of methadone substitution therapy it is possible to achieve solutions not only to medical and social problems, but mainly to reduce the level of illicit trafficking in narcotic drugs, psychotropic substances, their analogues and precursors, and other crimes committed by drug addicts.

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Abstarct

The scientific work focuses on the features of the program of substitution maintenance therapy and its preventive function for the prevention of drug crime. It is proved that general preventive measures such as appearing in the media, personal interviews, publication of the facts of detected offenses, blocking drug trafficking channels are not enough. The international experience of functioning of substitution maintenance therapy is analyzed. Based on the discussions on this program, their preventive role is noted.

Keywords: *methadone, maintenance therapy, drug crime, opioids, crime prevention.*

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APPLICATION OF PRACTICE THE EUROPEAN COURT OF HUMAN RIGHTS IN PROVIDING TEMPORARY ACCESS TO ITEMS AND DOCUMENTS

Аліна Гаркуша, Віолета Рец. ЗАСТОСУВАННЯ ПРАКТИКИ ЄВРОПЕЙСЬКОГО СУДУ З ПРАВ ЛЮДИНИ ЩОДО НАДАННЯ ТИМЧАСОВОГО ДОСТУПУ ДО РЕЧЕЙ І ДОКУМЕНТІВ. Досліджено проблеми застосування судової практики Європейського суду з прав людини (далі – ЄСПЛ) національними судами і сторонами кримінального провадження під час підготовки клопотань про надання тимчасового доступу до речей і документів. Встановлено, що застосування практики Європейського суду та дотримання Конвенції про захист прав людини і основоположних свобод має позитивний вплив на ефективність та справедливість досудового розслідування та правосуддя під час розгляду відповідних клопотань.

Тимчасовий доступ до речей і документів у кримінальному процесі розглядається як засіб, за допомогою якого здійснюється збір фактичних даних у межах кримінального провадження. До того ж цей захід передбачає певний ступінь обмеження прав особи. Слідчий суддя ухвалою про надання тимчасового доступу до речей і документів фактично змушує володільця речі або документу слідчому або іншій, зазначеній в ухвалі уповноваженій службовій особі, надати належне майно для ознайомлення , виготовлення копій тощо. Сьогодні переважна більшість науковців висловлюють позицію стосовно того, що дане обмеження прав володільця недооцінюється та не повною мірою висвітлюється у Кримінальному процесуальному кодексі України.

Зазначено на необхідності усунення прогалин і колізій у національному законодавстві та впровадження вивчення правозастосовної практики ЄСПЛ не лише для судів, але й для уповноважених службових осіб, які звертаються із клопотаннями до слідчих суддів. Звернення до практики ЄСПЛ повинно стосуватися не лише правосуддя, але й сторони обвинувачення, зокрема слідчого, оскільки саме він здебільшого готує клопотання про надання тимчасового доступу до речей і документів.

Ключові слова: *тимчасовий доступ до речей і документів, судова практика, права і свободи людини, Європейський суд з прав людини.*

Relevance of the study. Regarding the conflicts and gaps in national legislation, there is a need to refer to the case law of the European Court of Human Rights in order to regulate a single standard of observation of rights of the man and the citizen at the national level. Today, when investigating judges examine requests for temporary access to items and documents, there are many cases of non-compliance with the legality and unfoundedness of the decision, which further leads to citizens applying to the ECtHR. The problem in this case is mainly the unfounded need for temporary access to items and documents at the investigator's request. That is why the generalization of the case law of the ECtHR should be known and applied in the preparation of procedural documents, especially for practitioners in the course of their professional activities.

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Recent publications review. Research of certain issues of application of the measure of ensuring criminal proceedings in the form of temporary access to items and documents were carried out by such scholars as M.P. Klymchuk, I.V. Hlovyuk, S.V. Andrusenko, S.V. Smokov and others. In addition, this issue was concerned about by V.I. Farynnyk, M.A. Pohoretskyy, O.O. Yukhno. However, at the level of scientific doctrine, the issue of compliance of the procedure of application of temporary access to items and documents to the case law of the ECtHR has not been resolved.

The article's objective is to generalize the case law of the Purpose: to generalize the case law of the ECtHR on the consideration of requests for temporary access to items and documents and to make recommendations for compliance with the requirements when the investigator requests a temporary access to items and documents.

Discussion. The institute under study in the Criminal Procedural Code of Ukraine (hereinafter – the CPC of Ukraine) has a separate section – «Measures to ensure criminal proceedings». This institution does not have a separate legislative definition, but in accordance with the position expressed by the Higher Specialized Court of Ukraine for Civil and Criminal Cases, measures to ensure criminal proceedings should be understood as coercive measures provided by the CPC of Ukraine, which are applied in the presence of grounds and in the manner prescribed by law, in order to prevent and overcome negative circumstances that prevent or may interfere with the solution of criminal proceedings, ensuring its effectiveness [1].

The legal meaning of the term «ensuring measure» is aptly revealed by the interpretation of terms. «Provide» is defined in the sense – to create reliable conditions for the implementation of something; to guarantee something [2]. It is obvious that the criminal-legal content corresponds to the above content, as enforcement measures are primarily designed to create conditions for effective and efficient criminal proceedings, to ensure such a legislative procedure that will restore the violated rights and bring the perpetrators to justice. In our opinion, the main feature that fills the meaning of the concept of «ensuring measures» should be the presence of state coercion.

According to art. 131 of the CPC of Ukraine, one of the types of measures to ensure criminal proceedings is temporary access to items and documents. «Temporary access to items and documents» is an element of a fairly large institution in criminal proceedings, which is called «measures to ensure criminal proceedings.» This set of measures is a new approach to the systematization of individual components in one institution, and therefore today among scientists there are discussions about the concept and procedural order of application of each measure to ensure criminal proceedings. Among them, the case law distinguishes temporary access to items and documents as the most common.

The concept and procedural order for implementing the provisions of temporary access is contained in Chapter 15 of the CPC of Ukraine, which covers articles 159-165 of the CPC of Ukraine [3]. Referring to the definition of this concept, specified in part 1 of art. 159 of the CPC of Ukraine, it should be noted that «temporary access to items and documents is to provide the party to the criminal proceedings with a person in possession of such items and documents, the opportunity to read them, make copies and seize them» [3]. Such an explanation represents the measure under investigation as a procedural opportunity to gather evidence, i.e., by obtaining the investigating judge's permission for temporary access to items and documents, the investigator is able to obtain information indicating specific circumstances in criminal proceedings and may theoretically have evidentiary value.

Nevertheless, the vast majority of scholars do not consider temporary access to items and documents to be a tool in gathering evidence. We cannot disagree with this. In particular, temporary access to items and documents is not an initial action during a pre-trial investigation if there is a need to read certain material and specific information is of interest to the pre-trial investigation.

According to the criminal procedural legislation the investigator has the right to empirical activities, which he carries out in order to build a pyramid of evidence. Under part 2 of art. 93 of the CPC of Ukraine «the prosecution party collects evidence by conducting investigative (search) actions and covert investigative (search) actions, demanding and receiving from public authorities, local self-governments, enterprises, institutions and organizations, officials and individuals items, documents, information, conclusions of experts, conclusions of audits and acts of inspections, carrying out other procedural actions provided by the CPC of Ukraine» [3].

Based on this legislative wording of the way of gathering evidence by the prosecution, it should be emphasized that the investigator, prosecutor and other actors of the prosecution have

the right to demand data, necessary for their subjective conviction to prove the guilt or innocence of the person. In the future, the information obtained can be used as evidence or as confirmation of certain circumstances.

That is why temporary access is not a mandatory measure in every criminal proceeding to obtain the necessary information. It is rather a derivative investigator's decision, agreed with the prosecutor, if the person who possesses items or documents of interest to the pre-trial investigation does not voluntarily provide them for review, copying or seizure. Temporary access is included in the system of measures to ensure criminal proceedings, because it provides an authorized official the opportunity to gather evidence properly to conduct a comprehensive investigation of all the facts of a criminal offense.

Today, judges refer to the case law of the ECtHR as an international standard of human and civil rights when resolving any issue, regardless of the field of justice. The same applies to the consideration of motions by investigating judges for the application of measures to ensure criminal proceedings, namely temporary access to items and documents. The ECtHR already has a sufficient number of decisions dealing with the typical mistakes made by judges in ruling on temporary access to items and documents. Similarly, the study and understanding of modern requirements for the application taking into account them is necessary, above all, for practitioners.

Temporary access to items and documents can be considered as a means by which evidence is collected. In addition, this measure provides a certain degree of restriction of individual rights. The investigating judge, by a decision on providing temporary access, actually forces the owner of the item or document to provide the investigator or another official specified in the decision with the appropriate property for acquaintance, etc. Currently, the vast majority of scholars are of the opinion that this restriction of the owner's rights is underestimated and perceived in the Criminal Procedural Code quite lightly.

In particular, this is evidenced by part 1 of art. 309 of the CPC of Ukraine, which states that «during the pre-trial investigation the decisions of the investigating judge may be appealed on:… 10) temporary access to items and documents that allow the seizure of items and documents certifying the exercise of the right to conduct business or others, in the absence of which a natural person-entrepreneur or legal entity is deprived of the opportunity to carry out its activities» [3].

It should be noted that it is not only in these cases that serious human rights violations take place. Article 2 of the Convention on Human Rights stipulates that the state must ensure an independent and impartial investigation that meets certain minimum standards for its effectiveness, and the competent authorities must act with exemplary diligence and promptness to reliably establish the circumstances of the incident [4, p. 206]. In addition, the Convention regulates the protection of human rights in many areas of life, but whether it will be covered by the provisions of the Convention or another area of human rights depends on the items and documents specified in the request, which must be accessed.

Analyzing the case law of the ECtHR in our study, it can be concluded that the ECtHR, like national courts, has repeatedly considered the issue of providing temporary access to items and documents and the legitimacy of such a decision in general. Cases, considered by the ECHR, covered the following types of information:

- access to subscriber connection information (judgment in Malone v. The United Kingdom, application № 8691/79; Ben Faiza v. France, application № 31446/12);
- health information (L.H. v. Latvia, application no. 52019/07 and Avilkina and Others v. Russia, application no. 1585/09);
- banking information (M.N. and Others v. San Marino, application no. 28005/12), etc. [5].

This is a non-exhaustive list of thematic areas provided for consideration of applications, but the study identifies those that appear in the appeals in the vast majority.

If we combine the above decisions, it should be noted that this group of human rights, which are supposed to be limited, are protected by Art. 8 of the Convention for the Protection of Human Rights, namely the right to respect for privacy and family life and the fact that «everyone has the right to respect for his/her privacy and family life, his/her home and his/her correspondence» [6]. In addition, public authorities have the right to intervene in such life, but only in exceptional cases related to the needs of crime prevention, protection of the others' rights and freedoms and on the basis of law.

If we refer to the decision of the ECtHR in «L.H. v. Latvia», application № 52019/07, in

the present case the applicant alleged the collection of her personal medical data by a public authority, which as a result violated her right to respect for privacy, guaranteed by Art. 8 of the Convention [7]. According to the case, the authority acted unlawfully, demanding and receiving information about the applicant's state of health, as this violated the right to respect for privacy. Thus, the complainant emphasizes that obtaining medical information about her health was illegal, as the decision to provide access should be subject to judicial review, and the court ruling should specify the information to which (documents) there is a need to get access.

Given that the case law of the ECtHR contains a number of appeals, which, among other things, indicate the illegality of collecting information about privacy and family life, breach of secrecy, etc., the court issued certain recommendations on petitions and decisions to provide temporary access to items and documents. These rules are more of a recommendation, although they may later become standards, so, as noted above, the measure of ensuring criminal proceedings in the form of temporary access to items and documents is the most common among other ensuring measures.

In addition, the decisions and recommendations of the ECtHR can be sources of law, which are regulated by relevant national regulations. In particular, on February 23, 2006 the Verkhovna Rada of Ukraine adopted the Law of Ukraine «On the Fulfillment of Decisions and Application of Practice of the European Court of Human Rights» [8]. According to it, the Convention and the decisions of the ECtHR can be considered sources of law. The Convention is part of national law, and therefore its rules are applied by courts alongside national law and as rules of direct effect [9].

In particular, today, according to the recommendations of the ECtHR, Ukrainian courts are studying the investigator's request for temporary access to items and documents. Thus, the request for temporary access to items and documents must be made according to the provisions of the law, it must be argued for the investigating judge that there are no significant harmful consequences of the application of this measure to ensure criminal proceedings. Along with this, the way in which criminal proceedings are provided is reasonable and proportionate [9].

In «Cormorants v. Russia» and «Friesen v. Russia», the ECtHR has held that achieving a fair balance between the general interest of society and the protection of the fundamental rights of the individual only becomes relevant if it is established that the principle of «legality» was observed and it was not arbitrary. In addition, in «Panteleenko v. Ukraine» the ECtHR concluded that the providing of temporary access to items and documents had not been proved, as this interference with the privacy of specific individuals did not have sufficient legal justification and violated art. 8 of the Convention on protection ofHuman Rights and Fundamental Freedoms [9; 10, pp. 150-164].

It follows from the above that information obtained in violation of conventional human rights cannot be further used as evidence. Not only Ukrainian courts, but also investigators when applying for a ensuring measure in the form of temporary access to items and documents must comply with the requirements of the ECtHR, which are put forward, above all, to justify the legality and procedural need to obtain specific documents and things. In case of violation of these requirements, the obtained factual data will be considered inadmissible evidence, as required by national law. In particular, part 1 of art. 87 of the CPC of Ukraine declares inadmissible the evidence obtained as a result of significant violation of human rights and freedoms guaranteed by the Constitution and other numerous legal acts, as well as international treaties, consent to the binding nature of which was given by the Verkhovna Rada of Ukraine [3].

Article 160 of the CPC of Ukraine contains clauses that must be indicated in the request for temporary access to items and documents. Nevertheless, there is a need to emphasize what the legislator did not provide for in the codified law, but what the practice of the ECtHR requires. In particular, it concerns the principles of legality, accessibility, clarity and predictability in terms of the rule of law, the decision to provide temporary access to items and documents is an element of judicial review, and therefore the court's decision must be justified, as well as the investigator's request. In addition, the request should be as clear as possible to the items and documents to which there is a need to access [11, p. 30-31].

In addition, it should be noted that the person who owns items and documents must have guaranteed legal protection means and the opportunity to appeal an unreasonable decision on temporary access, and access should be provided only to the information necessary for the purposes of pre-trial investigation [5].

Conclusions. After analyzing the above information, it should be noted that when considering requests for temporary access to items and documents, investigating judges pay atten-

tion to the case law of the ECtHR, referring to it when making decisions. It is worth noting that this is clearly positive in the course of approaching generally accepted world standards of justice and protection of human rights.

However, adressing to the case law of the ECtHR should concern not only the judiciary but also the prosecution, in particular the investigator, because it is he who overwhelmingly prepares a request for temporary access to items and documents. Accordingly, the application must contain the ECtHR's recommendations concerning the legality and validity of the decision to be taken by the investigating judge.

Thus, there is a need to eliminate gaps and conflicts in national legislation and to introduce a study of the case law of the ECtHR not only for courts but also for authorized officials who apply to investigating judges. Such application of the case law of the European Court and observance of the Convention for the Protection of Human Rights and Fundamental Freedoms will have a positive impact on the efficiency and fairness of pre-trial investigation and justice in considering cases.

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Abstract

The article deals with problems of application of the case law of the European Court of Human Rights by national courts and criminal proceedings parties during the preparation of requests for temporary access to items and documents. The authors have established that the application of the case law of the European Court and compliance with the Convention for the Protection of Human Rights and Fundamental Freedoms has a positive impact on the efficiency and fairness of pre-trial investigation and justice in the consideration of such requests.

Keywords*: temporary access to items and documents, case law, human rights and freedoms, European Court of Human Rights.*

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PROCESS OF DETENTION IN UKRAINIAN CRIMINAL PROCEDURE

Дарія Лазарева, Наталія Резцова. ПРОЦЕСУАЛЬНА СУТНІСТЬ ЗАТРИМАННЯ У КРИМІНАЛЬНОМУ ПРОЦЕСІ УКРАЇНИ. Досліджено сутнісні характеристики затримання уповноваженою службовою особою як кримінального процесуального інституту. Сформульоване авторське визначення поняття затримання уповноваженою службовою особою.

Зазначено, що одним із недоліків досліджень окресленої вище проблематики є намагання окремих науковців жорстко «прив'язати» сутність затримання уповноваженою службовою особою до приписів кримінального процесуального закону. Водночас головні сутнісні риси будь-якого правового явища не можуть визначатися виключно на основі приписів законодавчих норм, радше навпаки – виходячи із сутності правового явища повинно формуватись його нормативне вираження. Відтак, законодавча регламентація затримання уповноваженою службовою особою не може розглядатися як безапеляційна основа для визначення його сутності. Первинним в цьому аспекті є пізнаване на рівні теоретичного мислення змістовне наповнення вказаного інституту, яке виражає головне, основне, визначальне в його предметі. Лише на підставі цього можна вести мову про те, наскільки адекватно процесуальні норми відображають дійсну сутність затримання уповноваженою службовою особою.

Авторами запропоновано розглядати застосування цього заходу забезпечення кримінального провадження як форму належного і невідкладного реагування уповноваженими службовими особами на факт виявлення злочину та отримання первинної інформації, яка дає можливість обґрунтовано підозрювати певну особу у його вчиненні. Неприпустимість зволікань із затриманням в умовах безпосереднього виявлення уповноваженими службовими особами підстав для цього об'єктивно позбавляє можливості для попереднього звернення до слідчого судді із відповідним клопотанням. Саме тому при законодавчому визначенні процесуальних підстав затримання уповноваженою службовою особою без ухвали слідчого судді їх необхідно формулювати таким чином, щоб у конкретній життєвій ситуації вони могли бути встановлені лише на основі очевидних фактів, які повинні сприйматися суб'єктами затримання особисто в момент вчинення (замаху на вчинення) злочину або безпосередньо після цього.

Ключові слова: *затримання за підозрою у вчиненні злочину, уповноважена службова особа, заходи забезпечення кримінального провадження, процесуальний примус.*

Relevance of the study. Scholars and practitioners are most certain that the procedure for detaining a person on suspicion of committing a criminal offense should be a part of criminal procedural regulations. As of today, the norms of the active Criminal Procedure Code of Ukraine (hereinafter referred to as the CPC of Ukraine) determine the grounds, conditions and procedure for detention by an authorized official, the rights of the detainee and the responsibilities of the subjects of procedural activities for the purpose of ensuring them. Recognizing the procedural nature of the above-mentioned type of detention implies solving the scientific problem of defining it as an institution of criminal procedure. Notwithstanding, it should be noted

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that solving the specified issue is complicated due to certain factors such as: the polysemy of the term «detention» in legislation, procedural science and law enforcement practice; the ambiguity of legislative regulations which indicate the procedural nature of detention on suspicion of committing a criminal offense; the differences in scholars' opinions on the given matter. Under these circumstances, comprehensive analysis of the essential characteristics of the detention process by an authorized official is required.

Recent publications review. Certain aspects of the stated issues were studied by Alenin Yu.P., Honcharenko V.H., Hroshevyi Yu.M., Dubynskyi A.Ya., Kaplina O.V., Kovalenko Ye.V., Lukianchykov Ye.D., Mykhailenko O.R., Nor V.T., Pysmennyi D.P., Pohoretskyi M.A., Udalova L.D., Shylo O.H., Shumylo M.Ye. Research papers of the above-mentioned scholars have defined theoretical grounds and key basic premises for correct understanding of the procedural nature of detention by an authorized official.

Herewith, there are several research papers aimed at defining the nature of the notion under examination by Bilousov O.I., Veretennikov I.A., Hryhoriev V.M., Huliaiev A.P., Makarenko Ye.I., Malyarova V.O., Melnykov V.Yu., Olshevskyi A.V., Popkov N.V., Retiunskykh I.O., Smokov S.M., Tertyshnyk V.M., Chernova A.K. Nevertheless, despite processualists' considerable attention to this issue, to date, it does not have a conclusive and established solution. Moreover, many of the previously developed theoretical provisions require reconsideration with regard to the requirements of the CPC of Ukraine of the year 2012.

This research paper **is aimed at** studying the essential characteristics of the detention process by an authorized official as an institution of criminal procedure which will serve as a basis for defining the above-mentioned type of detention.

Discussion. One of the downsides of studying the indicated issues is the attempts of many scholars to «tie» the essence of a detention by an authorized official tightly to regulations of the criminal procedural law. Nevertheless, we are convinced that the main essential features of any legal phenomenon cannot be defined solely based on the regulations of the legislative norms, rather on the contrary – a regulatory notion should be formed based on the essence of the legal phenomenon. Thereby, legal regulation of a detention by an authorized official cannot be considered as an dogmatic basis for determining its essence. The primary part of this aspect is the content of the mentioned institution which is studied through theoretical thinking and expresses the main, fundamental and defining parts of the subject. Based on this alone, we may speak about how adequately the procedural regulations reflect the actual essence of the detention by an authorized official.

The foundation for correctly defining the nature of the detention process by an authorized official as an institution of criminal procedure is the meaning of a more basic, generic term «detention». The common meaning of the word «detain» means keeping, restraining a person at a certain place for some period of time; forcefully stopping a person for a certain purpose [part 1 art. 359]. Should the given lexical meaning be extrapolated to the legal sphere, detention in its most common form may be defined as legally significant actions of subjects who are legally granted a appropriate authority, resulting in legitimate custodial restraint and personal integrity of a person for public benefit.

The restrictive nature of detention inevitably leads to state coercion during its application. The indicated characteristic has naturally formed an understanding of detention as a measure of procedural coercion. In accordance with the established viewpoint in legal science, criminal procedural coercion comprises a set of actions of psychological, physical, organizational or material influence associated with the restriction of subjective civil rights' restriction of participants in criminal proceedings, which are implemented through the application of statutory coercive measures by authorized officials, which consist of inducing the execution of procedural duties, termination of illegal activities, prosecution [part 2, art.149].

Nevertheless, as was aptly noted by Kornukov V.M., criminal procedural coercion represents a broad and multifaceted phenomenon. In some instances, it is the consequence of a violation of or non-compliance with the criminal procedure and serves as an accountability, in others, it serves as means of law enforcement and restoration of order, in the third instance, it is used as a prevention of certain actions [part 3, art. 8-9]. Due to specificity, criminal proceedings are primarily characterized by coercion, which has a special place and is pivotal to achieving the objectives of criminal proceedings. Implementation of many institutions of criminal procedure is associated, to a greater or lesser extent, with applying coercion for the purpose of eliminating the existing or potential obstacles. In this regard, the phrasing «means of procedural coercion» implies a wide range of procedural actions and decisions. Correspondingly, re-

garding detention solely as means of procedural coercion does not convey its procedural nature entirely, as in this case, the applied substantive characteristic has an overly broad sense.

In accordance with art. 131 of the CPC of Ukraine, detention of a person is one of the means of ensuring criminal proceedings. It should be noted that the category «means of ensuring criminal proceedings» is novel for Ukrainian domestic criminal procedural science and therefore, it is underdeveloped. Research papers express the opinion that the above-mentioned concept is identical to the measures of procedural coercion [part 4, art.163; p.5, art. 68; p.6, arts.102-103]. While not denying the evident fact that the application of measures to ensure criminal proceedings is directly associated with coercion, we nonetheless consider that it would not be entirely correct to use the indicated concepts interchangeably. In our opinion, the phrasing «measures to ensure criminal proceedings» used by the legislator is narrower compared to the more general concept of «measures of procedural coercion» and it more accurately reflects the purpose of the institutions covered by Section II of the CPC of Ukraine.

According to the Dictionary of Ukrainian Language (DUL-11), to ensure means «to create reliable conditions for implementing something; to guarantee something» [part 1, art. 18]. The legally defined purpose measures to ensure criminal proceedings is achieving the effectiveness of the latter. Thereby, it can be argued that means to ensure criminal proceedings through physical, psychological, material or organizational influence on the behavior of its participants are aimed at creating suitable conditions under which such proceedings are effective at achieving their objectives.

Despite the unified legal nature of the measures in question, each of them, by virtue of its specificity, facilitate achieving the objectives of criminal proceedings differently. The above-mentioned fully applies to the detention of a person. Each type of detention provided for by the active criminal procedure legislation, being associated with short-term custodial restraint of a person (which is a collective generic feature), differs in the area of implementation, grounds, purpose, executives and category of persons to whom it can be applied. On the basis thereof, detention by an authorized official should be regarded as a separate type of measures to ensure criminal proceedings, which has a special place in the structure of the purposefulness of criminal proceedings.

As a general rule, measures to ensure criminal proceedings are implemented based on the decision of the investigating judge, which is quite logical, taking into consideration how much interference is caused by personal rights and interests during the implementation of such measures. Therewith, detention by an authorized official is one of the cases where there are always exceptions to the rule. In order to understand the reasons for a legislator to allow albeit short-term, but still custodial restraint of a person without prior judicial control, it is imperative to take into account the the area of implementation of the type of detention in question.

Daily activities of of state law enforcement agencies are inseparably intertwined with various life situations caused by illegal actions of individuals. Nonetheless, it is not uncommon for law enforcement officials in their line of duty to encounter a person in the process of committing, attempting to commit or upon committing a criminal offense. Furthermore, it is possible to obtain data that will indicate the person involved in committing the criminal offense during the prompt response to the crime-related information. The source for such data would be the information received from the person affected, witnesses, clear evidence and traces at the crime scene, on the body or clothing of a certain individual.

A distinctive feature of the described situations is that the factual circumstances are evident, typically occur suddenly (conditionally) and are personally witnessed by law enforcement officials at the time of committing (attempting to commit) a criminal offense or immediately thereafter. Under the above-mentioned conditions, the functions assigned to the latter cause the urgent need to stop or prevent illegal activities, preventing the subject suspected of the crime from escaping. Implementing this task is possible only by means of psychological and/or physical influence on a person suspected of committing a criminal offense, which results in their custodial restraint, restriction of personal security, which is nothing but a detention on suspicion of committing a criminal offense in legal terms. In practice, depending on the specific situation, detention can be implemented both by verbal means (verbal order to stay put, stop certain actions, etc.) and by the use of physical force, special means or firearms.

On the premise of the above-mentioned, it is completely lawful to consider the application of the indicated measure to ensure criminal proceedings as a form of appropriate and urgent response by authorized officials to the detection of a crime and obtaining primary information that allows to reasonably suspect a certain individual of its commission. The ineligibil-

ity of delays in detention in the conditions of direct detection of the grounds for detention by authorized officials impartially deprives them of the opportunity for a preliminary appeal to the investigating judge with a corresponding petition. This is precisely why, when legally defining the procedural grounds for detention by an authorized official without the approval of the investigating judge, it must be phrased in such a way that in particular situations they can be established only on the basis of concrete evidence that should be perceived by the subjects of detention at the time of committing (attempting to commit) a criminal offense or immediately thereafter. Any indirect assumptions about the involvement of a certain person in the commission of a crime, which were formed within a certain time period after its commission, regardless of the degree of their reliability, cannot be considered as solid grounds for detention in the absence of the decision by the investigating judge.

The urgent nature of the detention by an authorized official determines another essential feature of this procedural measure, which is that it can be implemented before the start of the pre-trial investigation. The criminal procedure legislation requires an investigator or prosecutor to enter information into the Unified Register of Pre-trial Investigations (hereinafter referred to as URPI) and to initiate an investigation immediately, within 24 hours after filing a complaint, notification of a criminal offense or detection of the crime via any source that may indicate the commission of a criminal offense. Onward, the pre-trial investigation is considered to be open (P.1-2 art.214 of the CPC of Ukraine). Meanwhile, in practice, detention by an authorized official on suspicion of committing a crime quite often occurs simultaneously with receiving relevant information or shortly thereafter. The need to respond as promptly and urgently as possible to criminal acts against the background of a minimum time gap between their detection and obtaining factual data, which evidentiate the involvement of certain persons, may quite natural»entering the relevant information into the URPI.

The Criminal Procedure Code does not does not directly ban detention by an authorized official before entering information into the URPI. Thereby, it is appropriate to agree with the opinion that implementing an actual detention of a person suspected of committing a criminal offense and delivering them to the body of the pre-trial investigation without an appropriate decision of the investigating judge and before entering information into the URPI about opening of criminal proceedings is quite legitimate [part 7, art. 180]. However, to avoid misunderstandings on this issue in both procedural theory and law enforcement practice, it would be appropriate to provide for a corresponding opportunity in Part 3 of Article 214 of the CPC of Ukraine similarly with the crime scene examination.

One of the important aspects of comprehending the nature of the detention type in question is determining the range of subjects of its implementation. In this context, there is a necessity for interpreting the legislative phrasing»authorized official». It should be emphasized that an authorized official may act as a subject of detention both with the decision of the investigating judge, the court, and without it. This conclusion results directly from the content of Article 191 of the CPC of Ukraine, which is entitled «Actions of authorized officials after detention on the grounds of the decision of the investigating judge, the court on permission to detain», Part 6 of the above-mentioned article, as well as Part 3 of Article 207 of the CPC of Ukraine contain a fairly concise explanation: An authorized official is «a person who is legally entitled to carry out detention». In fact, the legislator confined themselves to this explanation, not resorting to establishing a complete and exhaustive list of categories of officials authorized to carry out detention, and in this regard, referring to other legislative acts regulating the procedure of law enforcement agencies in Ukraine. Based on this, it can be argued that the subject of detention is an official of the law enforcement agency of Ukraine, who is entitled by a certain law to detain persons suspected of committing criminal offenses.

Despite the fact that an authorized official may act as a subject of both types of detention, the official's role in the first and second cases will differ. In order to clarify this term, we should elaborate on the structure of the concept of «a subject of the procedural detention». Depending on the context, the mentioned subjects may be: a) a subject of procedural activity who initiates the detention; b) the subject of procedural activity, vested with the authority to make a decision regarding the application of detention c) the subject of procedural activity, who is the direct executor of the decision on detention.

In the case of detention on the ground of a decision of the investigating judge, the distribution of roles is as follows: the investigator, the prosecutor act as the initiators of the detention, apply to the investigating judge with a request for a detention permit, commission law enforcement agencies to carry it out or do it unassisted; the investigating judge decides on the

application of detention based on the results of consideration of the investigator's or prosecutor's petition; the authorized official acts as a direct executor of the decision to detain a suspected of committing a criminal offense on behalf of the investigator or prosecutor.

In turn, a prominent feature of detention on suspicion of committing a criminal offense on the grounds provided for in Part 1 of Article 208 of the CPC of Ukraine is that its only subject is an authorized official meaning that they independently (without the participation of the prosecutor, investigator or investigating judge) initiates the detention, makes the decision regarding its application and directly implements such a decision. Moreover, as it was aptly noted by Nykonenko, M.Ya., neither the investigator, nor the prosecutor in their procedural status may act as authorized officials who are legally entitled to implementing a detention of that kind. This conclusion is drawn from a grammatical interpretation of the provisions in Part 3 of Article 208 of the CPC of Ukraine, which states that an authorized official, investigator and prosecutor are listed separately as independent subjects, not connected by the authority to carry out a detention, as well as Article 210 of the CPC of Ukraine, whose content allows us to conclude that an authorized official who carries out the detention is absolutely unrelated to the pre-trial investigation body [part 8, art. 85-87].

To support the above-mentioned argumentation, we add that the claim such procedural figures as an investigator or prosecutor cannot act as subjects of detention on the grounds provided for in Part 1 of Article 208 of the CPC of Ukraine, conditioned by the very nature of this detention. As it has been noted above, the specificity of such a detention is that the grounds for its implementation are established as a result of personal perception of the relevant circumstances of the crime by an authorized official, which clearly reveal its commission by a certain person. In this case, the authorized official becomes a potential witness and may further be questioned in criminal proceedings about the crime on suspicion of committing which a certain person was detained. Consequently, implementing the detention without the decision of the investigating judge or prosecutor eliminates the possibility of their participation in the criminal proceedings in their procedural status.

Thus, a precondition for detention by an authorized official is the latter having a reason to suspect a certain person of committing a criminal offense, which is based on evident facts that were personally perceived by the authorized official at the time of committing (attempting to commit) a criminal offense or immediately thereafter. In the case of a prompt response to a crime, the authorized official of time independently assesses the situation in a short period to decide whether there are grounds for detention provided for by the criminal procedure law, makes an appropriate decision and physically seizes the suspect. In this case, the authorized official is not a subject of procedural activity, who is entitled to conduct a pre-trial investigation, and therefore there is an objective need to verify the initial suspicion by the subject that has the appropriate procedural status, namely investigator or prosecutor. In this respect, the requirement of Part 1 of Article 210 of the CPC of Ukraine to deliver the detainee to the nearest unit of the pre-trial investigation body appears to be quite logical.

The generalization of the above-listed features of detention by an authorized official enables us to distinguish its special purpose, comprising of the following elements: 1) immediate prevention of the commission of a crime or termination of a crime being committed; 2) preventing the escape of a person caught at the time of committing (attempting to commit) a criminal offense or immediately thereafter; 3) delivery of a person suspected of committing a crime to the nearest body, whose competence includes the verification of the said suspicion by conducting a pre-trial investigation.

The formulation of the purpose of detention by an authorized official enables us to distinguish it among other criminal procedural institutions, including precautionary measures. If detention is considered as a temporary precautionary measure, as required by Part 2 of Article 176 of the CPC of Ukraine, it is logical to assume that the purpose of its implementation should be equal to the purpose of precautionary measures, and the adjective «temporary» in this context will mean short duration, limited to the time required for a court to make a decision regarding a «permanent» preventive measure. However, the indicated consistent pattern does not appear in relation to the detention by an authorized official.

The purpose of precautionary measures, which is evident from the content of Part 1 of Article 177 of the CPC of Ukraine, is to ensure that the suspect, accused carries out the procedural obligations as well as to prevent their attempts at improper procedural conduct, whose typical forms are given in this procedural regulation. While having certain formal similarities with precautionary measures, particularly custodial restraint; the restriction of the rights and

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freedoms of a person suspected of committing a criminal offense, inherent to the detention by an authorized official, has a completely different purpose than that referred to in the said Part 1 of Article 177 of CPC of Ukraine. The main objective of this type of detention is to seize a person in the process of committing, immediately upon committing a criminal offense, eliminate their every opportunity to escape and hand them over to the pre-trial investigation authorities, that are responsible for conducting criminal proceedings on this fact. Stating that the detention by an authorized official is aimed at ensuring proper procedural behavior of the suspect would not be entirely correct, as at the time of making the decision to implement it, it is objectively impossible to identify and assess the risks that would give the reason to believe that such behavior would really be of an improper nature. In other words, at the moment of the detention being implemented, the authorized official cannot and should not try to make any assumptions about the further procedural behavior of the detainee: proper or improper. The decision regarding the specified issue is made after the detention within the limits of the further pre-judicial investigation. Nevertheless, the said detention does not necessarily have to trigger the initiation of a precautionary measure by default, as: firstly, in the course of the investigation, the initial suspicion may not be confirmed, and secondly, there may not always be grounds for such a decision due to the absence of risks of improper behavior on the part of the suspect.

Taking into account the above-mentioned, a temporary detention can only be considered detention on the basis of a decision made by the investigating judge, as the mechanism of its implementation involves assessing the risks of improper procedural conduct of the suspect before applying for «permanent» preventive measure in the form of custodial restraint. As for the detention by an authorized official, from our viewpoint, this procedural institution is a separate type of a set of measures that are aimed at ensuring criminal proceedings, whose purpose does not allow it to be characterized as a temporary measure of restraint.

Thus, the generalization of the above-mentioned features of detention by an authorized official enables us to make a **conclusion** regarding the nature of this institution of criminal procedure, in the form of the following definition: «Detention by an authorized official is a measure to ensure criminal proceedings, which is applied without the approval of the investigating judge by a law enforcement officer vested by a special law with appropriate powers against a person reasonably suspected of committing a criminal offense based on evident facts and circumstances perceived by an official of the law enforcement agency at the time of committing (attempting to commit) a criminal offense or immediately thereafter; and is expressed in the implementation of procedural action associated with the restriction of freedom and personal integrity of such a person in order to prevent or stop their illegal actions, prevent them from escaping and deliver them to the nearest body, whose competence includes the verification of the said suspicion by conducting a pre-trial investigation».

The proposed definition of the procedural nature of detention by an authorized official is the foundation for further scientific analysis of the grounds and procedure for its application.

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Abstract

This research paper presents the analysis of essential characteristics of the detention process by an authorized official as an institution of criminal procedure. The author's definition of the concept of detention by an authorized official has been formulated.

The authors have proposed to consider the use of this measure to ensure criminal proceedings as a form of proper and immediate response by authorized officials to the discovery of a crime and obtaining primary information that allows to reasonably suspect a person in its commission.

***Keywords**: detention on suspicion of committing a crime, an authorized official, measures to ensure criminal proceedings, procedural coercion.*

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MODERN STATE AND SIGNS OF ILLEGAL ACTIVITY IN THE FIELD OF TRANSPLANTATION

Оксана Мислива. СУЧАСНИЙ СТАН ТА ОЗНАКИ НЕЗАКОННОЇ ДІЯЛЬНОСТІ У СФЕРІ ТРАНСПЛАНТАЦІЇ. Визначено основні специфічні ознаки незаконної діяльності у сфері трансплантації. Надано характеристику протиправної діяльності у галузі трансплантації, зокрема, з урахуванням сучасного стану та нових форм протиправних дій у цій сфері, її суб'єктам та їх рольовому розподілу. Наведено кримінологічні особливості протиправної діяльності в галузі трансплантації, які обгрунтовано на емпіричному матеріалі. Особлива увага приділяється сучасним методам вчинення розслідуваної злочинної діяльності – вербуванню із застосуванням телекомунікаційних та інформаційних технологій.

Бурхливий розвиток технології трансплантації на початку XX століття призвів до появи нового типу соціально небезпечної протиправної діяльності, яка набула значного поширення через

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можливість отримання від неї значних прибутків, і за межами однієї країни. Жага до життя та попит на донорський матеріал призвели до розробки різних способів отримання людських трансплантатів, що стало суспільно небезпечним явищем.

Зазначено, що нелегальна діяльність у сфері трансплантації характеризується латентністю, участю чиновників, корисливістю, організованістю, професіоналізмом, транснаціональністю. Членами груп, які займаються незаконною діяльністю у сфері трансплантації, залежно від їх ролі, є клієнти, дилери, торговці людьми, посередники, вербувальники та контрабандисти.

Пропонуються нормативно-правові та організаційні заходи, спрямовані на вдосконалення юридичної відповідальності за незаконну діяльність у сфері трансплантації, заходи її виявлення, запобігання та документування тощо.

В рамках заходів щодо запобігання незаконній діяльності у сфері трансплантації доцільно закріпити у Кодексі України про адміністративні правопорушення відповідальність за рекламу незаконної діяльності у цій сфері.

Ключові слова: *незаконна діяльність у сфері трансплантації, вербування, попередження, злочини, донор, торгівля людьми, інформаційні технології.*

Relevance of the study. The development of biomedicine, which has long aroused the interest of the general public in the problem of inventing a way to obtain «eternal life» for mankind, has prompted science to study the crimes associated with it. The rapid development of transplant technology in the early twentieth century has led to the emergence of a new type of socially dangerous illegal activity, which has become widespread due to the possibility of obtaining significant profits from it, and outside one country. The thirst for life and the demand for donor material have led to the development of various ways to obtain human transplants that are socially dangerous.

Thus, the Criminal Code of Ukraine for the first time in 2001 established liability for violation of the procedure for transplantation of organs and other human anatomical materials (art. 143) and illegal donation (art. 144), trafficking in human beings for the purpose of exploitation, in particular «removal of organs» (art. 149) [1].

This negative phenomenon manifests itself in various forms: from killing people to obtain organs to smuggling donors and their transplants. Moreover, the forms and schemes of illegal activities in the field of transplantation are constantly changing.This necessitates constant monitoring and study of promising areas to prevent illegal activities in the field of transplantation.

Recent publications review. Problems of legal regulation of transplantation, some criminal law and forensic aspects of liability for illegal activities in this area have long been the subject of scientific research. From the criminal doctrine of the times of the Russian Empire, during the Soviet times until Ukraine's independence, the works of well-known domestic and foreign scientists M. Avdeyev, F. Berdychevskyi, I. Horelik, V. Hlushkov, Ya. Drgonets, A. Krasikov, M. Malein, M. Maleina, M. Shargorodskyi, P. Hollender, P. Holmes. In the field of modern domestic science of criminal law, crimes in the field of transplantation were investigated by S. Hrynchak, V. Hryshchuk, A. Musiyenko, D. Protsenko, O. Sapronov, G. Chebotaryova and foreign ones – Z. Volozh, D. Kobyakov, O .Kustova, N. Pavlova, S. Tikhonova.

Issues of criminal liability and combating trafficking in human beings, in particular, for the purpose of human exploitation as a donor are mentioned in the scientific works of A.Wilks, T. Vozna, S. Denisov, V. Ivashchenko, V. Kozak, V. Kuts, I. Lyzogub, A. Orlean, V. Pidgorodinsky, S .Kapitanchuk and others.

The works of these scientists, of course, have significant scientific and practical significance, although in fact they have lost their relevance, because they rely on outdated legislation in the field, do not take into account their criminological conditionality, new methods and technologies for detecting and investigating crimes.

The article's objective is to detect specific signs of illegal activity in the field of transplantation and features of modern methods of its commission.

Discussion. There is various information about the extent of illegal activities in the field of transplantation of human organs and tissues. Foreign experts claim that organ trafficking exists in almost every country, each year the amount of «shadow» profits is 6-8 trillion dollars [2; 3]. According to research, in a year the world initiates an average of more than 50 criminal proceedings for the illegal sale of human organs [4, p. 161] and thanks to a network of criminal groups that specialize in receiving and delivering donors and their organs, the criminal business in this area has become transnational. Also, three Ukrainians were detained who, with the help of social networks, were looking for minors who were ready to become organ donors for a monetary reward, and tried to take them to the Russian Federation to get about $ 200,000 for it [5].

Ukraine's geopolitical location determines the supply of illegal donors and their transplants to more affluent countries, or their transit through Ukraine from Asian countries to Europe, etc. The use of the victim as an organ or tissue donor is also manifested through human trafficking. The significant dynamics of human trafficking and the involvement of organized groups in its commission against the background of a small number of sentences for the punishment of persons engaged in such activities, gives grounds to conclude that trafficking in human beings as donors is a latent crime. This is facilitated by the difficulty of identifying transit donors who are trying to leave the territory of Ukraine or enter and move on its territory legally. Analysis of empirical data indicates the commission of the sale of children abroad as transplant donors (Odessa region), transplant smuggling (Kherson region) and trade in abortive tissues under the guise of immunobiological drugs (Crimea); illegal receipt of abortion materials and trafficking in juvenile organs, «smuggling» of cryopreserved cells (Kharkiv region); sale of fetal materials in injections, organization of illegal transplants (Donetsk region); illegal removal of organs from a corpse donor, illegal receipt of organs and other anatomical material, their illegal transplantation and trafficking in human beings as donors (Dnipropetrovsk and Kyiv regions); illegal use of road accident victims as donors, forgery of medical documents to obtain organs, conclusion of illegal agreements regarding transplants (Lviv and Ternopil regions).

There are no separate official data on transplant crimes in Ukraine, and various government sources provide quite contradictory data and «underestimate» the indicators called by international and non-governmental organizations [6; 7]. Quantitative indicators of crime in the field of transplantation are incorrect for several reasons: 1) there is no single reporting system of different law enforcement agencies, including in the structural units of one department; 2) criminal statistics do not reflect operational information on cases pending, as well as crimes that begin in Ukraine or by citizens of Ukraine, and continue in other countries. For example, the facts of crimes committed by citizens of Ukraine: organization of a clinic in India for the illegal treatment with stem cells and the export of stem cells of human abortive materials to Hungary [8].

Observance of objective quantitative indicators of crime in the field of transplantation is also hindered by its latency related to the specificity of the objective side and the subject of the crime – medical workers and their special knowledge in the field of transplantation; significant corporatism of medical workers, which ensures their deep secrecy; lack of a source of evidence – the death of the donor and (or) the recipient or the rapid deterioration of physical evidence in the form of organs or other human anatomical material; lack of criminal liability for certain forms of illegal activities in the field of transplantation. For example, the police learned that a surgeon had removed a patient's kidney without her consent, which was confirmed by tests, but the hospital's medical record did not contain any information about the operation, so the criminal proceedings for illegal removal of human organs were terminated [9], as well as the fact of illegal sending of 420 kilograms of bones of human origin for 13.5 thousand US dollars from Ukraine to the United States [10, p. 6], because human bones were outside the scope of the crime defined by the legislator.

Relying on the above mentioned, illegal activity in the field of transplantation is of a professional nature, because its commission is impossible without the involvement of a surgeon. Illegal receipt or implantation of a transplant (except for ready-made suspensions of the embryonic-placental complex) can be performed only by a «transplantologist» specialist or a former specialist. Other crimes in the field of transplantation can be committed by hospital staff or other individuals as intermediaries (morgue, prenatal center, forensic bureau).

Illegal activities in the field of transplantation are manifested in various forms: from killing people to obtain organs to smuggling donors and their transplants. The implementation of illegal activities in the field of transplantation can be divided into several stages: recruitment of victims; communication, which may involve the perpetrators, victims and third parties; exploitation of the victim. Thus, the subjects of such crimes can be classified by role distribution: a) the customer (recipient or his relatives); b) a dealer or trafficker (engaged in the purchase, sale or resale of parts of the human body); c) a mercenary (kidnaps or kills a donor); d) intermediary (searches / selects donors and buyers); e) recruiter (persuades to agree to donation); f) smuggler (moves donors or their anatomical material on the territory or across the border of Ukraine); g) organizer of criminal activity related to transplantation.

Illegal activities in the field of transplantation are characterized by the participation of officials who provide speed and cover for criminal operations (chief physician, chairman of the adoption committee), as well as selfish and violent nature.

Empirical analysis shows that 95% of illegal activities in the field of transplantation were committed by a group of people by prior conspiracy with a clear role distribution. Criminal groups are characterized by the following structure: leader and (or) organizer; a group of performers from among medical workers (surgeon, resuscitator, anesthesiologist, operating room nurse) and technical staff; group of assistants (extras of medical institutions, employees of cemeteries and crematoria, drivers of vehicles); the customer (recipient, his relatives or acquaintances); «Cover» (civil servants). The organized nature of such activities is caused by the impossibility of carrying out a criminal act alone: it requires coherence and confidentiality.

Illegal activities in the field of transplantation are characterized by transnationality, as it is carried out by international criminal structures, which have significant financial resources and the necessary information and technical support, technical and telecommunications means of receiving and delivering «living goods». Illegal transplant activities can start in one country and end in another. For example, in the hospital in Tallinn (Republic of Estonia), among others, a Ukrainian was arrested who illegally crossed the border to sell his kidneys to citizens of the State of Israel [11, p. 7], and in Ukraine criminal proceedings were instituted against an Israeli transplantologist for illegal kidney transplantation in a private clinic in Mariupol [12].

Recruitment can also be done through a special agent or advertising in the print media, but preferably on the Internet. Assistance can be provided by checking the compatibility of donor tissues (laboratory staff) or searching for compatible donors in confidential automated registries (average user or network administrator).Currently, the most popular way to obtain human organs has been to recruit donors using information technology, through the conclusion of agreements through the Internet. Ads are posted on popular sites, social networks and online stores in real time («on-line organ shops»). Criminals who recruit victims usually place ads on several electronic person-moderated or automatic bulletin boards at the same time, ie on websites on a paid or free basis. The use of information technology to recruit victims is a new tool for trafficking in human beings, rather than a form of crime in which organ trafficking remains a major form of human exploitation [13, p. 21]. It was reported that a deal for the sale of a kidney for 45 thousand US dollars at the auction «e-Bay» [14, p. 7].

Monitoring of the Internet for such advertisements in free access clearly shows the many pages with advertisements for trade in donor organs. For example, a site with a fake address «http://renels.co/rd.com« displays an ad with the following content in capital letters: «We will buy your kidney. Fee on hand before surgery». It is also noted that it is a branch of a large organization in Europe (Cologne, Germany), which is engaged in the selection of compatible pairs «donor – recipient», provides organizational and legal support and control of the agreement between donor and recipient on a commercial basis from the stage of acquaintance and collection of documents for kidney removal surgery before the rehabilitation period. The anonymity and mass use of users of online services contributes to the spread and receipt of income from these services, which significantly complicates the investigation of such crimes using only traditional approaches.

In order to carry out financial transactions, as well as the distribution of funds obtained by criminal means, organized criminal groups use electronic payment systems (Privat24, GlobalMoney, Easypay), and of particular interest to their participants are international payment systems that allow transfers between countries (PayPal, PerfectMoney, WebMoney, Western Union, MoneyGram). Cryptocurrency is becoming increasingly popular (in particular, there have been cases of using the cryptocurrency Bitcoin).

Conclusions. Thus, illegal activity in the field of transplantation is a modern criminal phenomenon, one of the complex social problems of both the world community and Ukrainian society. The spread of crimes in the field of transplantation, the specifics of their causes and conditions, methods of their commission, the identity of the offender and the resulting features of prevention make it appropriate to study and scientifically integrate the theoretical basis for further improvement and development and effective implementation of new practical measures to prevent crimes in transplantation.

Illegal activities in the field of transplantation are characterized by latency, participation of officials, selfishness, organization, professionalism, transnationality. Members of groups engaged in illegal activities in the field of transplantation, depending on their role, are customers, dealers, traffickers, intermediaries, recruiters and smugglers.

The specifics of transplantation presuppose that the person committing the crime has special knowledge or professional skills (a medical worker or a person who has been specially trained to commit a crime). The special subject has the following characteristics: a) educational

and qualification level in the specialty; b) permission (license) for the right to engage in this type of medical activity; c) a position in a state or municipal health care institution or a state scientific institution; d) the presence of official and professional responsibilities.

With the development of mobile Internet technologies and VoIP-telephony applications, members of criminal groups are increasingly using messengers (in Ukraine the most popular are WhatsApp, Viber, Telegram), as well as social networks (Facebook, Instagram, «In touch», etc.). As a rule, recruitment takes place both through direct communication (calls, chat) and communication in communities (can be closed and public), advertising, and so on. Most messengers have a secure connection between subscribers and allow you to exchange data in encrypted form. These technologies add confidence to criminals that law enforcement will not be able to access this data.

Within the framework of measures to prevent illegal activities in the field of transplantation, it is expedient to enshrine in the Code of Ukraine on Administrative Offenses the responsibility for advertising illegal activities in this area.

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Abstract

The article describes the illegal activities in the field of transplantation, in particular, taking into account the current state and new forms of illegal actions in this area, its subjects and their role distribution. These criminological features of illegal activities in the field of transplantation are based on empirical material. Particular attention is paid to modern methods of committing the investigated criminal activity – recruitment using telecommunications and information technology.

The normative, legal and organizational measures aimed at improving the legal responsibility for illegal activity in the field of transplantation, measures of its detection, prevention and documentation, etc. are offered.

Keywords: *illegal activities in the field of transplantation, recruitment, prevention, crimes, donor, human trafficking, information technology.*

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OPERATIONAL INVESTIGATIVE SUPPORT OF SEARCHES

Сергій Обшалов. ОПЕРАТИВНО-РОЗШУКОВЕ ЗАБЕЗПЕЧЕННЯ ПРОВЕДЕННЯ ОБШУКІВ. Розглянуто особливості оперативно-розшукового забезпечення проведення обшуків. Розслідування тяжких і особливо тяжких злочинів, особливо вчинених кримінальними угрупованнями, супроводжується формуванням несприятливих слідчих ситуацій, зокрема, відсутність слідів злочину, наявність незначного обсягу орієнтуючої інформації, відсутність очевидців злочинної події, не встановлення особи потерпілого, активна протидія досудовому розслідуванню та ін.

Зазначене вимагає удосконалення організаційно-тактичних заходів щодо проведення окремих слідчих (розшукових) дій, зокрема, обшуків. Обшук є невідкладною процесуальною дією, що дозволяє на початковому етапі розслідування виявити знаряддя і сліди злочину, встановити особу злочинця, висунути правильні слідчі версії. Невідкладне й якісне проведення процесуальної дії з урахуванням особливостей розслідування тяжких і особливо тяжких злочинів може сприяти одержанню важливих доказів, які свідчать про причетність членів кримінальних угруповань, їх лідерів та організаторів конкретних злочинів до організованої злочинної діяльності. Наголошено, що слідчі, розслідуючи тяжкі та особливі тяжкі злочини, повинні враховувати, що злочинці не завжди

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можуть зберігати зброю, засоби вчинення злочинів, викрадені предмети, цінності та інші об'єкти, що мають значення для кримінального провадження, за місцем проживання, а користуються послугами осіб, які не приймали безпосередньої участі у вчинених злочинах або не входять до складу кримінальних угруповань, але здатних за певну винагороду зберігати у себе вказані об'єкти. Такі особи, як правило, приховують свої зв'язки зі злочинцями, тому під час підготовки до проведення обшуків важливо виявити таких осіб, застосовуючи низку оперативно-розшукових заходів. Це дозволяє економити час, сили та засоби і тим самим сприяє реалізації принципу наступальності у боротьбі з організованою злочинністю.

Висвітлено методи обшуку та особливості їх поєднання з оперативно-розшуковими заходами.

***Ключові слова**: оперативно-розшукове забезпечення, слідчі (розшукові) дії, обшук, оперативний огляд, тактичний прийом, методи обшуку.*

Relevance of the study. Recently, crime has adapted to new political and socio-economic conditions. The growth of organized crime, its transformation into transnational one, merging crime with the state and organizational and administrative apparatus, improving the technical equipment of criminals, complicating communication between them, the use of new methods of preparation, commitment and concealment of crimes and other negative factors, of course, complicate an already difficult activity of law enforcement agencies and, above all, units of the National Police of Ukraine, for the timely and high-quality detection, investigation and prevention of grave and especially grave crimes. Criminals cannot do without a reliable organizational and technical base, which makes them less vulnerable to law enforcement agencies, more mobile in obtaining the information necessary for criminal activity.

Recent publications review. Such scholars as V.P. Bakhin, R.S. Belkin, I. P. Kozachenko, K. O. Chaplynskyy, V. V. Shendryk, V. Yu. Shepitko and others have devoted their works to the study of the conceptual principles of detection and investigation of criminal offenses, features of investigative (search) actions. However, the problematic issues of the peculiarities of operational and search support of searches need additional coverage.

The article's objective is to highlight the features of operational-search support of searches.

Discussion. Further development of the theory and practice of operational-search activities involves raising the professional and educational level of operational-search units of the National Police of Ukraine, training personnel to perform operational and investigative tasks in new social conditions and effective use of operational units in criminal proceedings.

That is why the comprehensive, timely and effective use by the National Police operational units of methods and means of operational-search activities, combining them with individual investigative (search) actions, is an effective tool in combatting crime. This requires constant improvement of organizational-preparatory and tactical measures to do certain procedural actions, in particular, searches.

Immediate and sudden searches, taking into account the specifics of the investigation of certain types of crimes, can help to obtain important evidence of the involvement of specific individuals in criminal activities.

In general, a search is an investigative (search) action, the content of which is a compulsory inspection of premises and buildings, areas, individual citizens in order to find and seize items relevant to criminal proceedings, as well as identifying wanted persons [1, p. 290].

The general tactics of the search imply the need to take into account the investigative situation at the initial stage of the investigation, the characteristics of the opposing party and the nature of the criminal encroachment. Hence, the right choice of search tactics allows us to effectively conduct procedural action. During the detection and investigation of grave and especially grave crimes, a search should be carried out immediately in order to identify the perpetrators of these crimes, stolen items and valuables. Unjustified delay, untimeliness and unpreparedness of searches allow criminals to destroy or replace traces and tools of crime, to hide from the investigation and court, to hide or sell stolen items, to spend money obtained by criminal means, etc.

Regarding this, searches should be planned depending on the investigative situation at the initial stage of the investigation, the circumstances of the criminal proceedings and the analysis of the indicative information collected.

Investigators should keep in mind that in conducting searches, the suddenness of their conduct is crucial. However, the speed and suddenness of searches should not lead to haste and reduce the quality of their conduct, and negative results should not affect the intention to bring searches to their logical conclusion. The suddenness of the search is also of great psychological

importance. The sudden start of the search is unexpected for the searched objects' owners and causes nervous and psychological stress, which the investigator must use as effectively as possible during the search.

The suddenness of searches is impossible without observance of conspiracy and the rules of secret decision-making on their conduct, including operational-search measures. Therefore, the disclosure of information about a planned search to a significant number of persons may lead to information leakage and loss of the factor of the procedural action's suddenness.

The generalization of the materials of criminal proceedings for grave and especially grave crimes for which searches were conducted, allowed us to conclude that the effectiveness of their direction depends on the time and suddenness of the conduct.

We can agree with the opinion of K.O. Chaplynskyy, who on the basis of the study of operational materials and criminal proceedings, generalization of survey data and questionnaires of investigators and operational units officers has identified the most effective methods of search:

Sequential and sample survey. During the sample survey, if there are sufficient grounds, the places of probable concealment of the searched items are checked first of all. This method is used for time-consuming work. If the selective search does not give positive results, the operation manager proceeds to a sequential inspection of all items. The search must begin with the most labor-intensive areas, as the investigator will be tired and will not be able to examine them thoroughly until the end of the proceedings. This is due to the fact that the search results are negatively affected by the investigator's fatigue, as it is difficult to focus attention due to the weakening of the sharpness of perception. In such cases, it is advisable to vary the nature of the search. But the sequence of the search depends on both its features and the investigator's tactical considerations. During the search, the research must be carried out carefully from all sides, inspect the parts that are hidden from the investigator, with each object being studied and inspected separately.

Parallel and counter examination is advisable during searches of a spacious room or area. In other cases, a counter-examination is performed. In this case, one searcher moves to the right of the entrance and the other to the left. When they meet, they inspect the center of the room. In general, depending on the nature and characteristics of the object under study, the objects sought and other circumstances, eccentric, concentric, frontal, sector, square or nodal methods of object study may be applied using the necessary technical devices.

Single and group searches are selected based on the number of people conducting the search. Due to the fact that searches involve a large number of people who do not have sufficient skills, it is necessary to skillfully combine the techniques of single and group searches. Where individuals are insufficiently qualified in search tactics, the search is conducted by the head of the search team, and others provide assistance. In this case, the survey is best conducted by a single search. At the same time, if the persons are sufficiently prepared to carry out the procedural action, the search may be carried out by the method of group search. At the same time, more experienced participants perform skilled work, and assistants perform ancillary operations.

Examination without violation and with violation of the integrity of objects. In the first case, methods of measurement, comparison and others are used to establish differences in weight and size. Detection of discrepancies between objects indicates the presence of hiding. During the search, the investigator has the right to open the locked premises and storage facilities if the owner refuses to open them. At the same time, the investigator must avoid unnecessary damage to doors, locks and other objects. However, the inspection of objects in violation of the integrity of the objects should be carried out only if there are sufficient grounds for it.

Distractions are used by changing the sequence of searches, conducting sample surveys, deliberately holding attention to minor objects in cases where the head of the search team is aware of hiding places, in cases where it is impractical to disclose their awareness to criminals and its operational sources.

Use of reflection of searched persons. Through reflection, the investigator elicits certain criminals reactions or creates specific conditions under which a person commits certain acts and observes them to expose hidden objects.

Systematic search and accounting of actions. The investigator should inspect the objects carefully and consistently, without being distracted by others. The obtained results should be carefully noted in the protocol, and also it is expedient to make plans and schemes, in those cases when photography does not provide clarity and does not allow to fix the location of a

hiding place and ways of detection and removal.

Use of scientific and technical means. Simultaneous searches should be combined with the use of search equipment to give criminals the impression of the futility of hiding items under search.

Involvement of a suspect, witness and victim in searches. Participation in the search of suspects allows the investigator to observe their psychophysical reactions during the proceedings. Involvement of witnesses and victims will prevent the seizure of items that have nothing to do with criminal proceedings.

During the search, it is advisable to use a technique based on the removal of certain persons from the place of search, in order to use their ignorance of its results during subsequent interrogations and simultaneous interrogations of previously interrogated persons.

Constant exchange of information between participants of the search about the detected items, methods of concealment and methods of detection.

Observing the behavior of those who are searched and those who find themselves at the scene is used when it is necessary to establish which investigator's actions are causing such a reaction in such persons. Searches conducted in the presence of these persons are more effective than without their participation. They are not mandatory participants in the search. Therefore, the investigator in each case, based on the investigative situation, decides on their involvement in searches. But it is important to remember that sometimes criminals can deliberately simulate certain psychophysical reactions to distract the investigator and tire the group with a fruitless search.

Sudden presentation of the item found during the search to the searched person. This tactic allows the searched person to have the impression that the search team knows all the objects to be found and their location. From here, the searched person can voluntarily name the places where other material evidence and items relevant to the criminal proceedings are hidden.

When criminals are identified but not detained, it is advisable to use a psychological technique based on the «leakage» of information, in order to persuade the perpetrators of stolen property to commit actions controlled by law enforcement agencies. However, such tactical operations have certain difficulties and risks, as there may be a loss of operational control over the movement of values.

Using the detecting dogs is an operational-search measure carried out during a search as well as before its beginning. This allows us to find items with a specific smell, encrypt the source of the received indicative information and legalize the information obtained in operational manner.

Given that the search sites may be located in the open area, the head of the operation must provide external protection, the responsibilities of which include: surveillance of the searched object, preventing anyone from leaving the object of search, monitoring the behavior of persons who are involved in the search. This measure allows the head of the operation to concentrate those who were in the search area in one place under the supervision of external security. On the other hand, the operations manager can obtain information about the results of observation of the situation around the objects where the search is conducted, and use it, guided by tactical considerations [2].

In criminal proceedings for grave and especially grave crimes, investigators should take into account that criminals may not always keep weapons, means of committing crimes, stolen items, valuables and other objects relevant to criminal proceedings, at the place of residence or work, and use the services of persons who did not take a direct part in the committed crimes or are not members of criminal groups, but are able to keep these facilities for a fee. Such persons, as a rule, hide their relationships with criminals, so in preparation for searches, it is important to identify such persons, using operational-search measures [2].

According to the Law of Ukraine «On Operational-Search Activities», operational units of the National Police of Ukraine may secretly detect and record traces of grave and especially grave crimes, documents and other items that may be evidence of preparation or commitment of grave crimes, or to receive indicative information, including by penetration into premises, vehicles, land plots.

Taking into account operational and investigative capabilities, it is important to ensure the mandatory operational-search support of searches, through the use of a number of methods, forces and means of operational-search activities. This is due to the fact that most serious and especially serious crimes are latent.

Conclusions. The importance of conducting searches in the investigation of grave and

especially grave crimes is due to the fact that often their results contain initial information that proves the involvement of certain persons in criminal activities and can be the basis for timely forensic and pre-trial investigation planning. All traces of the crime found during the searches are compared with the information obtained after the inspection of the scene. So, identification of links between items that are seized during searches, allows us to link to a specific person and bring him/her to justice. All this saves time, effort and resources and thus contributes to the implementation of the principle of offensiveness in combatting crime.

There is the need for operational-search support of certain investigative (search) actions, first of all due to the fact that it contributes to the most successful solution of problems of prevention, detection and investigation of crimes by establishing sources of information about the circumstances of its commitment (possible witnesses, location of stolen property, tools of crime), determining the most appropriate time for investigative (search) actions and the use of tactics, recording operational and investigative information that may have probative value, verification of evidence, etc.

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Abstract

Peculiarities of operational-search support of searches have been considered. Investigation of serious and especially serious crimes, especially committed by criminal groups, is accompanied by the formation of unfavorable investigative situations, in particular, the absence of traces of the crime, the presence of a small amount of indicative information, the absence of eyewitnesses, failure to identify the victim etc.

The importance of conducting searches in the investigation of grave and especially grave crimes is due to the fact that often their results contain initial information that proves the involvement of certain persons in criminal activities and can be the basis for timely forensic and pre-trial investigation planning.

Keywords: *operational-search support, investigative (search) actions, search, operational-inspection, tactical tool, search methods.*

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INTERACTION OF INVESTIGATOR WITH KNOWLEDGEABLE PERSONS DURING EXPERT RESEARCH

Дмитро Шаповалов. ВЗАЄМОДІЯ СЛІДЧОГО З ОБІЗНАНИМИ ОСОБАМИ ПІД ЧАС ПРОВЕДЕННЯ ЕКСПЕРТНИХ ДОСЛІДЖЕНЬ. Досліджено окремі аспекти використання спеціальних знань певних фахівців у ході проведення слідчих (розшукових) дій. Здійснено аналіз кримінально-процесуальних та інших законодавчих норм, висловлене критичне ставлення до реформаційних процесів щодо розмежування та думки провідних науковців з приводу. Зазначено процесуальні дії, які потребують залучення спеціалістів-криміналістів, а саме: слідчий огляд, обшук, слідчий експеримент. Залучення спеціаліста в галузі медицини переважно відбувається для проведення: огляду місця події та огляду трупа, ексгумації, освідування, слідчого експерименту, отримання зразків для експертизи, проведення експертизи, проведення слідчих (розшукових) дій за участю малолітньої або неповнолітньої особи. Наголошено на необхідності фахової допомоги на всіх етапах проведення слідчих (розшукових) дій – підготовчому, робочому та документальній фіксації результатів. З огляду на те, що функціональні обов'язки інспекторів-криміналістів не передбачають володіння глибокими знаннями в дактилоскопії, трасології, холодній і вогнепальній зброї тощо, акцентовано увагу на доцільності залучення працівників Експертної служби МВС України. Досліджено всі види допомоги спеціаліста, які поділяються на криміналістичну, консультативну, методичну та технічну, розкрито сутність кожної. Розглянуто дискусійне питання залучення медика замість судово-медичного експерта, доведена помилковість такої взаємозаміни. Зроблено порівняльний аналіз з практикою проведення огляду місця події в США, позитивно відмічено не просто залучення, а здійснення безпосередньо самого огляду не детективом чи прокурором, а оглядовою групою фахівців. Висловлені пропозиції щодо застосування сучасного криміналістичного обладнання.

***Ключові слова**: слідчий, спеціаліст, органи досудового розслідування, слідчі (розшукові) дії, слідчий огляд, обшук, слідчий експеримент.*

Relevance of the study. To obtain the full amount of forensically significant information during the procedural actions in criminal proceedings, not only special equipment is required, but also certain knowledge, skills and abilities. Achieving the ultimate goal of the pre-trial investigation is possible under the conditions of fruitful cooperation of the investigator with knowledgeable persons. This is evidenced by a number of factors. Thus, adhering to the latest changes in the legislation on careful continuous recording of one or another investigative (search) action alone, it is quite difficult, and sometimes almost impossible, to perform all this alone. Finding traces of the committed criminal offense, their fixation, proper packaging and removal, the use of photo and video, etc. – all this is the experts' prerogative.

Recent publications review. Fundamental work on the use of special knowledge and the involvement of knowledgeable persons during the proceedings were studied by such scientists as: M. I. Avdeyeva, V. D. Arsenyev, V. P. Bakhin, R. S. Belkin, V. D. Bernaz, A. I. Winberg, L. M. Holovchenko, G. I. Gramovich, A. V. Dulov, A. V. Ishchenko, N. I. Klymenko, V. V. Kovalenko, V. O. Konovalova, B. S. Kuzmichov, V. K. Lisichenko, V. H. Lukashevych, Ye. D. Lukyanchikov, I. V. Pyrih, M. V. Saltevskyy, K. O. Chaplynskyy, V. Yu. Shepitko, M. H. Shcherbakovskyy, P. V. Tsymbal, V. V. Tsyrkal and others. In their researches they widely studied the institute of special knowledge with its components. At the same time, the rapid development of science and technology, constant changes in legislation affect these issues and require additional analysis.

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The article's objective is to determine the main directions of interaction of investigator with knowledgeable persons during the investigation (search) actions in criminal proceedings.

Discussion. Further actions of law enforcement officers in criminal proceedings will depend on successfully conducted investigative (search) actions aimed at searching, detecting and extracting trace information. However, certain factors stand in the way, including inconvenient time of day, insufficient lighting, outdated equipment, and so on. It should be noted a significant complication of work in the pandemic.

Scholars carefully studied the investigative (search) actions, the procedural aspect, the organization and tactics of conduct, compliance with changes in legislation. However, the use of special knowledge, the main carriers of which in conducting procedural actions are multidisciplinary experts, always has its own characteristics and improves in proportion to scientific and technological progress.

Interviewing practitioners has found that during the investigation of criminal proceedings, experts were involved in the following procedural actions: for investigative examination – in 90 % of cases, search – 78 %, investigative experiment – 56 %, other procedural actions – 13 %.

Thus, as a rule, forensic experts from the forensic support departments of the investigative divisions of the National Police of Ukraine are involved as experts for the investigative inspection, search, and investigative experiment, whose task is to properly collect and extract traces.

As Ye.V. Kovalevska notes, experts in the field of medicine are involved in conducting mainly for: inspection of the scene and examination of the corpse; exhumations; examination; investigative experiment; obtaining samples for examination; conducting examination and conducting investigative (search) actions with the participation of a minor [3, p. 13].

The functional responsibilities of forensic inspectors do not involve deep knowledge of fingerprinting, tracing, cold steel and firearms, etc. Therefore, in difficult cases it is possible to involve employees of the Expert Service of the Ministry of Internal Affairs of Ukraine. But, as practice shows, the bureaucratic procedure of registration of such interaction does not promote fruitful cooperation.

As I.V. Pyrih rightly noted the reform of the Expert Service of the Ministry of Internal Affairs has led to both positive and negative consequences. Among the positive points should be noted the separation of functions of technical-forensic and judicial-forensic support of the investigation, which contributed to the observation of the principle of independence of judicial examination. On the other hand, there were problems with the staffing of both Scientific-Research Expert-Forensic Centre units and the sectors of technical-forensic support of investigative departments. The level of forensic training of forensic inspectors of the investigative departments of the National Police today remains quite low. Lack of skills of forensic inspectors affects the final result – the quality of the investigation of criminal offenses, the formation of the evidentiary base [6, p. 12].

Of course, the investigator is the central figure of one or another investigative (search) action. However, as K.O. Chaplynskyy notes, specialists (experts) provide the head of the operation and the heads of individual search teams with advice and recommendations of scientific and technical nature (for example, how best to prepare a procedural action; what techniques, methods and tools should be used to identify, collect, record and pre-examine evidence) and assistance in the use of forensic equipment and search devices. At the same time, experts can help in drawing up plans, schemes and drawings [9, p. 85].

Types of specialist assistance are divided into forensic, advisory, methodological and technical one. Forensic assistance consists in the preparation, organization and conduct of a certain investigative (search) action; detection, fixation, seizure of evidence, sampling for expert research.

Some scholars emphasize an integrated approach. Taking the example of modern textbooks on fingerprinting, scientists note that it is difficult to find in a compact form the entire technological chain of techniques, methods and tools that must be in a full fingerprint examination of handprints from the moment of detection at the crime scene to the conclusion of fingerprint examination. As a rule, such recommendations are scattered across different chapters of assistance and are not perceived by those who examine handprints as a whole [5].

Methodical assistance consists in explaining the correct names of the seized objects or their parts during the investigative (search) action by an expert in terminology used in a particular field of knowledge. Sometimes, when drawing up the report, the investigator writes down this

information under the dictation of an expert. When providing this assistance, the investigator receives new special knowledge, improving his/her professional experience. Technical aid is to assist the investigator in the use of forensic tools in the course of investigative (search) actions; inspection, detection, fixation, seizure of physical evidence; drawing up diagrams, drawings, etc. Advisory assistance is expressed in oral explanations, references on special issues that may arise or arise in the preparation and conduct of investigative (search) actions, the procedural registration of their results. A forensic expert provides all these types of assistance [1].

Undoubtedly, the activity of an expert during various investigative (search) actions has its differences. However, it is possible to single out common tasks during a search, inspection, and investigative experiment. In this context, a number of scholars note that the expert's assistance is as follows:

- use of scientific and technical means to search, fix, seize criminologically significant information;
- inspection of technically complex objects;
- preliminary assessment of items;
- advisory assistance on issues requiring special knowledge [8, p. 48].

Depending on types of criminal offenses committed, there is a need to involve multidisciplinary experts, which can be computer specialists, economists, chemists, ballistics experts, explosives technicians, etc. Today, in Ukraine an investigative task force includes one expert who is busy in photo taking or videotaping, all the work related to traces, packaging, and photo tables design also takes much time.

If we pay attention to the foreign colleagues' experience, the group of experts gives a greater result.

As R.L. Stepanyuk notes, a significant difference between the practice of US investigations and ours is the possibility not just of involving, but of conducting the inspection itself, not by a detective or a prosecutor, but by a review group of experts. Of course, we should remember that the US criminal justice system does not provide for a full-fledged pre-trial investigation. Therefore, compliance with formal procedures for registration of the results of investigative (search) actions of foreign colleagues is not as important as well as in Ukraine [7, p. 15].

Objects that specialists work with can be: the scene (area or premises); terrain or premises that are not crime scenes; living persons; items (tools and traces of a crime or criminal); corpse; documents; animals or their corpses [2].

In our opinion, the examination of the corpse is debatable, in particular, the issue of involving a forensic-medical expert. Yes, some scholars suggest using the foreign colleagues' experience. Unlike in Ukraine, in the United States there is no mandatory requirement for the participation of a forensic expert in the examination of a corpse at the scene. There, the detective decides on this issue depending on the circumstances. This again must be noted most rational Americans. Not in all cases of examination of the corpse at the place of its detection there is a need to involve a forensic expert, and a regular doctor is enough. Distraction of forensic experts, the number of which is small, especially in the province, on visits to examine all the corpses leads to a decrease in the quality of their work on examinations [7, p. 16].

First, it is impossible to mix two different types of activity: 1) the participation of a forensic expert as a specialist in the investigative (search) action and 2) the execution of a forensic examination, for the erroneousness of which he is criminally liable.

Secondly, medicine, like no other scientific field of knowledge, has different branches, sub-branches, which differ from each other and which cannot be covered at the professional level. Therefore, in our opinion, corpses with signs of criminal offenses must be examined by an expert, who specializes in this, i.e. by a forensic expert.

An important aspect of this topic is the technical support, which mostly requires updating. As practice shows, experts use a small range of fingerprinting powders, use scotch tape instead of fingerprinting film, fingerprinting is performed in a stable way with paint and so on. They make photo- and video shooting using their own cameras.

Yu. M. Chornous rightly notes the need for modern equipment, in particular, laser scanning of the proceedings place, information retrieval systems of biometric identity, information retrieval systems for identification of human fingerprints, etc. [10, p. 326].

Undoubtedly, all of the above significantly affects the quality of investigative (search) actions and provides a positive result.

Immediately after the procedural action, the help of a specialist is needed to correctly describe the found and seized objects. The dictation by the specialist of certain fragments of the

protocol on specific items, such as homemade firearms, ammunition, cold steel, corpse, its parts, computer equipment and others significantly improves the content.

Conclusions. Summing up, it should be noted that during the investigative (search) actions, there are certain difficulties to overcome which is possible through fruitful interaction between the investigator and the expert. In order to conduct high-quality and professional investigative (search) actions such as inspection of the scene, search, investigative experiment, the work of narrow expert in the areas of activity is required. All this will allow to avoid a superficial approach in time and to prevent mistakes and miscalculations during the investigation of criminal offenses.

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Abstract

The article deals with certain aspects of the use of special knowledge of certain specialists in the course of investigative (search) actions. There is the analysis of criminal procedural and other legislative norms, and the critical attitude to reformation processes concerning delimitation and opinion of leading scholars concerning it has been expressed. Procedural actions that require the involvement of forensic specialists have been indicated, in particular: investigative examination, search, investigative experiment.

Keywords: *investigator, expert, pre-trial investigation bodies, investigative (search) actions, investigative examination, search, investigative experiment.*

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EUROPEAN EXPERIENCE OF LEGAL REGULATION OF ANTI-CORRUPTION ISSUES IN THE PUBLIC SECTOR

Наталія Слотвінська. ЄВРОПЕЙСЬКИЙ ДОСВІД ПРАВОВОГО РЕГУЛЮВАННЯ ПИТАНЬ ПРОТИДІЇ КОРУПЦІЇ У ПУБЛІЧНОМУ СЕКТОРІ. Усунення, нейтралізація чи обмеження дії соціальних передумов корупції потребує системних змін в основних сферах соціального життя, насамперед у функціонуванні публічної влади. Оскільки корупція – це явище, яке пов'язане зі зловживанням певними можливостями, які надаються певною посадою чи службовим становищем осіб, які уповноважені на виконання функцій держави, традиційно вважається, що заходи запобігання корупції мають перш за все бути спрямовані на таких осіб. Важливу роль у попередженні корупції відіграє довіра суспільства та відповідальність органів публічної адміністрації перед ним. Запобігання та протидія корупції не можуть бути ефективними без здійснення попереджувальних заходів саме у публічному секторі – сфері, де виконують свої професійні обов'язки особи, уповноважені представляти державу. Корупція у державі та неефективне управління у ній є взаємопов'язаними явищами: неефективність державного управління неминуче стимулює корупційні відносини, а корупція, у свою чергу, знижує ефективність державного управління. Тобто неефективність державного управління є одним з факторів корупції у державі.

Антикорупційні стандарти ООН у публічній сфері передбачають здійснення комплексу заходів, які спрямовані на запобігання вчиненню корупційних правопорушень. Це, в першу чергу, вимоги до державних посадових осіб здійснювати свою діяльність на етичних засадах, які можуть бути встановлені у спеціальних кодексах поведінки, що допомагають особам, які виконують публічні функції, обрати правильний варіант поведінки при виникненні ситуації, в якій ризик вчинення корупційного правопорушення високий. Важливим питанням для врегулювання є виникнення конфлікту інтересів при здійсненні своїх посадових обов'язків, пов'язаного з цим декларування доходів державних посадовців. Умовою ефективної протидії корупції у публічному секторі є також здійснення заходів, спрямованих на забезпечення відкритості влади через доступ до публічної інформації та зменшення бюрократії та заплутаності у державному управлінні.

Ключові слова: *корупція, публічний сектор, правопорушення, кримінальне право, кримінальний закон, стандарт.*

Relevance of the study. Elimination, neutralization or restriction of the social preconditions of corruption requires systemic changes in the main spheres of social life, first of all in the functioning of public authorities. Because corruption is a phenomenon associated with the

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abuse of certain opportunities provided by certain posts or official position of persons authorized to perform state functions, it is traditionally believed that anti-corruption measures should be aimed primarily at such persons. Public confidence and public accountability play an important role in preventing corruption. Preventing and combating corruption cannot be effective without preventive measures in the public sector, an area where those authorized to represent the state perform their professional duties. Corruption in the state and inefficient governance in it are interrelated phenomena: inefficiency of public administration inevitably stimulates corrupt relations, and corruption, in turn, reduces the efficiency of public administration. That is, the inefficiency of public administration is one of the factors of corruption in the state.

Recent publications review. issues of combating corruption in the public sector were studied by V. Kolotiy, K. Vodolaskova, M. Mel'nyk, D. Kanevs'kyy, V. Reshota and others.

The article's objective is to study the combating corruption in the public sector in Ukraine.

Discussion. The UN pays special attention to the prevention of corruption in the public sphere, the results of the work of this organization on the creation of anti-corruption mechanisms in this area are enshrined in the UN Convention against Corruption.

The UN Convention against corruption is a comprehensive document that contains both standards for the criminalization of corruption offenses and the prevention of corruption, international cooperation and the return of property acquired as a result of any of the crimes covered by the convention. Articles 7 to 10 of the Convention set international anti-corruption standards in the public sector, which can be divided into the following groups, depending on the areas in which corruption is most pronounced:

1. The system of employment, selection, training and preparation of civil servants in order to deepen their awareness of the risks associated with corruption and related to the performance of their functions; establishing criteria for candidates and elections for public office; enhancing transparency in the financing of candidates for elected public office and, where appropriate, in the financing of political parties.
2. Application of codes of conduct that establish a proper model of conduct for public officials; measures and systems to ensure that public officials report to the relevant authorities any acts of corruption which they become aware of in the performance of their duties; measures that ensure that government officials declare their extracurricular activities, occupations, investments, assets, and significant gifts or profits; rules for preventing conflicts of interest that may arise when an official carries out his official activities.
3. Ensuring openness and transparency of public administration through the establishment of the right of access to public information, its publication, and simplification of administrative procedures in public bodies that are authorized to make decisions.
4. Ensuring transparency in public procurement and public finance management.

The activities of the entire public sector in the country should be based on such principles as efficiency, transparency, honesty and probity. This involves establishing objective criteria for the recruitment of civil servants, as well as creating conditions for continuous training and fair remuneration. S. Rose-Ackerman, for example, argues that ensuring adequate remuneration for work is a guarantee not only of overcoming corruption in the public sector, but also of an influx of highly qualified professionals who are reluctant to work as government officials for low wages, preferring the private sector or relocating abroad in search of professional realization. As a result, vacancies in the civil service are not filled by highly qualified specialists. Or there is another situation, especially in countries where corruption is very common, when vacancies are filled in order to compensate for low wages with bribes. In developing countries, positions in the bureaucratic hierarchy are very desirable, because they provide broad opportunities for bribery [1, p. 286]. Increasing the remuneration for the performance of official functions in the state is a way to reduce the level of corruption in the civil service, confirmed by the experience of other states. For example, one of the measures of the anti-corruption reform package in Singapore (Singapore ranked 5th in Transparency International's Corruption Perceptions Index in 2019) [2] was to raise the salaries of senior government officials to the level of top managers of private corporations [3]. Regarding the criteria for recruitment, most countries have developed similar criteria for admission to the civil service, and the tendency to ensure transparency in recruitment is the use of electronic means of communication as a mechanism for announcing competitive recruitment and processing applications from candidates and so on.

The experience of Georgia is interesting in this respect. In this country, during the im-

plementation of anti-corruption reforms, an electronic system of registration of civil servants was introduced, which did not allow nepotism when hiring a person [4, p. 71].

The international standard in the anti-corruption policy of states are measures taken to prevent conflicts of interest. In Art. 7 of the UN Convention against Corruption emphasizes the need to create, maintain and strengthen such systems that promote transparency and prevent conflicts of interest.

Conflict of interest is a complex and sometimes difficult concept to understand, especially in countries with a low legal culture and systemic corruption. There is no universal definition of this concept, but in most countries this concept means a situation in which the public interests to be represented by an official, conflict with the private interests of a person, which can lead to bias in the performance of official duties and to corruption offenses.

To prevent conflicts of interest, it is common practice to adopt written standards, in particular codes of conduct, that guide officials on how they should behave and what actions to take to prevent conflicts of interest. In Article 8 of the UN Convention against Corruption states that each State Party shall take into account, as appropriate and in accordance with the fundamental principles of its legal system, relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials [5].

Such codes of conduct are usually aimed at preventing potential conflicts of interest through a combination of positive declarative provisions or principles and restrictions and prohibitions on certain activities, such as accepting gifts or rewards that may give rise to a conflict of interest.

In many countries, such codes are created not only for all civil servants, but also for various areas of public administration. For example, codes of conduct can be created to ensure integrity and transparency in public procurement, for customs authorities and bodies with high corruption risks. Corruption risk should be understood as circumstances (phenomena, processes) in the functioning of state bodies and local governments, the activities of their officials, which create a situation of possible or even inevitable corrupt behavior of such persons [6, p. 312].

According to Art. 11 of the Convention («Measures relating to the judiciary and prosecution services») taking into account the independence of the judiciary and its crucial role in the fight against corruption, each State Party shall, in accordance with fundamental principles of its legal system and without damage to the independence of the judiciary, strengthen the integrity of the judiciary and preventing any possibility of corruption among them (in those States Parties where the prosecution service is not part of the judiciary but enjoys the same independence as the judiciary, and in relation to representatives of the prosecutor's office). Such measures may include rules concerning the conduct of the judiciary. Well-known international instruments in this area are the Bangalore Principles of Judicial Conduct and the Code of Conduct for Law Enforcement Officials.

For the code to work as required by international experience, its implementation must be ensured in practice. This is done by two main methods. First, it is necessary to create a well-organized curriculum on the requirements of professional ethics. Every employee must undergo similar training. In addition, such training should be provided not only when a person enters the civil service, but periodically. Second, for the code to be effective, it is necessary to develop an effective system of sanctions for violations of the code, which should be proportional to the offense [7, p. 6].

An important means of detecting violations of the Code of Conduct is to create an effective system of notifications of suspicions of corruption. According to Part 4 of Article 8 of the UN Convention against Corruption, states are considering the introduction of measures and systems that ensure that public officials report to the relevant authorities about acts of corruption that they became aware of during the performance of their functions. However, such a rule is often ineffective without providing certain guarantees for those who report offenses. Important in this aspect is the application of standards on the protection of whistleblowers (informants), as well as the formation of mechanisms for effective response to reports of offenses.

In the United States, for example, all executives are required to report to the Attorney General any information or statement by an employee regarding a violation of the law by employees. An official who knew about the theft, misuse of property or corrupt practices committed by other officials, but did not report it, is subject to administrative liability [8].

In order to prevent conflicts of interest, it is common in the world to restrict the activities of public officials in the private sector. Such a restriction can be absolute (for example, in Armenia and Bulgaria) or relative, when public officials can receive income from private activ-

ities, but with certain permits or only up to a certain level of income (such a limited ban exists in Austria and France). In Japan, for example, public officials are prohibited from engaging in any activity in the private sector without the special permission of the National Personnel Authority, the central body that monitors the conduct of public officials. It may also prohibit any links between public sector officials and any private organizations, or those that are controlled or otherwise interact with the public authority in which the public official works. There is also a practice of banning or restricting activities in the private sector after the end of the civil service, in many countries the period of such restriction is from 3 to 5 years.

However, as noted at the UN Conference on the Prevention of Corruption in 2012 in Vienna, public officials, despite a legal ban or restriction on private sector activities, actually have serious business interests, and this phenomenon is most common among elected officials [8]. S. Rose-Ackerman notes that it is difficult to find a universal recipe for overcoming the conflict of interest of elected officials. The minimum that can be done in this direction is to decisively expose the financial interests of incumbent politicians and their family members when making certain decisions. The links between politicians and wealthy lobbyists should also be exposed so that voters can evaluate the activities of their representative. This problem with the conflict of interest of elected officials is particularly acute in young post-communist states [1, p. 305].

However, such restrictions vary from state to state. If, for example, French law is compared with American law, it is more about administrative than criminal law, with the same goal – to prevent the unification of personal financial interests and the performance of civil servant functions. In practice, French bans seem less severe. Officials are generally not required to declare their income, and restrictions on professional activity after dismissal are not as severe as, for example, in the United States. In the United States, restrictions on the political activities of civil servants have been imposed to prevent dependence on party commitments. In France, on the other hand, it is common for an official to seek an elected political office. Officials can run in elections without losing their status, and at the local level they can even combine public service with elected office. If an official goes to parliament, he is obliged to take a leave, but with the expiration of his term of office, he may return to his previous position. Such a system is viable because it is based on a long tradition of understanding the social significance of the civil service. In countries where the civil service is associated with corruption and favoritism, it cannot operate. However, such a model in France must be changed very quickly, as it is planned to establish new stricter rules to limit conflicts of interest [9]. Establishment of disciplinary, administrative or other liability for non-compliance with the requirements to prevent conflicts of interest is a condition for the effectiveness of such rules. For example, in the United States, if an official is found to be in violation, the following measures may be applied:

- partial or complete disqualification;
- transfer to a lower position;
- a proposal to terminate «conflicting» financial ties [10, p. 97].

Part 5 of Article 8 of the United Nations Convention against Corruption stipulates that each State Party shall endeavor, where appropriate and in accordance with the fundamental principles of its domestic law, to introduce measures and systems which oblige public officials to submit declarations to the relevant authorities, in particular on off-duty activities, occupations, investments, assets and significant gifts or profits that may give rise to a conflict of interest over their functions as public officials. Subject to paragraph 6 of this article, each State Party shall consider disciplinary or other measures against public officials in violation of the codes or standards established pursuant to this article.

At the same time, the text provides grounds for the following fundamental conclusions:

1) The Convention does not impose obligations on States parties, and States Parties, having ratified the Convention, have not undertaken to introduce a mandatory declaration by public officials of their income, let alone expenditure; 2) the recommendations of the Convention apply only to the declaration of income by public officials, and not to all subjects of responsibility for corruption offenses, and not take into account the declaration of income and expenses by close persons (relatives) of subjects of responsibility for corruption offenses; 3) the recommendations on the declaration of income apply only to cases where in connection with their receipt may be «a conflict of interest around their functions as public officials», and do not apply to all other situations of income.

Thus, the imposition or non-imposition by a national legislator of certain categories of persons whom it recognizes as liable for corruption offenses, the obligation to declare income

and / or expenditure, is a matter for the national legislature itself.

However, the obligation to declare income has already become an international standard in the field of anti-corruption.

Singapore is one of the most successful countries in the fight against corruption, where declaration is mandatory. Every year, government officials are required to fill out special forms to declare their income. If such persons cannot explain where their additional funds come from, it can be assumed that the source of their income is corruption. The relevant inspection is then carried out by the prosecutor [11].

The obligation to declare in foreign countries provides for the application of a broad and limited approach to the range of persons subject to financial control. In some states, the obligation to declare extends to all public officials, but in most states, the obligation to declare rests with senior government officials. For example, in South Korea, high-ranking government officials are required to declare information about their property, as well as the same information about their family members. The same obligation is imposed on certain categories of public officials working in areas particularly prone to corruption, such as tax management, financial control, law enforcement, etc. [8].

Some countries also apply the principle of «de minimis», according to which a certain minimum income limit is set, the excess of which is subject to declaration. In Austria, for example, an elected public official is required to disclose income in excess of € 1,142 per year. Bodies that control the declaration of income by government officials are empowered to require declarations from officials who are not defined by law as subjects of declaration [8].

There are also different models for publishing income tax returns. Declarations can be confidential when declarations are submitted to anti-corruption bodies or other state bodies that control them, or public, when the body receiving the declarations is obliged to publish them through the media or the Internet or in any other way. In the United States, for example, those who want to review a senator's declaration must personally visit a special body, identify themselves, and only then they will have access to the declaration.

However, a confidential regime can only be effective if the anti-corruption body that controls the declarations is independent and enjoys the trust and support of the public. But, such conditions are very difficult to achieve in most countries.

A certain compromise system has also been formed, when only the declarations of the top government officials are published.

As for the control over the declaration of income, there are also two models: when such control is carried out by one specialized body and when the control powers are vested in separate units of the bodies where the subjects of the declaration work.

The importance of establishing a centralized body to monitor compliance with the rules on overcoming conflicts of interest and to monitor the submission of declarations by public officials was noted at UN Conferences [8]. Different states decide differently on the introduction of special bodies to prevent conflicts of interest of officials. Some have centralized bodies that monitor the implementation of conflict of interest prevention standards (Japan, the United States, and the Republic of Korea). In others, this is done by internal units of state bodies (Russia) [10, p. 103].

Declaring the income of public officials helps to identify in which areas of the official's activity a conflict of interest may arise. Of course, for those who systematically take bribes, declaring income may not have a deterrent effect, but such an anti-corruption measure makes it possible in some way to deter honest civil servants from receiving illegal benefits. In addition, in most countries, the declarations of senior government officials are subject to publication, i.e. public scrutiny, which is necessary for the effective implementation of anti-corruption mechanisms.

An area where corruption abuses are particularly prevalent is public procurement. This is evidenced by the fact that a separate article of the UN Convention against Corruption deals with public procurement and public financial management (Article 9).

In most countries, public procurement is an important part of the economy. In developing countries, where the state plays an important role in the economy, public procurement is even more important. From an economic point of view, bribery and conspiracy, rigging of bidding results cause additional costs in the bidding process, inefficient allocation of limited state resources. That is why measures have recently been taken at the international level to develop public procurement systems that should prevent corruption and increase competition in this area.

Fraud with bids during the procurement procedure takes various forms:

In «suppression of bids» or «restriction of bids» schemes, where one or more competitors who would otherwise have to bid or have previously submitted bids agree to refrain from bidding or to withdraw a previously submitted bid for that the application from the predetermined winner of the competition was accepted. Sometimes one or more conspirators may file fabricated protests in an attempt to prevent those who do not participate in the conspiracy from obtaining a contract. After the contract is awarded, the winner of the tender may pay the other conspirators in cash or by subcontracting.

«Submission of additional bids» (also called «defensive or shadow participation» in the tender) occurs when some competitors submit bids with bids that are too high, ie unable to win, or if the bids are submitted as competitive in price, they are unacceptable for reasons other than prices. Such applications are designed to create a sense of real competitive choice. This allows you to win for a predetermined bid of one of the competitors, when the institution requires a minimum number of bidders [12, p. 26].

Sometimes «silent partners» join the contracts awarded for the works. These conspirators are involved in the sharing of profits from the performance of contracts with an officially appointed contractor, but their participation in the work is not known to the contracting authority.

Conspiracy is more likely if there are a small number of contractors. The fewer competitors, the easier it is to get together and agree on prices, bids, customers or territories. Conspiracy can also occur when the number of firms is quite large, but there is only a small group of major customers or applicants, and others are firms that control only a small market share [13, p. 24]. At the same time, corrupt agreements are being made with persons authorized to conduct tenders.

Part 1 of Article 9 of the UN Convention against Corruption, which deals with issues related to public procurement, is based on 3 basic principles: transparency, competition and objective decision-making criteria.

UN standards on public procurement provide for the following: timely public dissemination of information related to procurement procedures; establishing in advance the conditions of participation in public procurement; application of pre-established and objective criteria for decision-making on public procurement; an effective system of internal control, including an effective system of appeal, to ensure the possibility of recourse to the courts in the event of non-compliance with rules or procedures; adoption of special rules concerning the personnel responsible for procurement.

At the Conference of the State Parties of the UN Convention against Corruption in December 2010, the UN Intergovernmental Working Group on the Prevention of Corruption in Vienna recommended that State Parties consider the use of computerized systems to regulate public procurement, monitor and detect violations in procurement, and to consider the issue of non-admission to the procedure of public procurement of entities involved in corruption offenses [14].

The use of electronic procurement systems can be an important contribution to ensuring the transparency of operations in this area. Free access to such systems can lead to increased participation of entrepreneurs in public procurement, increased competition in their implementation. Electronic procurement systems can be particularly effective in involving small and medium-sized enterprises in the procedure. In addition, increased transparency can help to strengthen the control of procurement process by competitors and civil society.

One of the priority areas for preventing and combating corruption is to ensure open government. Having ensured the openness of the activity of governmental structures, the government solves three extremely important tasks for itself and society: 1) restores the faith of citizens to official authorities; 2) creates unfavorable preconditions for corruption of society; 3) ensures the realization of the constitutional rights of citizens in the information sphere. The level of transparency of the government is an indicator of the level of its democracy, the degree of trust of citizens in the government they have elected, a powerful social anti-corruption factor [15, p. 387]. The unavailability of information on decision-making by public authorities contributes to the development of backroom agreements that benefit certain individuals with the greatest influence in society, corruption relations within the public sector of the state. Article 10 of the UN Convention against Corruption obliges States to take such measures as may be necessary to enhance transparency in public administration. The key to open government is the existence in the state of legislation on access to public information, which allows citizens to be

as informed as possible about the governmental processes in the state, and therefore to monitor the activities of public officials.

The main international standards in the field of the right of access to information are:

– the principle of maximum openness – all information held by public authorities is open, except as provided by law;

– information to which access is closed must be clear, narrowly described and consistent with control in accordance with the «three-part test», namely: 1) the information must be relevant to the legitimate purpose provided by law; 2) the disclosure of information must threaten to cause significant damage to the specified legitimate purpose; 3) the damage that may be caused to the specified purpose must be more significant than the public interest in obtaining information;

- the amount of information, access to which is limited, about a public person should be much less than the amount of information about a private person;

– the procedure for access to information should be clearly defined, and the general deadline for providing information on request should be short; – provides not only the right of access to information held by public authorities and local governments, but also to information belonging to private organizations, if the disclosure of this information reduces the risk of harm to the main public interest;

– availability of a special out-of-court mechanism to protect the right of access to information (information commissioner);

– protection of «whistleblowers» [16, p. 303].

The reduction of opportunities for bribery in the sphere of official activity can be achieved through the introduction of new mechanisms of interaction between citizens and officials. For example, the use of electronic systems of interaction with public authorities, e-procurement, e-government is widely used to prevent corruption. For example, in Estonia, the government has introduced an online payment system as an alternative to paying for various types of documents, which has significantly reduced the possibility of extorting bribes from officials, as personal contact is minimized under such conditions [10, p. 101].

Greece is one of the countries that successfully implements the principles of transparency of information on the use of public funds. In 2010, a law was passed requiring all public authorities to publish their decisions online, including decisions related to public procurement. From October 1, 2010, all state and local governments are required to publish their decisions on the Internet through a platform called «Transparency» (diavgeia – διαύγεια) [17]. By law, the decisions of these bodies cannot be carried out without first posting them on this website. Only decisions that contain legally protected information or information related to state security are not published. Each document with the decision is accompanied by an electronic digital signature and number. If there is a discrepancy between the decision published in the official publication and the decision posted on the Transparency website, the latter is preferred. Public procurement contracts are also published on this website.

Ensuring the openness of government is also achieved by simplifying administrative procedures to facilitate public access to the competent decision-making bodies. Such measures are also provided in Art. 10 of the UN Convention against Corruption. The experience of states that have managed to significantly reduce the level of corruption as a result of the implementation of the anti-corruption reform system shows that deregulation is a necessary element of this system. Comparing the fight against corruption and bureaucratic hurdles in Ukraine and Georgia, Georgian Deputy Justice Minister Giorgi Vashadze told at the conference «Ukraine, where are you going?» in Oxford in 2011 that the first step to successful reforms should be to minimize all bureaucratic procedures. This applies to everything from obtaining a passport, buying an apartment or obtaining a copy of a birth certificate [18].

In Georgia, for example, the complex system of obtaining permits and licenses has been replaced by the principle of a «single window», which provides for the provision of many administrative services by a single body, which significantly reduces administrative burdens and corruption risks. The number of licensed activities decreased by 85%, in this area strict deadlines were set for processing applications for licenses and permits by state bodies, which was based on the principle of «tacit consent» – the application was considered satisfied if the applicant did not receive a response within the prescribed period. Customs, property and business registration procedures have also been simplified [19].

Conclusions. UN anti-corruption standards in the public sphere provide for the implementation of a set of measures aimed at preventing the commission of corruption offenses.

These are, first of all, the requirements for public officials to carry out their activities on an ethical basis, which can be established in special codes of conduct that help persons performing public functions to choose the right course of action in a situation where there is a high risk of corruption. An important issue for settlement is the emergence of a conflict of interest in the performance of their duties, the related declaration of income of public officials. The condition for effectively combating corruption in the public sector is also the implementation of measures aimed at ensuring the openness of government through access to public information and reducing bureaucracy and entanglement in public administration.

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Abstract

Elimination, neutralization or restriction of the social preconditions of corruption requires systemic changes in the main spheres of social life, first of all in the functioning of public authorities. Because corruption is a phenomenon associated with the abuse of certain opportunities provided by certain posts or official position of persons authorized to perform state functions, it is traditionally believed that anti-corruption measures should be aimed primarily at such persons. Public confidence and public accountability play an important role in preventing corruption. Preventing and combating corruption cannot be effective without preventive measures in the public sector, an area where those authorized to represent the state perform their professional duties.

UN anti-corruption standards in the public sphere provide for the implementation of a set of measures aimed at preventing the commission of corruption offenses. These are, first of all, the requirements for public officials to carry out their activities on an ethical basis, which can be established in special codes of conduct that help persons performing public functions to choose the right course of action in a situation where there is a high risk of corruption.

Keywords: *corruption, public sector, offenses, criminal law, criminal law (act), standard.*

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COGNITIVE ACTIVITY OF A FORENSIC EXPERT: PSYCHOLOGICAL ASPECT

Олена Солдатенко, Олександр Юнацький. ПІЗНАВАЛЬНА ДІЯЛЬНІСТЬ СУДОВОГО ЕКСПЕРТА: ПСИХОЛОГІЧНИЙ АСПЕКТ. Характеризуючи процес експертного дослідження, можна відзначити, що в ньому тісно поєднуються пізнавальна і практична діяльність. Пізнавальна діяльність експерта більш наближена до наукової роботи, проте відрізняється від неї деякими особливостями.

Однак, незважаючи на відмінні особливості, пізнавальна діяльність експерта як і наукова робота, заснована на застосуванні спеціальних знань з метою вирішення експертних завдань, тобто головним чином полягає в розумовій діяльності, в основі якої лежить творчий характер.

Як показує практика, пізнавальна діяльність судового експерта передбачає активне співвідношення практичного досвіду та знань, які є продуктом абстракції у формі категорій і понять. Крім того, пізнавальна діяльність судового експерта характеризується необхідністю вирішувати перелік розумових завдань на усіх етапах дослідження. Виникнення і вирішення цих завдань насамперед пов'язано з об'єктивними умовами, в яких опиняється експерт як суб'єкт експертизи.

Експерт має право висловлювати свою думку, тільки на основі внутрішнього переконання, що лежить в основі концепції висновку експерта. Однак достовірний висновок судовий експерт зробить тільки за умов, коли його внутрішнє переконання буде адекватно відображати результати проведеного дослідження, заснованого на спеціальних знаннях. Тобто основою для формування внутрішнього переконання експерта слугують фактичні дані, що отримані та оцінені експертом тільки на підставі спеціальних знань.

Таким чином, особливість пізнавальної діяльності судового експерта полягає в тому, що його висновок повинен відображати внутрішнє переконання, тобто упевненість експерта в його достовірності. Об'єктивною стороною внутрішнього переконання може бути лише сукупність фактичних даних, встановлених в ході експертного дослідження, незалежно від будь-яких зовнішніх впливів та дій.

Ключові слова: *пізнавальна діяльність судового експерта, висновок експерта, принцип внутрішнього переконання, професійні якості судового експерта.*

Relevance of the study. Characterizing the process of expert research, it can be noted that it closely combines cognitive and practical activities. Cognitive activity of the expert is closer to scientific work, however, differs from it in some features.

Firstly, according to Art. 242 of the CPC of Ukraine [1], the expert conducts an examination (practical study) at the request of a party to criminal proceedings or on behalf of an investigating judge or court, if special knowledge is required to clarify the circumstances relevant to criminal proceedings. The purpose of the cognitive activity of the expert is to acquire new scientific knowledge, to establish the general patterns of the phenomena being studied, to solve theoretical problems.

Secondly, the cognitive activity of the expert is aimed at identifying a specific phenom-

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enon (properties) of the object under study. The general patterns of this phenomenon are known to the expert as a specialist before the study. And the study itself should only confirm the presence or absence of these patterns in the object of examination. As for the purpose of scientific research, it is primarily to establish in the objects of knowledge of unknown or little-known objective patterns or properties.

Thirdly, the task of practical expert research is ultimately to establish certain evidentiary facts relating to events that have already occurred for certain reasons. This causes, depending on possible situations, the variable use in the study of scientific techniques and tools to establish the process of emergence and identification of physical evidence – the objects of expert research. This kind of variability in research is usually absent.

However, despite the distinctive features, the cognitive activity of the expert as well as scientific work based on the application of special knowledge to solve expert problems, ie mainly consists of mental activity, which is based on creative nature.

Recent publications review. One of the indicators of the depth of this problem is the fact that they are often the subject of discussion at scientific conferences, seminars, publications of scientists and practitioners. The activities of the forensic expert in its various manifestations were paid attention to by many scientists (T.V. Averyanova, V.D. Arsenyev, S.F. Bychkova, R.S. Belkin, O.O. Eisman, A.V. Ishchenko, N.I. Klymenko, V.O. Konovalova, Y.G. Korukhov, M.Ya. Segai, A.O. Selivanov, I.V. Pirig, O.R. Ratinov, O.R. Rossinskaya, M.L. Cymbal, M.G. Shcherbakovsky and others). However, certainly not diminishing the contribution of these scientists to this problem, it should be recognized that even today the issues of cognitive activity of forensic experts are relevant.

The article's objective is to analyze the various positions on this issue. The novelty of the work is to address the psychological features of the cognitive activity of the forensic expert during the examination and the formation of his conclusion on the basis of the principle of internal conviction.

Discussion. As practice shows, the cognitive activity of a forensic expert involves an active relationship of practical experience and knowledge, which are the product of abstraction in the form of categories and concepts. In this case, thinking has a social nature, ie each individual becomes a subject of thinking, after he masters the social experience, language, techniques of mental activity. Thinking helps the expert to achieve the goals, which are the result of cognitive expert activity. The result of this activity is expressed in the form of a decision (conclusion) of a forensic expert on the basis of evaluation of the received information.

In addition, the cognitive activity of a forensic expert is characterized by the need to solve a list of mental tasks at all stages of the study. The emergence and solution of these problems, in the first place, is associated with the objective conditions in which the expert finds himself as a subject of examination. These include the specifics and structure of the problem, which always includes a priori uncertainty, as well as the decision-making process, which is creative in nature and consists of proposing, checking expert versions, evaluating the data and drawing conclusions.

Note that the activities of a forensic expert is characterized by the fact that many problems are not solved according to the traditional scheme and in such cases it is necessary to look for special techniques and methods, model, predict the possibilities and effectiveness of their use. As a rule, these are complex decisions, therefore new receptions, and sometimes also techniques do not always provide correctness of results of research.

It should be noted that the possibility of proper performance of expert activities depends on the qualitative characteristics of both the object under study and the personality traits of the researcher (expert). The more complex the object, the faster the complexity of the relationship increases; the greater the complexity, the less time is left to resolve issues, the more likely errors in the study. To overcome the prospect of one's own mistake, it is necessary, first of all, to overcome oneself, the illusion of ease of solving the situation, to be able to make non-standard decisions. This process in philosophy is called creativity [2, p. 344]. The ability of the expert when using the methodology of expert research to independently find solutions in complex situations that arise in the process of solving various expert tasks, determines the creative nature of expert research. Expert creativity is a mechanism of adaptation of an expert to specific, changing situations that have no analogues in past experience. In such situations, the expert must use all his special knowledge to solve the tasks.

At all stages of cognitive activity, the forensic expert has to face something unknown,

about which he may have no knowledge. In such cases, of some interest are the problems, the solution of which is unconventional, and the logic of the study, based on known methods, does not allow to formulate a specific solution. Then intuitive thinking comes to the rescue as a result of synthesis in search of possible ways of research [3, p. 34].

It should be noted that intuitive thinking, combined with logical, is inherent in expert research in the case of solving very complex problems. Their complexity is explained by many factors, which include: insufficiency, fragmentation of research objects, lack of traditional methods, insufficient level of development of a particular field of forensic science, low competence of the expert. If thinking is not creative, then this fact can lead to a misunderstanding of the processes and phenomena manifested in the objects of study, will negatively affect the transition of intuitive thinking to rational cognition, and therefore will not ensure the truth of the conclusion and may cause error.

In other words, personally perceiving the phenomenon of the external world, reflecting the substantive content of the sensory object in his mind, the expert «includes» his thinking, which defines the information he perceives as a stimulus to their own behavior. Due to the interpretation, evaluative and mental activity of the expert, the boundaries of the perceived object expand [4, p. 123].

It is also important that at the level of interpretation and evaluation of perceived information can be detected error of perception and perception of the object. And in some cases, even on the basis of correct sensory data in the interpretation can be made an erroneous conclusion [5, p. 25]. This may explain the situation when different experts in the study of the same objects on the basis of the same features make ambiguous, sometimes opposite conclusions, which are the result of different interpretations of the features. For example, one expert recognizes the signs as significant, evaluates them as positive (coincidental), another – recognizes these signs as diagnostic, which can not individualize the object.

There are also cases when the subject is unable or unable to identify in time the error in the sensory image or to give a full assessment of the correctly perceived phenomenon. Such situations can be explained, on the one hand, by a rather strong change in the mechanism of reflecting objective reality, and on the other – by the inconsistency of logical thinking due to insufficient knowledge, insufficient practical and social experience, physiological and psychological properties, and the peculiarity of the situation. In general, in such cases there is a separation of the content of knowledge from the conditions of its origin or attribution of this content to other conditions [4, p. 63].

It should be noted that in the course of his activity the forensic expert gives an opinion on his own behalf and bears personal responsibility for it. This means that the expert has the right to express his opinion only on the basis of internal conviction, which underlies the concept of the expert's opinion [6, p. 478; 7, pp. 73-76].

In turn, the content of the forensic expert's inner conviction can be defined as the achievement of proof of a position when the expert considers solved the task set before him, his belief in the truth or incorrectness of the results, based on sufficient grounds [8, p. 84].

However, a forensic expert will make a reliable conclusion only if his inner conviction will adequately reflect the results of the study based on specialized knowledge. That is, the basis for the formation of the inner conviction of the expert are the actual data obtained and evaluated by the expert only on the basis of special knowledge.

If a forensic expert draws conclusions not on the basis of the use of special knowledge, but under the influence of information that is not directly related to the objects under investigation – this will lead to the formation of erroneous internal beliefs. Such cases, first of all, include the influence of suggestion. Suggestion is a mental influence on a person in which there is an uncritical perception of the thoughts and will of another person as their own. In psychology, it is divided into direct and indirect [9, p. 140].

As for the formation of the forensic expert's inner conviction, it is rather an indirect suggestion. For example, an expert may draw incorrect conclusions under the influence of the materials of the proceedings, which contain a certain assessment of the object of study, under the influence of the results of the use of computer technology and equipment that are perceived as real. The expert may also be influenced by the information of the investigator, who reports other evidence that in some way answers the questions to be decided by the expert, and he can only confirm this.

Also, the possibility of unintentional suggestion under the influence of the opinions of more experienced (competent) professionals, who may be consulted by an expert, should not

be ruled out. In this case, the decision may not be made on the basis of confidence in the correctness of their conclusions, but based on the views of authoritative colleagues. Negative influence on the correct formation of internal beliefs can also be carried out on the basis of studying the materials of similar examinations.

Among other psychological factors that negatively affect the formation of the inner conviction of the expert, we should mention the professional deformation, which is considered in the special literature as «inertia» in solving mental problems [10]. It's most characteristic manifestations are the reassessment of their capabilities, knowledge, hasty conclusions, ignoring the opinions of their colleagues, simplifying research methods, and so on. The study of the manifestations of occupational deformity and the definition of ways to overcome them are of particular interest. It can be assumed that a significant number of re-examinations are the result of occupational deformity that occurred during the initial examination.

It is necessary to keep in mind the interpersonal relationships in the staff of the expert institution, because they also significantly affect the effectiveness of professional activities. It should be noted that in the relations of participants in expert activities there are aspects that are not subject to legal regulation. For example, ethical relations in the staff of the expert institution, including the relationship between the expert and the head, participants in the commission, comprehensive and re-examinations. Such relationships are built in accordance with the general norms of morality, as well as formal and informal rules of conduct in the team. However, the specifics of expert activity also involves the development of certain subjective qualities that allow the expert to achieve the goals.

It is believed that if over time the expert has not formed observation, attentiveness, logical thinking, then successful work in the field of forensic science is impossible due to the risk of constant mistakes and it is better to change the profession. Among the qualities that also clearly exclude the possibility of engaging in expert activities, ie determine the professional unfitness of the expert, should be mentioned mental inferiority and the presence of defects of the senses.

As for other qualities of a forensic expert, it should be noted that their formation is influenced not only by internal but also external (social) conditions in which they are manifested. These most often include: creativity, heuristics, predicate, objectivity, comprehensiveness and self-criticism.

The expert must also have both operational and long-term memory, both verbal and visual thinking. On this basis, the ability to quickly remember, long-term preservation and accurate reproduction of the features of the object at any stage of expert research.

Among the psychophysiological qualities of a forensic expert should be mentioned emotional balance, ability to concentrate, mental endurance, the ability to quickly switch from one task to another, etc. [11, pp. 428-429].

As a result of the constant influence of the conditions of activity of a forensic expert, a subjective set of qualities (skills, abilities) is formed, which is necessary for the successful performance of the duties assigned to him.

Conclusions. Thus, the peculiarity of the cognitive activity of a forensic expert is that his/her conclusion should reflect the inner conviction, ie the confidence of the expert in its reliability. The objective side of the inner conviction can be only a set of factual data established during the expert study, regardless of any external influences and actions.

The position of the expert on the truth of the information received by him about the object of examination is made gradually, as a result of verification and evaluation of the obtained data, taking into account the theoretical provisions of science, which he is a specialist, expert practice and personal experience.

Analysis of the levels of knowledge of a forensic expert in conducting research shows that his wrong decisions (conclusions) are influenced by the results of inadequate mental processes and impaired thinking operations. Also, errors in the cognitive activity of forensic experts can occur on the basis of personal mental qualities, in particular due to lack of observation, inattention, lack of creative imagination.

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Abstract

The paper addresses the features of the forensic expert's cognitive activity during the expertise and the process of drawing a conclusion based on the principle of inner certainty. Some factors which prevent forming of such certainty are considered in the present paper.

The peculiarity of the cognitive activity of a forensic expert is that his/her conclusion should reflect the inner conviction, ie the confidence of the expert in its reliability. The objective side of the inner conviction can be only a set of factual data established during the expert study, regardless of any external influences and actions.

Keyworlds: *cognitive activity of the legal expert, forensic scientist, expertise conclusions, principle of inner certainty, professional qualities of the legal expert, forensic scientist.*

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DETERMINATION OF CONCEPTUAL PRINCIPLES OF CRIMINAL PROCEDURAL MEANS FOR ENSURING THE SAFETY OF UKRAINIAN CUSTOMS OFFICERS

Інна Єфімова. ВИЗНАЧЕННЯ КОНЦЕПТУАЛЬНИХ ЗАСАД КРИМІНАЛЬНИХ ПРОЦЕСУАЛЬНИХ ЗАСОБІВ ЗАБЕЗПЕЧЕННЯ БЕЗПЕКИ ПРАЦІВНИКІВ МИТНИЦІ УКРАЇНИ. Досліджуються організаційні особливості визначення концептуальних засад кримінальних процесуальних засобів забезпечення безпеки працівників митниці України. Акцентується увага на тому, що високо оцінюючи значимість здобутків науковців, формування системи кримінального процесуальних засобів забезпечення безпеки працівників митниці й досі залишається актуальним. Можливо, публічне обговорення зазначених проблем підвищить ефективність кримінальної процесуальної практики забезпечення безпеки не тільки працівників митниці, а й інших правоохоронних органів України у контексті глобального реформування законодавства України.

Підкреслюється, що на висвітлення теоретично сформульованих та емпірично доведених положень і рекомендацій щодо сталого забезпечення безпеки працівників митниці запропоновано шляхи удосконалення цієї діяльності з урахуванням реформування правоохоронних органів та безпосередньо вдосконалення положень Кримінального процесуального кодексу України.

Наголошено, що велике значення для правового регулювання кримінального процесуального забезпечення безпеки працівників митниці України при виконанні службово-професійних завдань мають закони України «Про державний захист працівників суду і правоохоронних органів» та «Про забезпечення безпеки осіб, які беруть участь у кримінальному судочинстві», якими передбачено систему заходів від перешкоджання виконанню покладених обов'язків і здійсненню наданих прав, а так само від посягань на життя, здоров'я, житло і майно зазначених осіб та їх близьких родичів у зв'язку зі службовою діяльністю. Керівники підрозділів повинні постійно: проводити інструктажі щодо заходів безпеки при проведенні спеціальних операцій; проводити відповідні заняття з метою підвищення навичок співробітників; проводити розбір екстремальних ситуацій, які вже виникли або можуть виникнути; моделювати можливі екстремальні ситуації; доводити до підлеглих відповідні накази та здійснювати контроль за виконанням відповідних розпоряджень і вказівок; впроваджувати у службову діяльність нові технічні розробки, зброю, спеціальні засоби тощо.

Вказано, що комплекс правових заходів передовсім процесуального характеру, повинен гарантувати співробітникам та їх близьким родичам їх правовий, фізичний, психологічний захист та захист немайнових прав і свобод у разі виникнення необхідності. Але багато проблем виникає під час реалізації заходів безпеки. Насамперед не відпрацьовано механізм реалізації цих заходів, швидкість та оперативність проведення відповідних заходів, відсутнє належне матеріально-технічне забезпечення їх реалізації (наприклад, необхідно швидко підготувати несправжні імітаційні засоби, а саме зміни прізвище, ім'я, по-батькові працівника тощо). Для більш ефективної реалізації заходів, передбачених цими законами, необхідно ввести до структури Служби безпеки України спеціальний підрозділ, на який буде покладено вирішення заходів безпеки працівників Державної прикордонної та Держаної митної служби України.

***Ключові слова**: кримінальна процесуальна діяльність, негласні слідчі (розшукові) дії, кримінальні процесуальні засоби забезпечення безпеки, працівники митниці, підрозділи власної безпеки, Державна митна служби України.*

Relevance of the study. The formation of a new socio-economic structure of Ukraine, the formation and transformation of state institutions are fraught with many problems. Objective complexity and subjective miscalculations in the course of large-scale reforms have determined the intensification of criminal processes and the transformation of criminal activity into a social practice, which acquires new systemic quality due to the active establishment of cor-

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rupt relationships and the penetration of power structures.

The legal status of customs officers has also changed dramatically. The activity on provocations, attempts of unlawful pressure on customs officers was intensified. According to statistics, 19 crimes were registered against customs officers in 2017, 25 crimes in 2018, and 27 crimes in 2019.

Recent publications review. The theoretical basis of the article was the work of domestic and foreign scientists in the field of theory of operative-search activity and counteracting organized crime, in particular: M. I. Anufriev, K. V. Antonov, O. M. Bandurka, V. I. Vasylynchuk, S. M. Husarov, O. M. Dzhuzha, E. O. Didorenko, O. F. Dolzhenkov, V. P. Zakharov, O. V. Kyrychenko, A. M. Kyslyy, I. P. Kozachenko, O. I. Kozachenko, O. E. Korystin, S. I. Minchenko, D. I. Nykyforchuk, V. A. Nekrasov, S. V. Slinko, S. V. Obshalov, V. L. Ortynskyy, M. A. Pogoretskyy, D. V. Pryymachenko, V. D. Pcholkin, V. S. Sapsay, V. V. Topchiy, V. H. Teliychuk, O. V. Husainov, S. S. Chernyavsky, A. A. Yukhno, V. V. Shendryk, I. R. Shynkarenko and others.

Recognizing the importance of the achievements of these scientists, it is necessary to emphasize that the operative-search security of the customs employees is still relevant. It is possible that public discussion of these problems will increase the effectiveness of the operative-search practice of ensuring security not only of customs officers, but also of other law enforcement agencies of Ukraine in the context of global reform of Ukrainian legislation.

The article's objective is to clarify theoretically formulated and empirically proven provisions and recommendations on the operative-search security of customs officers and to propose ways of improving this activity taking into account the reform of the operative-search legislation and directly the provisions of the new Criminal Procedure Code of Ukraine.

Discussion. Defining the conceptual foundations of criminal procedural means of ensuring the security of customs officers of Ukraine requires coverage of theoretically formulated and empirically proven provisions and recommendations and can be formed in the following areas [1, pp. 179-183]:

The first direction «Theoretical and legal principles of security of customs officers» is covered by three blocks [2, p. 43; 3; 4, p. 27].

Block 1.1 «Scientific developments to ensure the safety of customs officers» examines the state of scientific development of issues of customs officers.

As a result of the analysis of scientific publications on the issue of ensuring the safety of law enforcement officers in general and customs officers in particular, the types of threats and possible ways to improve this activity are identified. The analysis of scientific achievements on ensuring the safety of law enforcement officers of Ukraine allows us to conclude that most problems of operational and investigative support are considered by scientists in general or it concerns only the system of measures provided by the Law of Ukraine «On State Protection of Court and Law Enforcement Officials» duties imposed on law enforcement officers and the exercise of the granted rights, as well as encroachments on the life, health, housing and property of these persons and their close relatives in connection with the official activities of these employees.

Block 1.2 «Legal regulation of security of customs officers».

In order for customs officers to successfully protect the rights and freedoms of citizens, they need to professionally protect themselves, and for this they need to know the relevant legislation, be physically and technically prepared, skillfully and honestly perform their duties, even if someone does not like it. – be assured that their conscientious work will be duly appreciated and that the honor, dignity, health and property of them personally and their loved ones will be safely protected.

There are external and internal levels of danger in the activities of customs officers. The first are related to the peculiarities of the external environment, and the second – with the nature, content, mode of operation. Solving the problem of legal protection involves finding and identifying significant factors that affect security and depend on employees.

An important condition for the legal protection of customs officers is their legal actions. A study of legal protection issues has shown that it is impossible to eliminate the undesirable consequences only by creating safe conditions, because customs officers often become the causes of violations of the law.

Block 1.3 «Guarantees of legal protection of customs officers».

Some guarantees of legal protection of customs officers remain undefined and undisclosed in essence. In this regard, the law should provide for the improvement of such measures

to ensure the personal safety of customs officers as: providing them and their relatives with personal protection, protection of their homes and property; providing them with temporary use of personal protective equipment, danger notifications, special means, firearms; measures to ensure the confidentiality of data on the object of protection; transfer to another job; issuance of new documents with changed personal data; relocation to another place of residence at the expense of the state. It is a question of revision of norms on criminal and administrative responsibility for counteraction to lawful activity of customs bodies and the further implementation of provisions of the Law of Ukraine «About state protection of employees of court and law enforcement agencies».

The second direction «Organizational and legal framework for ensuring the safety of customs officers» consists of three blocks and is devoted to the practical basis and organizational measures for the safety of customs officers [5; 6; 7, p. 30-35].

Block 2.1 «Characteristics of criminal offenses against customs officers».

Counteraction to criminal offenses against customs officers is impossible without knowledge of the special conditions and reasons that contribute to the commission of such crimes. The low protection of customs officers from crimes leads to their intimidation and the spread of violations of official discipline in the customs authorities of Ukraine. The general causes of this phenomenon include: low income and social protection of customs officers of Ukraine; significant overload of employees' own safety; the level of logistics does not correspond to today's realities; the customs personnel training system does not meet the requirements of today; staff turnover and, as a consequence, loss of corporate experience; ineffective crime prevention system by own security units; lack of effective public control over the activities of the customs authorities of Ukraine; difficult legal situation with the definition of the rights and responsibilities of customs officers; negative social background; closed and excessive corporate nature of the system of customs authorities of Ukraine.

Block 2.2 «Model of sustainable provision of criminal proceedings for crimes against customs officers».

Factors that reduce the effectiveness of operational and investigative support at all stages of criminal proceedings for crimes against customs officers: shortcomings in the regulation of this area of activity; low level of operational readiness of criminal police forces and means; inconsistency of the level of organization of covert investigative (search) actions with the requirements of the time; reforming the bodies of revenues and fees of Ukraine and other law enforcement agencies; insufficient level of professional training of operatives; lack of modern scientific and methodological support; lack of modern scientific developments on innovations in procedural activities.

Detection of investigated crimes should be understood as a defined system of organizational measures, investigative actions, forensic, operational and investigative and other investigative measures that ensure rapid and complete detection and consolidation of traces of a crime committed in non-obviousness and identification of the perpetrator.

Block 2.3 «Use of confidential cooperation to ensure the safety of customs officers».

The prevailing opinion of scholars and practitioners is that the advantage of this form of operational and investigative support is that the information obtained can be immediately involved in the process of proving the implementation of appropriate covert investigative (investigative) actions or court decisions and thus gain the force of judicial evidence. Using this advantage, operational units of all tools of operational and investigative activities most often use the development of detained or arrested persons suspected of committing the investigated crimes.

Despite the existing shortcomings and miscalculations in the practice of using the incriminating method, researchers always appreciate its importance in combating crime. The incriminating search is a purposeful action of confidants to timely identify and obtain promptly relevant information about the facts that are the bearers of illegal acts and behavior of the criminal environment, or when they commit these crimes, further action to conceal them and counter law enforcement agencies.

The third direction is «Organizational and tactical principles and directions of improving the criminal procedural security of customs officers» [8, pp. 59-62; 9, pp. 31-33; 10, pp. 27-30].

Block 3.1 «Organization of operational and investigative support of pre-trial investigation in criminal proceedings for crimes against customs officers».

Adherence to the conspiracy of operational units, their technical equipment and experi-

ence gained in conducting all possible covert investigative (investigative) actions to expose the criminal activities of criminal structures and their participants, which allows to obtain such primary information that can effectively supplement or clarify information on investigated crimes.

In combination with other means and methods, especially proactive search, covert surveillance allows to obtain data on the behavior and actions of persons undergoing criminal proceedings. It is important to stop or neutralize the counteraction to the criminal environment during the operational and investigative support of further investigation of crimes of this category in full.

Block 3.2 «Features of operational and investigative support of criminal proceedings for crimes against customs officers».

Ensuring the stage of trial solves the following tasks: 1) continuing a set of operational and investigative measures and covert investigative (search) actions against the accused, defendants in order to identify and document their opposition to a fair trial; 2) detection and documentation of illegal actions of officials and other participants in the trial, who showed intent or committed acts in violation of the principle of inevitability of liability of the defendants for what was done; 3) detection and documentation of crimes committed by the accused or their criminal connections, which remained undisclosed in the criminal process or unreasonably excluded from it due to lack of proof of guilt.

Block 3.3 «The current state of customs officials to prevent crimes against them».

In order to protect the life, health, property, etc. of customs officers, it is necessary to take legal measures, in particular legal protection, which should include protection of the professional activities of the employee and his family members. It can be divided into two types: the first – permanent – is the provision of legal guarantees by the Constitution of Ukraine and the laws of Ukraine; the second – situational – is used in case of a certain situation. The second type involves the study of adverse factors and dangers in the activities of customs officers, identifying opportunities for society, the state, certain institutions to minimize them, compensation and correction of their impact on the development of the employee's personality in terms of legal protection.

Conclusions. It is proved that a set of legal measures, primarily of a procedural nature, should guarantee employees and their close relatives their legal, physical, psychological protection and protection of non-property rights and freedoms in case of need.

Heads of units must constantly: conduct briefings on security measures during special operations; to conduct appropriate classes in order to improve the skills of employees; to analyze extreme situations that have already arisen or may arise; model possible extreme situations, bring relevant orders to subordinates and monitor the implementation of relevant orders and instructions; to introduce new technical developments, weapons, special means into official activity; pay attention to the formation of a positive image of customs authorities through the media; constantly improve leadership style; to promote the creation of a favorable socio-psychological atmosphere in the teams of customs authorities; to form ways of realization of administrative activity by heads (complexity, planning, control, management, obligatory feedback, efficiency, hierarchy, staffing, responsibility, stimulation, adequacy, unambiguity, single leadership, interaction, coordination, timeliness, statistics).

But many problems arise during the implementation of security measures. First of all, the mechanism for implementing these measures, the speed and efficiency of the relevant measures, there is no proper logistics of their implementation (for example, it is necessary to quickly make an operation to change the appearance of the employee, etc.). For more effective implementation of the measures provided by these laws, it is necessary to introduce a special unit into the structure of the State Customs Service of Ukraine, which will be responsible for security measures or which can be introduced into the Department of Internal Security of employees of the State Customs Service of Ukraine.

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Abstract

The article examines the organizational features of determining the conceptual foundations of criminal procedural means of ensuring the safety of customs officers of Ukraine. Emphasis is placed on the fact that highly appreciating the importance of the achievements of scientists, the formation of a system of criminal procedural means of ensuring the safety of customs officers still remains relevant. It is possible that a public discussion of these issues will increase the effectiveness of criminal procedural practices to ensure the security not only of customs officers but also of other law enforcement agencies of Ukraine in the context of global reform of Ukrainian legislation.

Keywords*: criminal procedural activity, covert investigative (search) actions, criminal procedural means of security, customs officers, own security units, the State Customs Service of Ukraine.*

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ISSUES OF TYPICAL INVESTIGATIVE SITUATIONS IN THE INVESTIGATION OF INVOLVEMENT OF MINORS IN ILLEGAL ACTIVITIES

Володимир Приловський. ЩОДО ТИПОВИХ СЛІДЧИХ СИТУАЦІЙ ПРИ РОЗСЛІДУВАННІ ВТЯГНЕННЯ НЕПОВНОЛІТНІХ У ПРОТИПРАВНУ ДІЯЛЬНІСТЬ. Висвітлено деякі аспекти розслідування втягнення неповнолітніх у протиправну діяльність. Розглядаються типові слідчі ситуації в досліджуваній категорії кримінальних проваджень.

Зазначається, що відповідні уповноважені особи повинні виконувати свої посадові обов'язки згідно конкретних обставин та обстановки. Загалом, можна сказати, що однією з основоположних наукових категорій для планування та організації досудового розслідування є слідча ситуація. Водночас утягнення неповнолітніх у протиправну діяльність характеризується специфічними обставинами, що впливають на алгоритми дій працівників Національної поліції під час виявлення та розслідування вказаних кримінальних правопорушень.

Підтримується позиція, що типова слідча ситуація є динамічною інформаційною системою, елементами якої є істотні ознаки й властивості обставин, що мають значення у кримінальній справі, зв'язки, відносини між ними, а також учасниками процесу розслідування, що настали, і передбачувані результати дій сторін. При розслідуванні досліджуваної категорії кримінальних правопорушень має найбільш важливе значення безпосередньо практична складова типових слідчих ситуацій.

Визначається, що на початковому етапі розслідування втягнення неповнолітніх у протиправну діяльність виникають наступні типові слідчі ситуації: а) особа, яка втягнула неповнолітнього в протиправну діяльність, відома та затримана, є достатня кількість матеріальних та особистісних доказів, що свідчать про конкретні умови кримінального правопорушення, для повідомлення підозри; б) особа, яка втягнула неповнолітнього в протиправну діяльність, відома, але матеріальних та особистісних доказів недостатньо для повідомлення йому про підозру; в) особа, яка втягнула неповнолітнього в протиправну діяльність, відома, є достатня кількість матеріальних та особистісних доказів, але злочинець переховується від правоохоронних органів; г) виявлено факт втягнення неповнолітнього в протиправну діяльність, але особа злочинця не встановлена.

Ключові слова: *протиправна діяльність, неповнолітній, втягнення, типова слідча ситуація, слідча (розшукова) дія, організація.*

Relevance of the study. Criminal proceedings of any category should be based on purposeful and planned activities of law enforcement officers. The relevant authorized persons must perform their duties according to the specific circumstances and circumstances. In general, we can say that one of the fundamental scientific categories for planning and organizing a pre-trial investigation is the investigative situation. At the same time, the involvement of minors in illegal activities is characterized by specific circumstances that affect the algorithms of actions of the National Police during the detection and investigation of these criminal offenses. Therefore, we consider it necessary to investigate the issues of typical investigative situations in the investigation of a certain category of illegal acts.

Recent publications review. Significant contribution to the development of typical investigative situations of investigation was made by such scientists as Yu. P. Alenin, V.P. Bakhin, V.D. Bernaz, R.S. Belkin, O.I. Vozgrin, A.F. Volobuev, I.F. Gerasimov, V.A. Zhuravel, A.V. Ishchenko, V.O. Konovalova, M.V. Saltevsky, R.L. Stepanyuk, V.V. Tishchenko, M.P. Yablokov and others. But our study specified the typical investigative situations in the investigation of the involvement of minors in illegal activities, given the current forensic practice and the position of scientists.

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The article's objective is to study typical investigative situations in the investigation of the involvement of minors in illegal activities.

Discussion. It should be noted that we support the position of M.P. Yablokov that investigative situations allow to ensure the following things: a) to properly navigate the diversity of factual and other situations during the investigation in order to obtain data for tactical and strategic decisions in the case; b) to put forward the most substantiated investigative versions and determine the correct direction of the further course of the investigation; c) outline the optimal choice of investigative, operational and investigative actions, forensic operations and their appropriate priority; d) to minimize the number of methodological decisions of the investigator, based on trial and error [12, p. 89].

In turn, some authors emphasize that the essence of the initial stage of the investigation: is characterized by uncertainty associated with lack of information and its incompleteness, so the dominant focus of the investigator at this stage is «identifying the necessary evidence and tactical information and its sources. This task is solved taking into account the current investigative situation by conducting a set of investigative, other procedural and organizational actions. Most often, the basis for investigative actions is a forensic version. The main task of the initial stage, as a rule, is to identify the person involved in the crime. Therefore, the collection of information about it begins with a retrospective study of the traces left at the crime scene, in the memory of eyewitnesses, and so on. The information obtained is used to put forward versions of the subject of the crime, to determine the direction of his search [9]. In this regard, the question arises, the filling of typical investigative situations investigating the involvement of minors in illegal activities.

The opinion of I.I. Kohutych, who emphasizes that there are certain stages in the investigation process, namely:

1) initial – the period of investigative (search) actions, the temporal factor of which is characterized by the so-called urgency, also seems relevant to us. The beginning of this stage coincides, according to the scientist, with the beginning of the pre-trial investigation defined by part 1 of Art. 214 of the CPC, and ends with the implementation of tasks due to this stage;

2) the next stage – the period of all other investigative (search) actions aimed at thorough and systematic collection of evidence in the proceedings;

3) the final stage – the final period of the investigation, which begins when the investigator (prosecutor) decides to terminate the investigation and ends with the adoption of an authorized person of one of the procedural decisions under Art. 283 of the Criminal Procedure Code of Ukraine [5, pp. 235-236].

In view of the above, it should be noted that the initial and subsequent stages of the investigation into the involvement of minors in illegal activities will differ in the presence of a certain procedural participant: the suspect.

For her part, V.O. Shershneva on the content of the initial investigative situation noted that it can be considered in two aspects: theoretical (as typical for a particular type of crime and even more broadly – as a scientific, abstract category) and practical (as a specific life situation) in a criminal case under investigation, characterizes the initial stage of the investigation and includes, first of all, information on the results of preliminary inspections, urgent investigative actions and operational and investigative measures), and its main elements are: priority information obtained during the inspection statements, notifications and immediately after the initiation of a criminal case, about an event that contains signs of a crime, and about the persons involved in this event; objective conditions that characterize the receipt of this information; the forces and means at the disposal of the investigator for further work on the use of initial information in these conditions; the position of the suspect, victim, witnesses, as well as the results of their opposition to the establishment of the truth at the initial stage of the investigation and the potential for counteraction; other factors that hinder or contribute to the successful solution of forensic tasks (loss of material evidence found during the inspection, guilty plea, etc.) [11].

A.V. Ishchenko emphasizes that the study of the investigative situation as a forensic category has theoretical and applied significance. The theoretical significance of the development of this problem in general lies in the objective need to specify the content and concept of this scientific category. Its practical significance is that determining the content of investigative situations, their classification, analysis and evaluation provide an opportunity to objectively justify the choice of investigation methods that would best meet the circumstances and objectives of the investigation at a certain stage [3, p. 57]. Important in the investigation is

the most important direct practical component of typical investigative situations.

It is pertinent to conclude that the typification of investigative situations is possible provided that information is selected on some of the most important elements and such common components. Thus, M.S. Kachkovsky identified several groups of factors, the first of which includes information about certain circumstances of criminal activity (the person who committed the crime, the method, traces of the crime, the subject of encroachment and the amount of damage). The second group consists of a set of information about the most significant circumstances of the investigation (the state of the evidence base, the possibility of investigation, the behavior of suspects and other participants in the investigation, outsiders who try to interfere in the investigation). Typical investigative situations carry the main informational and organizational-methodical load in the construction of methods of investigation of crimes related to the intentional introduction of dangerous products on the Ukrainian market, and the most typical investigative situations of the initial and subsequent stages of investigation are interrelated [4].

Therefore, we believe in the position of S.I. Konovalov on the fact that the classification of investigative situations is useful as a form of organizing and organizing knowledge about it, but the idea of it should be supplemented by the mechanism of its influence on the investigation process, considering how it should be in these conditions organize and implement an investigation program [6, p. 124]. In this context, it is appropriate to cite the views of scholars who classify proceedings on the source of primary information about criminal offenses, namely: 1) cases initiated on operational materials and 2) cases in which the fact of pimping revealed by the investigator. The scientist stressed that a set of ways to collect primary information depends on it. In case of incomplete information received at the time of initiating a criminal case, the factor of suddenness in the production of primary investigative actions will be significantly lost, because the initiation of a criminal case on the same day is notified to the person against whom it was initiated. In the absence of initial information, the investigator is deprived of the opportunity to immediately plan, prepare and conduct urgent investigative actions so that the fact of notifying suspects of a criminal case did not interfere with exposing them in criminal activity [10, p. 11].

V.K. Gavlo noted that the following provisions should be taken into account during the practical application of a typical investigative situation to put forward versions and orient in the investigation environment: a typical investigative situation is a scientific concept regarding the manifestation of the general limits of the investigation it is the most probable, exemplary for the given conditions situation of investigation; the basis of a typical investigative situation is information data focused on the general boundaries of the forensic characteristics of certain types (groups) of crimes and the conditions of their investigation; a typical situation has «its» natural set of features (about the course and state of the investigation), the system of which individualizes it, makes it stable, fixed at the moment of the investigation, which allows to group situations by different, previously named, provisions [1, pp. 243-244].

Therefore, after entering the information into the URPI, as mentioned above, the initial stage of the investigation begins immediately. V.V. Tishchenko offers the following list of tasks of the initial stage of crime investigation:

1. Detection and recording of evidentiary information about the crime, which is being investigated on the «hot leads».
2. Taking measures to prevent the loss of evidence contained in traces, other objects, its timely detection and fixation.
3. Clarification and assessment of the current investigative situation.
4. Identification of sources of information about the investigated crime.
5. Determining the direction of the investigation and developing an investigation plan.
6. Choosing the form and methods of interaction with bodies and services carrying out operational and investigative work.
7. Search and obtain information about the mechanism and circumstances of the crime.
8. Collection and study of information about the identity of the victim.
9. Search, receipt and analysis of information about the perpetrators, their search and detention [8, p. 137].

Regarding the definition of a typical investigative situation, we consider the most accurate definition given by L. Ya. Drapkin, who formulated the investigative situation as a dynamic information system, the elements of which are the essential features and properties of circumstances relevant to a criminal case, connections , the relationship between them, as well

as the participants in the investigation process that occurred, and the expected results of the actions of the parties [2, p. 28].

Regarding their classifications, forensic scientists emphasize that many of these situations are typical. Thus, the main directions of the investigation are determined accordingly. For example, the initial stage is characterized by the following situations: 1) there is information about the event of the crime and the person allegedly guilty of it (mainly from the victims), but it is not yet clear whether this event was real, whether it was criminal and involved the person is specified to it. The direction of the investigation is to establish the reality of the event, its specific circumstances, the involvement of the suspect. It is of great importance to identify relevant traces and physical evidence and features of the relationship between the participants of the event. If necessary, the suspect is detained; 2) events with signs of a crime have been established and specific persons who are responsible for this according to their official position are known, but the nature of their personal guilt is not known. The direction of the investigation is to find out the immediate and main causes of the event and the degree of influence on the occurrence of the main causes of each of these persons, to identify the main culprits and prove their guilt; 3) events with signs of a crime have been established, which could be committed and used only by persons from a certain circle according to their position (forged expenditure documents, non-commodity transactions, destruction of accounting documents) or for which special professional skills and knowledge are required. money, securities, hacking storage using sophisticated methods). The direction of the investigation – the study of behavior related to the event under investigation, each suspect, the nature of their relationship to the identified data, establishing the fact that any of them used the results of the crime; 4) events with signs of a crime have been established, but there is no or almost no information about the guilty person (theft, secret murders). The direction of the investigation – using the use of standard versions of the detection of the maximum amount of data characterizing the offender, the area of his possible stay, screening of identified suspects, detention of the guilty person [7, p. 262].

Based on the study of the materials of the proceedings, it was established that at the initial stage of the investigation of the involvement of minors in illegal activities, the following typical investigative situations arise:

a) the person who involved the juvenile in illegal activities, known and detained, has a sufficient amount of material and personal evidence indicating the specific conditions of the crime, to report the suspicion – 15 %;

b) the person who involved the minor in illegal activities is known, but material and personal evidence is not enough to inform him of the suspicion – 52 %;

c) the person who involved the juvenile in illegal activities is known to have a sufficient amount of material and personal evidence, but the offender is hiding from law enforcement agencies – 23 %;

d) the fact of involvement of the juvenile in illegal activity is revealed, but the identity of the criminal isn't established – 10 %.

Conclusions. Summing up, we note that one of the fundamental scientific categories for planning and organizing a pre-trial investigation is the investigative situation. The position is maintained that it is a dynamic information system, the elements of which are the essential features and properties of the circumstances relevant to the criminal case, connections, relations between them, as well as participants in the investigation process and the expected results of the parties. Based on the study of forensic practice and the opinions of scholars, typical investigative situations of the initial stage of the investigation of the involvement of minors in illegal activities were identified.

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Abstract

The article deals with covering some aspects of the investigation of the involvement of minors in illegal activities. Typical investigative situations in the studied category of criminal proceedings have been considered.

It is stated that the relevant authorized persons must perform their duties according to the specific

It has been determined that at the initial stage of the investigation of involvement of minors in il-

legal activities, the following typical investigative situations arise: a) the person who involved a minor in illegal activities is known and detained, there is sufficient material and personal evidence reports of suspicion; b) the person who involved the minor in the illegal activity is known, but the material and personal evidence is not sufficient to inform him of the suspicion; c) the person who involved the juvenile in illegal activities is known to have a sufficient amount of material and personal evidence, but the offender is hiding from law enforcement agencies; d) the fact of involvement of the juvenile in illegal activity is revealed, but the identity of the criminal isn't established.

Keywords: *illegal activity, juvenile, involvement, typical investigative situation, investigative (search) action, organization.*

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PROBLEMATIC ISSUES RELATING TO THE AGE OF THE VICTIM OF THE CORRUPTION OF MINORS

Вадим Фурса. ПРОБЛЕМНІ ПИТАННЯ ЩОДО ВІКУ ПОТЕРПІЛОЇ ВІД РОЗПУСНИХ ДІЙ ОСОБИ. У статті, на підставі аналізу теоретичних напрацювань з кримінального права та діючих положень Розділу IV Особливої частини Кримінального кодексу України, здійснено спробу проаналізувати інститут потерпілої від розпусних дій особи. Зокрема, у статті зазначається, що Законом України від 14 березня 2018 «Про внесення змін до Кримінального кодексу України щодо захисту дітей від сексуальних зловживань та сексуальної експлуатації» було змінено редакції статей 155 та 156 КК України та фактично виконано вимоги ст. 18 Конвенції Ради Європи про захист дітей від сексуальної експлуатації та сексуального насильства в частині рекомендації країнам-учасникам визначити вік, до досягнення якого заборонені статеві відносини з дитиною навіть за добровільної згоди останньої, при цьому закріплено, що віком до досягнення якого заборонено будь-які статеві відносини з неповнолітнім є 16-річний вік.

Також у статті аналізуються аргументи вчених щодо підвищення віку потерпілої від розпусних дій особи. Загалом, погоджуючись із аргументами вчених, доводиться недоцільність на даному етапі підвищувати вік потерпілої особи до 18 років, оскільки підвищення віку не вирішить проблему вчинення розпусних дій в силу того, що значна кількість дітей вступає в добровільні статеві відносини ще в малолітньому віці. У зв'язку з цим акцентовано увагу на необхідності запровадження сексуальної освіти на рівні початкової та середньої школи, яка в кінцевому результаті приведе до формування сексуально свідомої людини із високими моральними цінностями, і як наслідок зменшить кількість ранніх статевих контактів малолітніх та неповнолітніх осіб, а також зменшить кількість статевих злочинів узагалі.

Ключові слова: *статеві зносини, розбещення неповнолітніх, розпусні дії, статеві злочини, потерпіла особа, вік потерпілої особи, сексуальна освіта.*

Relevance of the study. The topic of sexual crimes against minors remains relevant. They pose an increased public danger. The position that a child, due to his physical and mental immaturity, needs increased protection and guardianship, has long been universally recognized. As a result of the commission of a sexual crime against a minor, his further physical and mental development is often disrupted. Such persons may form the wrong, from a moral point of view, the idea of sexual relations. Subsequently, personality deformation is not excluded. Also, sexual crimes are characterized by high latency, therefore, the registered cases of this category of crimes do not reflect reality.

This largely intensified the search for ways to improve the current legislation in Ukraine, which is still taking place.

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Recent publications review. The problems of the general criminal law and criminological characteristics of crimes against sexual freedom and sexual inviolability are reflected in the works of S. Avramenko, Yu. Aleksandrov, Yu. Antonyan, M. Bazhanov, Yu. Baulin, L. Brich, A. Dudorov, A. Ignatov, A. Savchenko, O. Sineokogo, A. Svetlichny, S. Chmut, I. Chugunikov, Y. Yakovlev and others. Despite significant scientific developments, advances in legal practice, discussions between scholars continue.

The article's objective. Analysis of the need to raise the age of the victim of lecherous actions of a person, taking into account the latest changes in criminal legislation.

Discussion. The Law of Ukraine dated March 14, 2018 «On Amendments to the Criminal Code of Ukraine is regarding the Protection of Children from Sexual Abuse and Sexual Exploitation» changed the disposition of Articles 155 and 156 of the Criminal Code of Ukraine. The law proposes a new version of Article 155 of the Criminal Code of Ukraine. In part of the first article, the legislator changed the evaluative concept of «sexual maturity» to a specific age – 16 years. He also consolidated the provision that only adults are subject to criminal liability. In the second part of the article, the list of special subjects of crime is replaced by the general concept of «close relatives or family members». Also, the article is supplemented with a note that refers to another normative act. There are much fewer changes to Article 156. In the second part of the article, the list of special subjects of crime is replaced by the general concept of «close relatives or family members».

With these changes, the legislator has complied with the requirements of Art. 18 of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. It is legally stipulated that the age before reaching which any sexual relations with a minor are prohibited is 16 years of age.

At the same time, researchers have repeatedly raised the issue of raising the age of the victim to 18 years.

S. Avramenko believes that raising the age, firstly, will coordinate the title of Article 156 of the Criminal Code with the disposition of Part 1 of this norm, and secondly, the norms of the Ukrainian Criminal Code will be consistent with the provisions of international treaties ratified by the Verkhovna Rada of Ukraine; thirdly, criminal law protection will cover a diverse area of sexual inviolability of minors, fourthly, the normal sexual development of a person during the period of minority will lay high ideals of family values and promote the harmonious development of a new generation of Ukrainian citizens [1, pp. 70-71].

A. Svetlichny believes that the sexual sphere of life of young people and their safety is extremely important from the point of view of vulnerability. Consequently, the proposal to raise the age of the victim from the corruption of minors to eighteen years is an actual and demanded thought in modern society [2, c. 88].

The main argument in favor of raising the victim's age to 18 years is the child's physiological and mental development. The scientist points out that the peculiarities of the psychophysical sexual development of an individual do not distinguish the achievement of 16 years of age as a certain milestone in the development of minors. On the contrary, the period from 15 to 18 years old is defined as early adolescence and is the period of completion of the physical maturation of the body.

As the next argument, the researcher cites the provision that in the criminal legislation of many countries responsibility for the corruption of minors is established exclusively for persons of eighteen years of age. Thus, the legislator assigns full control over sexual relations in society to adults. Also, an argument in favor of an increase is that, recognizing as a victim of lecherous actions of a person who has not reached the age of sixteen, the legislator artificially deprived the criminal legal protection of persons who, for objective reasons, have not reached puberty and are in an active phase of sexual development [2, pp. 87-90].

Agreeing with the arguments of scientists, we consider it inappropriate to increase the age of the injured person to 18 years at this stage. We believe that raising the age will not solve the problem of committing lecherous acts, since a significant number of minors enter into voluntary sex at a young age.

In 2018, UNICEF released the results of a study on adolescent sexual initiation. The results obtained indicate that more than half of adolescents (56% among boys and 58% among girls) had sex with people of the opposite sex. With increasing age, the number of adolescents who have had sex with persons of the opposite sex is growing: among adolescents 10-13 years old, almost every ninth (11%) had sexual intercourse, among adolescents 18-19 years old – 92%.

Among adolescents who had sex with persons of the opposite sex, about half (46%) had

their first sexual experience at the age of 14-15, and 17% – at the age of 6-13. Among girls, every fifth (21%) had the first sexual intercourse at the age of 6-13, and every second or third (42%) – at the age of 14-15. Among adolescents, every seventh (15%) began sexual activity at the age of 6-13, every second (48%) – at the age of 14-15.

67% of adolescents had the first sexual intercourse at the age of 14-15 years. 56% of adolescents had the first sexual intercourse at the age of 16-17 years. 37% of adolescents had the first sexual intercourse at the age of 18-19 years.

Among adolescents who had sex with people of the opposite sex, almost a quarter (24%) had 3-5 partners in the last year, and 12% had 6 partners or more. The older the adolescents, the more among them are those who have had 3-5 partners in the last year: among adolescents 10-13 years old, such 14%, among adolescents 18-19 years old – 27%. Among adolescents who have had sex with people of the opposite sex, 60% have regular sexual partners (such 68% among girls and 57% among boys). The older the adolescents, the more among them are those who have regular sexual partners: 23% among 10-13 year olds, 67% among 18-19 year olds. Among adolescents who have regular partners, a quarter (26%) had 2 or more sexual partners in the last year. This concerns girls to a greater extent than boys (31% and 23.5%, respectively), as well as 14-15-year-olds, compared to representatives of other age groups (32%, among 16-17-year-olds – 24%, 18 -19 year olds – 27%).

Among adolescents who have had sexual intercourse with persons of the opposite sex, every second (51.5%) has experience of sexual intercourse with a casual partner. This is predominantly typical for boys than for girls (58% and 38%, respectively). With increasing age, the proportion of adolescents who have had sexual contacts with casual partners increases: from 46% among 10-13-year-olds and 14-15-year-olds to 56% among 18-19-year-olds.

Among adolescents who had casual sexual partners, 38% had 2-3 partners in the last year, and 28% had 4 or more partners. There are no statistically significant sex differences in the number of partners during the last year. 2-3 casual partners had 40% of girls and 37% of boys, 4 or more partners – 25% of girls and 28% of boys. Those who had 2-3 casual sexual partners within the specified period are slightly less among those 10-13 years old (33%) and more among 16-17-year-olds (41%). Condoms are generally not used by minors in the case of casual sex [3, pp. 28-31].

At the same time, Ukraine continues to be the country with the largest number of HIV-infected people. Unprotected sexual intercourse remains the main mode of HIV transmission. According to the Public Health Center of the Ministry of Health of Ukraine, at the beginning of 2018, there were 244,000 HIV-infected people living in the country. Every hundredth citizen of Ukraine aged 15 to 49 is infected with HIV. This is one of the highest rates among countries in the region. According to the European Center for Disease Control and Prevention and the Regional Office for Europe of the World Health Organization, the region of Eastern Europe and Central Asia, to which Ukraine belongs, is the only one in the world where the number of new cases of HIV infection and deaths from AIDS continues to grow. As of 01.04.2019, 142,076 HIV-infected citizens of Ukraine were monitored in healthcare institutions (an indicator of 336.5 per 100,000 population), including 46,987 patients diagnosed with AIDS (111.3). In the structure of HIV transmission routes, the share of the sexual route continues to grow (65.6%). At the same time, the relevance of the parenteral route of transmission with the introduction of narcotic drugs remains high, despite the downward trend (20.8%) [4].

Conclusions. Almost every fifth child begins sexual activity at a young age. A significant number of children who have begun sexual activity have several sexual contacts a year with casual sexual partners, as well as regular sexual partners. Adolescents are sexually active. A significant number of sexually active adolescents do not use condoms and are at risk of contracting sexually transmitted diseases, including HIV.

We believe that in the aggregate of such circumstances, it is necessary not to raise the age of the victim, but to pay attention to the sexual education of adolescents. Sexuality education is not only education about sexual relations between people. This is education that is able to convey knowledge about nature and the construction of the human body and physiological processes that occur at a particular period in the development of a child or a healthy person. Sexuality education will provide knowledge about the physical and psychological problems that a person faces during sexual activity and ways to overcome them, provide information about reproductive health and sexually transmitted diseases, about contraception, the procedure for their use and their effect on the human body, about intimate hygiene and

its features depending on gender and the like. Also, sexuality education will convey knowledge about friendship, love and family values, about tolerance, mutual respect in relationships, responsible parenting, about sexual harassment, other crimes and ways to avoid them and not become a victim. Ultimately, sex education will lead to the formation of a sexually conscious person with high moral values and, as a result, will reduce the number of early sexual contacts of minors and minors, as well as reduce the number of sexual crimes in general. Also, sexuality education will serve as a kind of springboard for the fight against sexually transmitted infections.

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Abstract

In the article, based on the analysis of theoretical developments in criminal law and current provisions of Section IV of the Special Part of the Criminal Code of Ukraine, an attempt is made to analyze the institution of a victim of lewd acts. In particular, the article states that the Law of Ukraine of March 14, 2018 «On Amendments to the Criminal Code of Ukraine on Protection of Children from Sexual Abuse and Sexual Exploitation» amended the wording of Articles 155 and 156 of the Criminal Code of Ukraine and actually met the requirements of Art. 18 of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse as regards the recommendation to member states to determine the age at which sexual intercourse with a child is prohibited, even with the latter's voluntary consent, stipulating that any sexual age is prohibited relationship with a minor is 16 years old.

***Keywords**: sexual intercourse, abuse of minors, lewd acts, sexual crimes, victim, age of the victim, sex education.*

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ANALYSIS OF LAW REGULATION OF THE HUMAN ANATOMICAL MATERIAL TRANSPLANTATION IN UKRAINE

Євгенія Філатова. АНАЛІЗ ПРАВОВОГО ЗАБЕЗПЕЧЕННЯ ТРАНСПЛАНТАЦІЇ АНАТОМІЧНИХ МАТЕРІАЛІВ ЛЮДИНИ В УКРАЇНІ. Стаття присвячена аналізу правового забезпечення трансплантації анатомічних матеріалів людини в Україні. Розкрито особливості проблем запуску системи трансплантації для повноцінного врегулювання законодавчої бази.

Згідно з Конституцією України людина, її життя і здоров'я, честь і гідність, недоторканність і безпека визнаються в Україні найвищою соціальною цінністю. Ключовою тенденцією сучасного кримінального права є розвиток законодавства України. Одним із нещодавнім прийняттям став чинний Закон України «Про застосування трансплантації анатомічних матеріалів людині» від 17 травня 2018 року (далі – Закон), який був розроблений на основі Закону України «Про трансплантацію органів та інших анатомічних матеріалів людині» від 16 липня 1999 року.

Новий Закон удосконалив чинну нормативно-правову базу України у сфері трансплантації у відповідності з міжнародними стандартами та світовим досвідом. Реалізація Закону повинна сприяти розвитку трансплантації та вітчизняної медицини на якісному новому рівні. А саме, зменшення рівня смертності серед важко хворих людей та забезпечення реалізації конституційного та природного права людини на життя та охорону здоров'я.

Удосконалення системи трансплантації в Україні є актуальною для нашої держави. Трансплантація сьогодні у всьому світі розглядається як надзвичайно ефективний та в цілому ряді випадків безальтернативний метод лікування необоротних захворювань та ушкоджень таких життєвих важливих органів як нирки, печінка, підшлункова залоза, легені, серце тощо.

Також Україна значно відстає від країн Європи за темпами розвитку клітинної трансплантації, зокрема трансплантації гемопоетичних стовбурових клітин.

Тож аналіз правового забезпечення трансплантації анатомічних матеріалів людини в Україні, розкриває недоліки законодавчої бази, які потребують доопрацювання. Обґрунтовано необхідність внесення доповнень до законодавства досліджуваної теми.

Ключові слова: *трансплантація, кримінальне право, врегулювання законодавчої бази, інформаційна система трансплантації, трансплант-координатор, координаційний центр, реєстр.*

Relevance of the study. One of the main reasons for the development of helminthiasis in Ukraine in this area of medicine is the lack of necessary organs for transplantation. According to preliminary estimates, between 40 and 60 potential donors per 1 million population die each year in Ukraine, which will be about 3,000 donors who could establish the lives of 10,000 patients. Today, in the developed world, transplantation has become the standard treatment for many pathologies, and experts predict that in the middle of the third millennium, 50% of surgical operators may be represented with a human organ transplant. Studying the current scientific state and development of medicine, as well as the possible use of cases, the treatment of patients involves transplantation of organs or other anatomical materials from deceased donors, in Ukraine there is an urgent need to improve the modern legal framework to regulate transfer. In view of this, on May 17, 2018, the new Law of Ukraine «On the use of transplants of human anatomical materials» № 2427-VIII was adopted, which improved the legislation in this area and increased the long way for transplantation in Ukraine. However, in order for the Law to fully invite, it is necessary to finalize and supplement the legislation on transplantation with more specific and clear norms for the activities involved in transplantation, to obtain human

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anatomical materials for the production of bioimplants.

Recent publications review. It is worth noting the works of the domestic and foreign scientists (G. Anikina, V. Glushakova, O. Zherzh, L. Ilyashenko, K. Ilyushchenko, I. Kyryluk, O. Myslyva, A. Musienko, S. Tikhonova, T. Fabriki, G. Chebotaryova and others), who studied the issues of illegal transplantation of human anatomical materials. However, insufficient scientific development of the issue requires further researches. It is necessary to form the list of main problems which arose after the adoption of The Law of Ukraine «On the application of transplantation of anatomical materials to a person», as a result, it will help to improve the sphere of transplantation in Ukraine.

The article's objective is to analyze the law regulation of the transplantation of human anatomical materials in Ukraine.

Discussion. On August 4, 2015, the Verkhovna Rada of Ukraine received The draft Law «On Amendments to Certain Legislative Acts of Ukraine on Health Care and Transplantation of Human Organs and Other Anatomical Materials''. A long process of consideration and making amendments resulted in adoption of The Law of Ukraine «On the application of transplantation of anatomical materials to a person» № 2427-VIII on May 17, 2018, which improved the law regulation in the area and made a big step forward in transplantology in Ukraine.

Due to the Law, important amendments were made to the legislative documents, namely to:

1) The Law of Ukraine «On general state pension insurance» № 1058-IV on July 9, 2003;

2) The Law of Ukraine «On the Burial and the Burial Business» № 1102-IV on July 10, 2003;

3) The Law of Ukraine «On the Prosecutor's Office» № 1697-VII on October 14, 2014;

4) The Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine Concerning Restrictions on State Regulation of Economic Activity» № 2608-VI on October 19, 2010;

5) The Law of Ukraine «Fundamentals of the Legislation of Ukraine on Health Care» № 2801-XII on November 19, 1992;

6) The Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine Concerning the Activities of the Ministry of Education and Science, Youth and Sports of Ukraine, the Ministry of Health of Ukraine, the Ministry of Energy and Coal Industry of Ukraine, Other Central Executive Bodies Directed and Coordinated by the relevant ministers, State Committee for Television and Radio-broadcasting» № 5460-VI on October 16, 2012;

7) The Law of Ukraine «On Amendments and Repeal of Certain Legislative Acts of Ukraine in Connection with the Adoption of the Civil Code of Ukraine» № 997-V on April 27, 2007;

8) Criminal Code of Ukraine № 2341-III on April 5, 2001;

9) The Law of Ukraine «On Safety and Quality of Donor Blood and Blood Components» № 931-IX on September 30, 2020;

Subsequently, in 2020, bylaws were developed and adopted to regulate the Law, namely:

1) Order of the Ministry of Health of Ukraine «On Amendments to the List of Names of Cycles of Specialization and Improvement of Physicians (Pharmacists)» № 289 on February 7, 2020;

2) Order of the Ministry of Health of Ukraine «On approval of measures and means to prevent infection in the healthcare facilities» № 1777 on August 3, 2020;

3) Resolution of the Cabinet of Ministers of Ukraine «On approval of the Procedure for obtaining and providing hematopoietic stem cells and exchange of information on the available human anatomical materials intended for transplantation» № 257 on March 25, 2020;

4) Resolution of the Cabinet of Ministers of Ukraine «On approval of the Procedure for transportation of human anatomical materials within Ukraine, import of such materials into the customs territory of Ukraine and their export from the customs territory of Ukraine» № 720 on August 5, 2020;

5) Resolution of the Cabinet of Ministers of Ukraine «On approval of the Regulations on the Unified State Information System For Organ and Tissue Transplantation» № 1366 on December 23, 2020;

6) Order «On the establishment of a specialized state institution «Ukrainian Center for

Transplant Coordination» 1154-r on September 23, 2020;

7) Resolution of the Verkhovna Rada of Ukraine «On approval of the provisions on the passport of the citizen of Ukraine and on the passport of the citizen of Ukraine for travel abroad» № 2503-XII on June 26, 1992 [2; 3; 5; 6; 9; 10; 14; 17; 18].

The new Law improved the current legal framework of Ukraine in the field of transplantation in accordance with international standards and world experience. The implementation of the Act should promote the development of transplantation and domestic medicine to a qualitatively new level.

Thus, the first aspect of the Law was use of new terms, which are listed in Article 1. The legislator supplemented and clearly defined 28 terms. For comparison, in the previous Act there were only 8 terms.

One of the new terms is a transplant coordinator, it is an employee of a healthcare institution, forensic bureau, a specialized government agency in the field of transplantation of organs, tissues and cells, other business entity engaged in activities related to transplantation, whose job responsibilities include transplant coordination. His or her authority is prescribed in Article 9 of the Law.

At the initiative of the Ministry of Health of Ukraine, the Ministry of Economic Development and Trade of Ukraine approved the profession of «transplant coordinator» in The State Classification of Occupations under code 2229.2.

Acquisition of theoretical knowledge and practical skills in transplant coordination is included in educational programs in the manner prescribed by law.

In early February 2019, the Ministry of Health of Ukraine on the basis of the Zaporizhzhya Medical Academy of Postgraduate Education began training physicians who wish to become transplant coordinators.

For structuring the collection, registration, accumulation, storage, processing, adaptation, change, renewal, use, distribution (distribution, sale, transfer) – there is the Unified state information system for organ and tissue transplantation, which is prescribed in Article 11. In particular, the Cabinet of Ministers of Ukraine has to approve the Regulations on the Unified State Information System of Organ and Tissue Transplantation and the Regulations on the State Information System of Hematopoietic Stem Cell Transplantation, which has to determine the list of registers that are part of these systems, the procedure and conditions of including data to the system, its functions, access to these information systems and, in particular, data, as it is specified in part 4 of Article 11 of the Law.

The Law of Ukraine «On the application of transplantation of anatomical materials to a person» on May 17, 2018, was enacted on January 1, 2019. But the Resolution «On approval of the Regulations on the Unified State Information System For Organ and Tissue Transplantation» № 1366 was adopted on December 23, 2020, which led to the postponement of the full enactment of the Law for almost 2 years.

Currently, Resolution № 1366 on 23 December, 2020, prescribes the tasks of the Unified system: identification of donor-recipient pairs, effective and efficient (real-time) provision of participants of the national organ transplantation system with information about potential donors of human anatomical materials, available human anatomical materials intended for transplantation and / or production of bioimplants, persons in need of transplantation, persons in need of medical supervision in connection with transplantation, as well as, other information necessary for the proper functioning of the transplantation system in Ukraine [13].

In order to optimize the process, identify and precede possible difficulties, the position of transplant coordinator was created in the United States in the 1960s, we, by contrast, only started to consider this practice in 2018. Such registries began to appear in different states of the USA, but it was not always possible to find the suitable donor. To improve the search process, such organizations were merged into the United States National Register. Gradually, this system spread to Europe, Asia, Australia. However, even in the National Registers it was sometimes not possible to find the suitable donor. All this led to the integration of data from around the world into the International Network (in Europe – European Marrow Donor Information System), and then into the World Wide Web – Bone Marrow Donors Worldwide. Up-to-date information on the number of donors in the world is available on the Bone Marrow Donors Worldwide website [1].

From January 1, 2021, the Unified State Information System for Organ and Tissue Transplantation was launched in Ukraine. This year, for the first time, a lung transplantation is planned to be done in Ukraine.

It is also planned to develop a mechanism involving all types of transport in the transportation of anatomical materials and recipients, including civil aviation, air transport of the State Emergency Service of Ukraine, the National Police and the State Border Guard Service. The Ministry of Health reported that 250 organ transplantation operations are expected to be carried out in 2021.

In part 2 of Article 14 of the Act, the legislator prescribed the removal of anatomical materials from a living donor, which is possible in the case of a family donation or cross-donation, and in part 3 added a ban on the removal of anatomical materials from pregnant women.

The important step was to allow getting from close relatives permission to decide on the removal of anatomical materials for transplantation and / or production of bioimplants from the body of the dead persons after determining their condition as irreversible death if the person did not consent to posthumous donation, as specified in part 11 of Article 16 of the Law.

In 2019, according to the Ministry of Health, the number of organ transplantation operations doubled during the operation of the Law. For example, in December 2020, a liver was transplanted for the first time in the Lviv Clinical Emergency Hospital, heart and two kidneys were transplanted from the same donor, and four lives were saved. After the death of the brain, relatives of the dead person (mother, brother and son) permitted removal of anatomical materials for transplantation. A 45-year-old resident of Odessa received a new heart. After a heart attack, his own organ could not perform its function. A donor heart was his only chance to live on. The recipients of the kidneys were residents of Ternopil region – a 35-year-old woman and a 47-year-old man.

Pursuant to Part 11 of Article 16 of the Law, if a dead person did not express his / her consent or disagreement for posthumous donation during his / her life, or he / she did not appoint an authorized representative, approved by the transplant coordinator according to the Unified State Information System of Organ and Tissue Transplantation, consent for the removal of anatomical materials for transplantation and / or production of bioimplants from the body of such a person after determining his / her condition as irreversible death, in accordance with the Law, is requested by the transplant coordinator personally from the other spouse or one of the close relatives of the person (children, parents, siblings and sisters). But what if close relatives have different views on the consent for the removal of the anatomical materials of the dead person?

This part needs refinement and concrete action in this situation. Postponement of this issue may make it impossible to remove the anatomical materials of a dead person, whose organs can save the lives of others. To solve this problem, we can use the practice of the Civil Code of Ukraine on the order of inheritance by law. For example, it is possible to make a consent order for the removal of anatomical materials. The solution to this issue would be the adoption of a «presumption of consent», which provides the possibility of a legal right to remove organs from a dead patient if he did not express will to prohibit the action. This practice promotes the development of transplantation, as it provides a legally easier way to «access» the organs needed for transplantation, but at the same time exacerbates moral problems.

Now people can give their pre-death consent for organ transplantation and record the decision in their passport or driver's license. This is definitely a positive moment. But the critical mass of people who may soon agree to become a donor will remain very small in quantitative terms. Therefore, the law will not be able to be fully realized immediately.

Currently, the right to provide transplants of human anatomical materials in Ukraine is exercised within the positions of «encouraging voluntary approach», which indicates the presumption of disagreement.

An individual, his/her life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value, part 1 of Article 3 of The Constitution of Ukraine. So the state guarantees these rights with various legal mechanisms. One of the most powerful mechanisms is the establishment of criminal liability for encroachment on these values. Violation of procedures prescribed by law with regard to human organs or tissue transplantation was punished by a fine up to 50 tax-free minimum incomes, or correctional labor for a term up to two years, or restraint of liberty for a term up to three years, with or without the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years, in accordance with Part 1 of Article 143 of the Criminal Code of Ukraine (version – adopted on April 5, 2001).

Accordingly, doctors were afraid of performing operations. Currently, the activities of doctors involved in transplantation are regulated in a new way. Thus, the Law of Ukraine «On

Amendments to Some Legislative Acts of Ukraine Regulating the Issue of Transplantation of Human Anatomical Materials» № 418-IX on December 20, 2019, changed paragraph one of part 1 of Article 143 of the Criminal Code of Ukraine: «Intentional violation of the procedures prescribed by law with regard to human organs or tissue transplantation which caused significant damage to the health of the victim». There must be responsibility, but, because of the wording of the previous version of Article 143 of the Criminal Code of Ukraine, doctors were frightened to perform transplant operations. Earlier it was noted that a violation of the procedure of transplantation had led to criminal liability. But there was no clear procedure for transplantation, therefore any formal violation threatened criminal liability. In the current version, this paragraph has been changed, emphasizing the intentional violation and causing significant harm to the victim.

In addition, it is important to provide Ukrainian regional clinics with the necessary equipment to ensure their fully-functioning. It is crucial for medical institutions not only to be able to determine brain death, but also to have equipment for monitoring of patients` postoperative conditions. Then the transplant operations will become routine, and it would be able to be performed in each regional clinic. In 2021, due to the Ministry of Health, budget expenditures on the transplant pilot project were significantly increased to 502 million UAH. For comparison: in 2019, the budget was 112 million UAH. Currently, the Ministry is working on a mechanism of transplantation in Ukraine and conducting detailed cost estimation, so that, in the near future, transplantation can become a completely standard type of medical care that Ukrainians get in their country.

Today, the pilot project of transplantation development is being implemented in Ukraine, which envisages a change in the financial mechanism of transplantation operations. The Ministry contracts with health facilities and covers all costs for each transplant operation now.

The Ministry of Health reported that 327 transplant operations were performed in 2020 (9 – heart, 20 – liver, 94 – kidney and 204 – bone marrow, 4 of them from a non-relative donors). By contrast, 228 transplant operations were performed in 2019, (71 – kidney, 6 – liver, 1 – heart, and 150 – bone marrow). This allows us to see a positive trend in the number of transplant operations, which is based on getting permission to remove anatomical materials for transplantation from the body of the dead person after determining his/her condition as irreversible death from close relatives.

Pursuant to the Law of Ukraine «On Amendments to Some Legislative Acts of Ukraine Regulating the Issue of Transplantation of Human Anatomical Materials» № 418-IX on December 20, 2019, Article 20 of the Law was amended, the advertising of human atomic materials is now allowed within social advertising in order to promote transplantation.

Conclusions. Thus, from the analysis of the legal provisions of transplantation of human anatomical materials in Ukraine it can be concluded that the Law of Ukraine «On the application of transplantation of anatomical materials to a person» should start to work from 2021, based on the legislation, adopted in 2020, to regulate the law. However, according to the analysis of the article, it is necessary to refine and supplement the legislation of transplantation with more specific and clear norms for carrying out activities related to transplantation, obtaining human anatomical materials for manufacturing of bioimplants, to solve issues which are not clearly prescribed by the Law.

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Abstract

The article deals with analysis of the legal support of transplantation of human anatomical materials in Ukraine. The peculiarities of the problems of launching a transplantation system for a full-fledged settlement of the legal framework are revealed.

Improving the transplant system in Ukraine is important for our country. Today, transplantation is considered worldwide as an extremely effective and in many cases non-alternative method of treating irreversible diseases and injuries of such vital organs as kidneys, liver, pancreas, lungs, heart, etc.

Ukraine also lags far behind European countries in the pace of development of cell transplantation, in particular hematopoietic stem cell transplantation.

Therefore, the analysis of the legal provision of transplantation of human anatomical materials in Ukraine reveals the shortcomings of the legal framework that need to be improved. The necessity of making additions to the legislation of the researched topic is substantiated.

Keywords*: transplantation, criminal law, regulation of legal base, transplantation information system, transplant coordinator, coordination center, register.*

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TACTICS OF SOME VERBAL INVESTIGATOR (SEARCH) ACTIONS IN THE INVESTIGATION OF FRAUD IN THE FIELD OF EMPLOYMENT

Ірина Гукова. ТАКТИКА ПРОВЕДЕННЯ ДЕЯКИХ ВЕРБАЛЬНИХ СЛІДЧИХ (РОЗШУКОВИХ) ДІЙ ПРИ РОЗСЛІДУВАННІ ШАХРАЙСТВА У СФЕРІ ПРАЦЕВЛАШТУВАННЯ. У статті розглянуто поняття, процесуальні та тактичні особливості найпоширенішої з вербальних процесуальних – допиту.

Проаналізовано наукові підходи до змісту допиту, а також висвітлено проблемні питання, тактичних прийомів та обставин, які підлягають встановленню, при допиті різної категорії осіб у справах щодо шахрайства у сфері надання послуг із посередництва у працевлаштуванні.

Наголошено, що специфіку допиту визначає предмет даної слідчої (розшукової) дії, що залежить не тільки від процесуального становища допитуваного та інформації, якою він володіє, а й від способу вчинення шахрайства і характеру слідчої ситуації. Визначено організаційно-тактичні особливості проведення допитів під час розслідування шахрайства у сфері надання послуг із посередництва у працевлаштуванні, окреслено обставини, що підлягають встановленню та наведено перелік питань, які визначають специфіку шахрайства у сфері надання послуг із посередництва у працевлаштуванні.

Успішне використання тактичних прийомів та застосування їх комбінацій є можливим тільки завдяки достатньому обсягу інформації відносно матеріалів кримінального провадження та наявності ряду доказів (показань інших учасників кримінального процесу, документів, в яких відображаються шахрайські операції тощо).

Надати достатньо детальну інформацію про шахрайство на ринку праці та осіб, які його вчинили, а також пояснити певні факти про подію, може потерпілий. Показання останнього є достатньо достовірні через його зацікавленість у справі. Тому найважливішим завданням слідчого є встановлення психологічного контакту та окреслення обставин, які необхідно встановити під час допиту.

Ключові слова: *шахрайство, працевлаштування, послуги із посередництва, ринок праці, слідча (розшукова) дія, допит, потерпілий, підозрюваний.*

Relevance of the study. Interrogation is the most common verbal investigative (search) action in absolute percentage with other procedural actions aimed at obtaining information from people. During its holding it is possible to establish information about the event of the crime, its circumstances, participants, the role of each, etc. The information received from the subjects of criminal proceedings may cover a significant number of factors that will allow an objective assessment of the situation and used in the evidentiary process, in order to bring the perpetrators to justice. Questions of interrogation are constantly in the center of close attention of scientists, due to the constant improvement of ways of committing crimes and changing the mechanism of criminal activity in general. Practice is forced to respond to various innovations, and representatives of the scientific world are constantly trying to find new ways to solve problems associated with the effective conduct of proceedings. This presupposes the adoption of effective measures in line with current trends and changes in forms of criminal activity, including in the field of employment.

Recent publications review shows that the problematic issues of interrogation have repeatedly been the object of close attention of scientists, in particular: V. P. Bakhin, V. K. Veselskyi, M. V. Saltevskyi, K. O. Chaplynskyi, S. S. Chernyavskyi and others. Such scientists as S. V. Golovkin, O. V. Kurman, N. Yu. Kyrylenko, O. L. Musiyenko, T. V. Okhrimchuk, N. V. Pavlova, T. A. Pazynych, S. V. Kuzmenko and others considered the issue of interrogation of different categories of persons during the investigation of fraud of different categories. Meanwhile, today there are a number of problems that remain relevant, despite their long and in-depth study. In addition, due to the specifics of fraud in the labor market, there is a question about the

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need for in-depth study of organizational, tactical and procedural aspects of the interrogation of various persons in proceedings of this category. This indicates the relevance of this article.

The article's objective is to analyze scientific approaches to the content of the interrogation, as well as to highlight the problematic issues, tactics and circumstances to be established during the interrogation of various categories of persons in cases of fraud in the field of employment mediation services.

Discussion. The key to the success of the interrogation is quality preparation for it, and choosing the right tactics.

According to a number of scholars, the choice of interrogation tactics depends on several factors: the situation of interrogation (primary, repeated, the presence of psychological contact); procedural position of the interrogated and the level of his interest in the results of the investigation; features of the interrogated person (age, character, level of awareness, presence of criminal experience); the nature of the information and evidence available to the investigation [1, p. 60].Thus, during the planning of the interrogation (at the preparatory stage) the investigator must find out a number of facts that are important for the investigation and determine the specifics of the proceedings, especially with regard to legal relations in the labor market and the implementation of criminal plans. To do this, you should familiarize yourself with a number of legal regulations governing legal relations in the field of employment; determine the procedure and procedure for the occurrence of labor relations between the employer, employee, intermediary and other entities operating in the specified segment; understand what violations contain signs of a criminal offense, and under what circumstances it is possible to talk about a civil tort. The investigator should study the legal literature in detail in this area, and it is better to seek the help of a specialist. In addition, the materials of the criminal proceedings and the documents contained therein should be carefully examined. If at the time of interrogation there are results of examinations, it is advisable to analyze the conclusions of experts and consider how they can be used in interrogation.

In order to identify certain inconsistencies in the testimony and use them during further interrogation, the investigator must analyze the testimony of others, the results of other procedural actions that contain evidence of the event under investigation. It is advisable to study additional information that will help to detail, clarify the testimony of the interrogated, to identify inconsistencies in certain facts. At the same time, an important element of preparation for the interrogation is to find out the personal interest of the interrogated person in certain results. N. V. Pavlova proposes to establish the nature of the relationship according to the scheme: witness-suspect, victim-suspect, victim-witness, suspect-another accomplice to the crime. The clarified circumstances determine the further tactics of interrogation [2, pp. 118-119]. Based on this, we can outline the data that the investigator must have at the beginning of the interrogation: regulations governing the conduct of transactions in the labor market; what is the violation of rights; which actions were legal and which were not legal; the nature of the illegal actions and the persons involved; place and time of committing fraud; characteristics of the interrogated person, his position and procedural status, connection with other participants in the criminal proceedings; the availability of evidence in the proceedings and the possibility of their use; the presence of contradictions and tactics for their elimination during interrogation, etc. The investigator needs to determine the maximum amount of circumstances to be established and set them out in detail in the interrogation plan with a mandatory indication of the tactics to be used.

However, as already mentioned, during the interrogation the interrogated may refuse to testify, or give testimony in a distorted version. This mostly applies to persons with «suspect» status. As practice shows, thus, in 12% of cases the suspects refuse to testify at all, and in 79% of cases they tell lies. This is logically explained by the desire to avoid criminal liability. In contrast, witnesses and victims refuse to testify during interrogation in only 3% of cases (this is not about victims and witnesses who do not report fraud to law enforcement agencies at all, causing latency). In 27% of cases, witnesses and victims may give false testimony, which is due to feelings about their reputation or fear of criminals, as well as the peculiarities of perception of the event itself.

Respondents have different social and professional status, different mental characteristics and motivation of their behavior, which determines the different nature of communication. A significant role belongs to the knowledge of the laws of formation of their readings, which is explained by the peculiarities of perception, memorization, reproduction, evaluation of information obtained during interrogation, and its use for tactical purposes [3, p. 3].

Understand the behavior of the interrogated, who hides the truth or is wrong about the events, choose tactics that will help to establish the goals and motives of the crime, to set the

factors that prevent the interrogated from telling the truth; to determine the optimal line of behavior in relation to the respondent, knowledge in the field of psychology will help [4, p. 30].

Psychological contact is always bilateral, its establishment and maintenance depend on both the investigator and the interrogated, although the initiative must belong to the investigator. At the same time, it should be borne in mind that the peculiarities of establishing psychological contact and tactics of direct interrogation differ significantly, depending on the procedural status of the interrogated person. If the victim or witness is mostly in contact and prone to communication, a large arsenal of tactics should be used against the suspects, including: presenting evidence; announcement of testimony of other persons; use of contradictions in the testimony of the same person; creating the impression of awareness of the investigator; suddenness factor, etc.

If we turn directly to the tactical features of the interrogation of a suspect in committing fraud, the investigator should take into account the fact that one of the essential characteristics of these persons is a constant willingness to use deception, ingenuity in its use. Thus, this type of criminals is characterized by psychological stability and mastery of techniques and methods of psychological influence on a person – persuasion and suggestion. This requires the investigator to show determination in establishing certain circumstances of the case, to be critical of the conduct of the interrogated and the content of his testimony. It is quite logical that under these conditions an important role in overcoming the interrogation of the interrogated is played by such handling of evidence, which allows to suspect the suspect that the investigation has certain and indisputable facts about his involvement in fraudulent seizure of property. The main feature of the use of tactics during the interrogation of suspects in fraud is the use of the method of presenting evidence on the rise. It is in this case that a favorable situation is created when the false testimony of the suspect is refuted by the new evidence [5, pp. 290-291].

In general, the successful use of tactics and the use of their combinations is possible only due to sufficient information on the materials of criminal proceedings and the availability of some evidence (testimony of other participants in criminal proceedings, documents reflecting fraudulent transactions, etc.).

The victim can provide sufficiently detailed information about the fraud in the labor market and the perpetrators, as well as explain certain facts about the event. The testimony of the latter is quite reliable because of his interest in the case. Therefore, the most important task of the investigator is to establish psychological contact and outline the circumstances that must be established during the interrogation.

Based on the specifics of fraud related to the provision of employment services, the following should be clarified:

- in connection with which the victim was looking for a job;
- in what way and for how long he was looking for a job, how he was looking for a job – independently or through employment agencies, if independently, then how – through advertisements in newspapers or via the Internet;
- whether he applied to various employment agencies, what are the consequences of such treatment;
- the victim immediately applied to the employer or an intermediary acted between them;
- how he learned about the employer or intermediary who offered employment services;
- how to characterize the nature of the relationship between the mediator and the employer;
- whether the money was paid to the intermediary for the provision of employment services, if so, in what amount and whether it was documented who received the money under the agreement;
- what kind of work was offered;
- whether an employment contract was concluded between the employer and the employee, if so, what are its conditions;
- whether the mediator and the employer presented documents certifying their status and legality of their activities;
- what the person who offered employment services look like did, or did not present identity documents, if victim did not suspect this person, which contributed to this;
- whether there are facts that will establish the identity of the fraudster (perhaps the fraudsters communicated with each other and exposed themselves with certain information, perhaps the victim saw the fraudsters in the media, etc.);
- what the situation was in the office where employment services were offered;
- if a job offer was found through an advertisement in a newspaper, what is its name, date, or it has been preserved;

- if the ad was found via the Internet, then when and through a site, how the correspondence was conducted, what phone number is indicated in the ad, whether the victim called this number;
- what the address and the name of the company were, what the description of the vacancy in the ads is like;
- who was present at the transfer of money for employment services, what are the signs of these persons, whether they did not provide telephone numbers and whether there were no calls to these numbers;
- whether the victim has not handed over any documents proving his identity, identification code, documents proving ownership of certain objects;
- whether various documents were sighned without studying their content;
- under what circumstances the victim learned that he had been deceived, what actions he had taken.

This list is not exhaustive and the range of issues may change, depending on the situation, the establishment of new circumstances during the interrogation.

Conclusions. Thus, interrogation is an important verbal investigative action that requires careful preparation and knowledge of the investigator's circumstances. The further course of the investigation depends on the results obtained during the interrogation. The success of the interrogation depends on how responsibly the investigator treats the collection of information necessary for the operation of evidence, on determining the list of issues that are important to establish the circumstances of the case and, directly, on the psychological mood and ability to communicate with different categories of criminal proceedings.

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Abstract

The article considers the concepts, procedural and tactical features of the most common of the verbal procedural, the interrogation. It is emphasized that the specifics of the interrogation is determined by the subject of this investigative (search) action, which depends not only on the procedural position of the interrogated and the information he possesses, but also on the manner of fraud and the nature of the investigative situation. The organizational and tactical features of conducting interrogations during the investigation of fraud in the field of employment mediation services are determined, the circumstances to be established are outlined and a list of issues that determine the specifics of fraud in the field of employment mediation services is given.

***Keywords**: fraud, employment, mediation services, labor market, investigative action, interrogation, victim, suspect.*

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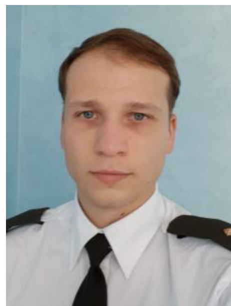

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ALGORITHMS OF LAW ENFORCEMENT OFFICERS' ACTIONS IN INVESTIGATION OF MASS RIOTS

Антон Лісняк. **АЛГОРИТМИ ДІЙ ПРАЦІВНИКІВ ПРАВООХОРОННИХ ОРГАНІВ ПРИ РОЗСЛІДУВАННІ МАСОВИХ ЗАВОРУШЕНЬ.** Висвітлено особливості розслідування масових заворушень. Зазначається, що послідовність заходів під час здійснення будь-якої діяльності забезпечує її ефективність та можливість досягнення бажаного результату. Процес розслідування кримінальних правопорушень не є виключенням. Розслідування масових заворушень на початковому етапі кримінального провадження може мати певні складнощі організаційного та доказового характеру. Тому вказаний процес потребує певної алгоритмізації з огляду на умови сучасності та зміни законодавства.

Наголошено, що типова слідча ситуація – це сукупність обставин, що підлягають доказуванню у кримінальному провадженні про злочин, інших обставин, що склалися в ході провадження слідчих дій, офіційно і неофіційно встановлених, можливо, навіть у сукупності із загостренням суперечностей між учасниками, суб'єктами криміналістичної діяльності та іншими особами.

Автором підтримується позиція, що врахування типового та індивідуального при розслідуванні кожного конкретного кримінального провадження робить цей процес більш ефективним. Роль і значення слідчих ситуацій обумовлені насамперед тим, що вони є моделлю для з'ясування невідомих елементів конкретної ситуації; їх виокремлення та врахування дозволяє під час практичної діяльності істотно економити час для визначення доцільності проведення тих або інших заходів при розслідуванні злочинів. У розроблених криміналістами типових вихідних слідчих ситуаціях окремих видів злочинів зосереджені дані, що дозволяють виробити наукові рекомендації з найбільш ефективного висунення загальних та окремих версій у ході слідчої діяльності. Тому типізація саме вихідних слідчих ситуацій є надзвичайно важливим завданням, що сприятиме розробці ефективних методик розслідування масових заворушень, а також ефективній практичній діяльності із розслідування злочинів цього виду.

На основі аналізу низки думок науковців та матеріалів кримінальних проваджень, науковцем визначено типові слідчі ситуації початкового етапу розслідування масових заворушень.

Ключові слова: *масові заворушення, організація, тактика, слідчі ситуації, слідчі (розшукові) дії.*

Relevance of the study. The sequence of measures during the implementation of any activity ensures its effectiveness and the ability to achieve the desired result. The process of investigating criminal offenses is no exception. The investigation of mass riots at the initial stage of criminal proceedings may have certain organizational and evidentiary difficulties. Therefore, in our opinion, this process requires some algorithmization regarding current conditions and changes in legislation.

Recent publications review. Such scholars as V. P. Bakhin, A. F. Volobuyev, V. A. Zhuravel, R. L. Stepanyuk, K. O. Chaplynskyy, V. Yu. Shepitko and others have devoted their works to the study of the conceptual foundations of the investigation of criminal offenses. However, typical investigative situations during the investigation of mass riots were not fully studied, taking into account the current CPC of Ukraine and the current needs of law enforcement practice.

The article's objective is to determine the algorithms of action of law enforcement officers in the investigation of riots.

Discussion. We support the opinion of M. I. Skryhonyuk who emphasizes that the investigative situation in criminal proceedings concerning mass riots can have conflict and non-conflict character and affect the process of criminal-procedural activity in different ways, and

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the latter, in turn, regulates it. This scholar formulates the concept of a certain forensic category as a set of circumstances to be proved in criminal proceedings for a crime, other circumstances that arose during the investigation, officially and informally established, perhaps even in conjunction with the escalation of contradictions between participants, actors of forensic activity and other persons [6, p. 68].

The presence of typical investigative situations, as noted by some authors, allows to develop directions for their solution, makes the investigator's work purposeful. Taking into account the typical and individual in the investigation of each specific criminal proceeding makes this process more effective. The role and significance of investigative situations are primarily due to the fact that they are a model for clarifying the unknown elements of a particular situation; their separation and consideration allows during practical activities to save time to determine the feasibility of certain measures in the investigation of crimes. The data concentrated in the typical initial investigative situations of certain types of crimes developed by criminologists, allow to develop scientific recommendations for the most effective promotion of general and individual versions in the course of investigative activities. Therefore, the typification of the initial investigative situations is an extremely important task that will contribute to the development of effective methods of investigating riots, as well as effective practical activities for the investigation of crimes of this kind [3, p. 77].

Having analyzed the materials of criminal proceedings, we have identified the following typical investigative situations of the initial stage of the investigation of mass riots:

1) information on mass riots has been obtained, material traces of a criminal offense have been identified, witnesses and victims were available, offenders have been identified;

2) information on the commitment of mass riots by an unidentified person has been received, information on the nature of the criminal offense is available, there are witnesses and victims;

3) information on the commitment of mass riots has been received from authorized persons, information on the nature of the criminal offense is available, there are witnesses;

4) the fact of commitment of mass riots has been revealed, there are no witnesses.

Let's describe these typical investigative situations and try to algorithmize them: to determine the possible actions of law enforcement officers and their sequence. In the first situation the main work relies on the coordinated activities of law enforcement at the initial stage of the investigation. In this situation the investigator must inspect the scene, make examination, identify witnesses, interrogate victims and witnesses. The timely conduct of these actions will provide a sufficient evidence base to notify the offender of suspicion.

Therefore, on April 7, 2014, approx. 10:00 p.m. Mr. D., being on the square in Kharkiv, where he took an active part in the rally for friendly relations with the Russian Federation and expanding the powers of the regions of Ukraine, succumbing to the appeals of individuals, acting knowingly, with the aim of gross violation of public order, the Kharkiv Regional State Administration and the Kharkiv Regional Council, as well as in order to destabilize the situation in Kharkiv region, decided to take an active part in the riots. Mr. D. not stopping his illegal actions aimed at committing mass riots and seizing the building in which the Kharkiv Regional State Administration and the Kharkiv Regional Council are located, had broke into the ground floor of the building with other people, where they began throwing stones, boards, light and noise grenades, explosive packages and to make shots from the unidentified traumatic weapons towards law enforcement officers who performed official duties to guard the building. Continuing their illegal actions, the participants of the riots, whose personalities were not identified, in order to overcome the resistance of law enforcement officers, set fire to car tires in front of the entrance to the building and, throwing several bottles of incendiary mixture, set fire to four offices located in the building. During the commitment of these actions, various injuries were inflicted on law enforcement officers and other persons [8].

This situation is common and is determined by the need for maximum fixation of the trace picture of the crime, taking measures to identify and detent offenders. In this situation, the examination and interrogation of eyewitnesses of the event is of special importance. In turn, N.O. Kononenko emphasizes that «Detention at the scene» is a fairly common tactical operation. Its preparatory stage is the longest and most difficult and is determined by the investigative situation at the time of detention.

At this stage, the characteristics of the victim and his/her environment should be clarified; the organization of measures to ensure the safety of victims, their relatives and witnesses and the preservation of their property should be completed; data on criminals' identities and

their environment should be clarified and studied; technical devices should be prepared that will be used for photography or videotaping, etc. Only after that the direct capture of hooligans starts [2, p. 103].

And already in this situation M.I. Porubov defines a possibility of conducting the following procedural and other actions:

- cessation of illegal actions;
- detention of the suspect;
- personal examination of the suspect, inspection of his/her clothes and the scene;
- identification of the detainee, establishment of signs of an offense in his actions;
- identifying and ensuring the preservation of sources of evidence, including interviews, inspection, interrogation, search [4, p. 244].

The second investigative situation is somewhat more complicated, as the perpetrator has not been identified. In this case it is necessary to carry out the following procedural actions: 1) inspection of the scene; 2) interviewing eyewitnesses of the event, and subsequently interrogating them as witnesses; 3) prescribing of appropriate expertise; 4) search for offenders on a verbal portrait from eyewitnesses; 5) interception of surveillance cameras.

It should be emphasized that the preliminary inspection materials are the result of open and covert activities of the pre-trial investigation bodies. All of them are concentrated in the investigator, who alone or together with the prosecutor (head of the pre-trial investigation body) analyzes them and makes the appropriate decision in the manner prescribed by law. The results of the preliminary inspection create an information field, assessing which the following situations can be constructed: 1) there are sufficient data on the existence of an obvious crime; 2) there are sufficient data on the hidden crime; 3) there are no sufficient signs of an obvious or hidden crime; 4) there are no signs of an obvious or hidden crime. According to these situations the investigator makes procedural decisions stipulated by law [1, pp. 436-437].

In view of the above, the obligatory investigative actions, as well as other measures in the defined investigative situation will be the following:

- inspection of the scene;
- interrogation of the victim, the witnesses and the suspect;
- examination of the victim and suspect;
- prescribing and conducting examination to determine the severity of injuries, identification of the offender;
- examination and instructions for the proceeding of videos, photographs, which record illegal actions and their consequences.

Thus, on August 31, 2015 approx. at 08:00 a.m., next to the building of the Verkhovna Rada of Ukraine, at the address: Kyiv, Hrushevskoho st., 5, a number of people, among whom was Mr. G. In order to provoke the crowd to mass riots, if the Verkhovna Rada of Ukraine approves the draft amendments to the Constitution of Ukraine in the first reading, they found wooden and metal sticks, explosive packages and explosive devices adapted for inflicting bodily injuries in advance who intended to use as a weapon to counter law enforcement officers, and who brought with them to the square near the building of the Verkhovna Rada of Ukraine. After the meeting, Mr. G., carrying wooden and metal sticks, explosive packages and explosive devices, were stationed across the border from law enforcement officers who performed their duties to maintain public order during the work of the Verkhovna Rada of Ukraine. Upon learning of the results of the vote and the adoption in the first reading of the draft amendments to the Constitution of Ukraine, at about 13:30 a crowd provoked by unidentified persons, among whom was Mr. G., near the Verkhovna Rada building and the hotel «Kyiv», carried out active physical resistance and resistance to law enforcement officers and servicemen of the National Guard of Ukraine, who are representatives of the authorities, accompanying their actions with the use of objects specially adapted to inflict bodily harm. In particular, Mr. G., taking an active part in the riots together with other persons, attacked law enforcement officers – employees of the Special Purpose Company of the Main Department of the Ministry of Internal Affairs of Ukraine in Kyiv and servicemen of the National Guard of Ukraine, did not comply with their legal requirements to stop public order, were trying to injure them, were throwing various objects at them, pushing them and with a plastic stick specially adapted for inflicting bodily injuries, were striking several blows to the face of an employee of the Special Purpose Company of the Main Department of the Ministry of Internal Affairs of Ukraine in Kyiv [7]. Mr. G. were detained due to coordinated activities of law enforcement officers at the initial stage.

Starting planning the solution of the tasks of the analyzed situation, the investigator must, first of all, find out the following points:

- circumstances that were not established at the beginning of the investigation;
- investigative (search) actions and operational search measures that were not carried out or were not carried out fully;
- sources that need to be further identified and introduced into the course of proof.

We support the position by V.O. Malyarova, who emphasizes that the algorithm for finding a criminal includes a consistent solution of the following tasks:

- detecting sources of information about the offender's characteristics;
- construction of a hypothetical model of the criminal and establishment of his/her belonging to: a wide set (class) of persons on general grounds; a narrow set (group) of persons on individual grounds;
- identification of a limited, quantified group of persons being inspected;
- identification of the person being inspected, i.e. a person who, according to the circumstances of the criminal proceedings, may be a wanted criminal, and if necessary, obtain samples from him/her for examination, according to art. 245 of the Criminal Procedural Code of Ukraine;
- identification of a specific person;
- identification of the wanted criminal [5, p. 131].

In the third situation we see an even more complicated picture: information on mass riots has been received from authorized persons, information on the nature of the criminal offense is available, and there are witnesses. This situation is marked by the fact that in addition to the above actions, it is important to detect the offender's identity as soon as possible on the «hot» tracks. Therefore, it is necessary to accurately compile his/her photo work from the words of eyewitnesses and the victim, to carry out appropriate operational search activities (in particular, the special operation «Spiral»). In a specific investigative situation it is necessary to carry out the following investigative (search) actions and to take other measures:

- inspection of the scene;
- interrogation of victims and witnesses;
- search for the offender on the «hot» tracks;
- examination of victims and witnesses;
- prescribing and conduct of examinations to establish the severity of injuries, identification of the offender.

So, Mr. O. on March 1, 2014 in the period from 11 o'clock. 00 min for 13 years. 00 minutes, acting together with other persons not identified by the pre-trial investigation, arrived at the Freedom Square in Kharkiv and was near the building of the Kharkiv Regional State Administration. At about 1 p.m. 00 min March 1, 2014 in order to actively participate in the riots, which were accompanied by the illegal seizure of the building of the Kharkiv Regional State Administration and destabilization of the situation in Kharkiv, c. O., acting together with unidentified persons, took an active part in the illegal actions aimed at seizing the building of the Kharkiv Regional State Administration. During the specified illegal actions Mr. O., wanting to demonstrate his obvious disregard for all current rules and norms of society, acting together with unidentified persons, demonstrating to others his intention to use violence against others, holding a stick in his hand, entered the building through the main entrance, thus took an active part in mass riots, which were expressed in the seizure of the building of the Kharkiv Regional State Administration [9].

The fourth investigative situation is complicated by the fact that hooliganism of mass riots was simply revealed, and witnesses and any information are missing. Therefore, it is necessary to increase the evidence base by taking appropriate procedural steps. In this situation, the following actions are required:

- inspection of the scene in order to identify traces of mass riots;
- identification and interrogation of witnesses;
- orientation of law enforcement officers to identify persons who may be witnesses to the act, and then their interrogation as witnesses;
- appointment of examinations necessary to establish certain circumstances of the offense.
- search for offenders.

Conclusions. Summing up, we note that in the investigation of mass riots, the amount of evidence that can be seized during the effective conduct of investigative (search) actions and

other measures is quite significant. We have identified the following typical investigative situations in the initial phase of a riot investigation: 1) information on mass riots has been obtained, material traces of a criminal offense were identified, witnesses and victims were available, offenders were identified; 2) information on the commission of mass riots by an unidentified person has been obtained, information on the nature of the criminal offense is available, there are witnesses and victims; 3) information on the commission of mass riots has been received from authorized persons, available information on the nature of the criminal offense, there are witnesses; 4) the fact of committing mass riots has been revealed, witnesses are absent. Typical investigative situations of an investigation allow it to be effectively planned, to carry out appropriate investigative (search) actions and other measures. Therefore, at the initial stage of criminal proceedings, it is desirable to algorithmize the actions of law enforcement officers by constructing specific typical situations of the investigation.

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Abstract

Features of investigation of mass riots are covered. It is noted that the sequence of measures during the implementation of any activity ensures its effectiveness and the ability to achieve the desired result.

It is emphasized that a typical investigative situation is a set of circumstances to be proved in criminal proceedings, other circumstances that have arisen during the investigation, officially and informally established, perhaps even in conjunction with the escalation of contradictions between the participants, the subjects of forensic activities and other persons.

Based on the analysis of a number of opinions of scientists and materials of criminal proceedings, the scientist identified typical investigative situations of the initial stage of the investigation of mass riots.

Keywords*: mass riots, organization, tactics, investigative situations, investigative (search) actions.*

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SIMPLIFIED COURT PROCEEDINGS FOR MISDEMEANORS UNDER AGREEMENT

Максим Таус. СПРОЩЕНЕ СУДОВЕ ПРОВАДЖЕННЯ ЩОДО КРИМІНАЛЬНИХ ПРОСТУПКІВ НА ПІДСТАВІ УГОДИ. У статті розглядаються актуальні питання ефективності кримінального процесу України в контексті проблемних питань одночасного застосування інститутів угоди у кримінальному провадженні та спрощеного судового провадження щодо кримінальних проступків без проведення судового розгляду.

Автором розглядається проблема неможливості, з огляду на чинні норми КПК України, одночасного здійснення кримінального провадження на підставі угоди в межах процедури спрощеного судового провадження щодо кримінальних проступків без проведення судового розгляду та обґрунтовується неефективність процесуальної моделі існування зазначених інститутів кримінального процесу без можливості спільного застосування при здійсненні кримінального провадження.

Проаналізовані чинні положення КПК України, яким врегульовані процедури судового провадження на підставі угоди в контексті здійснення спрощеного провадження щодо кримінальних проступків та сформульовані напрями вдосконалення кримінального процесуального законодавства для більш ефективного застосування інституту угод у кримінальному судочинстві. На основі проведеного аналізу чинних норм КПК України виявлені недоліки та прогалини кримінального процесуального законодавства, яке регламентує інститут спрощеного провадження щодо кримінальних проступків та інститут угод у кримінальному провадженні в частині, що стосується процедур судового розгляду угоди у кримінальному провадженні. На науковому рівні обґрунтовано доцільність поєднання інститутів судового провадження на підставі угоди із спрощеним порядком судового провадження щодо кримінальних проступків без проведення судового розгляду, у зв'язку з чим доведено необхідність якісного перегляду чинних положень КПК України, якими врегульований порядок судового провадження на підставі угоди у кримінальному провадженні.

Ключові слова: *кримінальне провадження, кримінальні проступки, судове провадження, судовий розгляд, провадження на підставі угод, спрощене провадження.*

Relevance of the study. One of the most important problems in criminal proceedings is the effectiveness of the criminal procedure [1]. In this regard, the legislature has introduced differentiated forms of criminal procedure into the current Criminal Procedural Code, such as criminal proceedings on the basis of agreements and summary proceedings for criminal offences.

The differentiation of a crime and a criminal offences was intended to ensure the effective and expeditious consideration of criminal proceedings, through the application of the summary procedure of criminal proceedings for criminal offences [2].

Criminal offences in international practice is a widely used institution in the common law and civil law system [3]. The criminal procedure law of most developed countries of the world has adopted, in one form or another, approaches to simplifying criminal proceedings in respect of acts which, by their very nature, are punishable acts of lesser gravity on the basis of the degree of public danger.

The current Criminal Procedural Code of Ukraine [4], from the first day of its implementation into the system of national legislation, contained a reference to such a criminal law institution as «criminal offences». However, its actual introduction took place only on 1 July 2020 with the entry into force of the Law of Ukraine «On amendments to certain legislative acts of Ukraine concerning simplification of pre-trial investigation of certain categories of criminal offences» (Law 2617 – VII) [5].

Since the entry into force of Law 2617-VII, many issues have arisen with regard to the

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procedure for the application of summary proceedings in criminal cases, particularly with regard to judicial proceedings. A separate problem has been the theoretical and practical application of summary criminal proceedings in conjunction with other institutions of criminal procedure, in particular the institution of agreements in criminal proceedings.

Recent publications review. The subject of criminal proceedings on the basis of agreements is the scientific work of such domestic scholars as: Yu. Alenin, I. Basysta, O. Baulin, M. Vilhushinskyy, I. Hlovyuk, Yu. Dyomin, N. Orlovska, O. Kuchynska, V. Nor, D. Pysmennyy, V. Tertyshnyk, L. Udalova, M. Khavronyuk, O. Yanovska and others. Some of the issues concerning the introduction of the Institute of Criminal offences have been addressed by scholars such as K. Zadoya, Yu. Dyomin and others.

However, in the writings of national scholars, no attention was paid to the problems of the simultaneous use of institutions for summary criminal proceedings and criminal proceedings on the basis of agreements. In this connection, this topic is of interest, primarily from the point of view of seeking ways of improving procedural legislation, which regulates the procedures for conducting criminal proceedings as reduced proceedings, and judicial proceedings on the basis of agreements.

The article's objective is to provide a scientific result in the form of improvements in criminal procedural legislation, which governs the trial of criminal proceedings in summary proceedings for criminal offences on the basis of an agreement.

In order to achieve the stated objective, the following tasks must be carried out: 1) to identify problems that may arise in the conduct of judicial proceedings on the basis of an agreement on criminal offences; 2) to identify shortcomings and gaps in the criminal procedure legislation, which regulates the institution of summary proceedings for criminal offences and the institution of agreements in criminal proceedings relating to concerning procedures for judicial review of an agreement in criminal proceedings; 3) to identify areas for improvement of the provisions of the current Code of Criminal Procedure in order to ensure more effective application of the provisions; which regulate the institutions of summary proceedings concerning criminal acts and agreements in the criminal procedure of Ukraine.

Discussion. In accordance with the provisions of art. 469 of the Code of Criminal Procedure of Ukraine, as amended by Law 2617-VII, may be concluded in criminal proceedings for criminal offences both a conciliation agreement and an agreement on the conviction of guilt [4].

It should be noted that, in the context of procedural features of the conclusion of an agreement in criminal proceedings at the stage of pre-trial investigation, the rules and requirements of the norms of the Code of Criminal Procedure of Ukraine are uniform, as for pre-trial investigation procedures relating to crimes, as well as the procedure for pre-trial investigation of criminal offences, which takes the form of an inquiry.

However, in view of the subject-matter of this article, we consider it appropriate to pay particular attention to the procedural problems of the simultaneous application of summary legal proceedings for criminal offences, which are provided for in the chapter 30 of the Code of Criminal Procedure and the provisions of the Constitution. Art. 474 of the Code of Criminal Procedure of Ukraine, which regulates the general procedure for judicial proceedings on the basis of an agreement in criminal proceedings.

Moreover, it is objectively possible to assess the effectiveness of the reform of criminal procedure and the practical application of the innovations introduced only from the point of view of their implementation at the trial stage. This conclusion is based on the fact that the trial itself, as a key stage in criminal proceedings, is an indicator of the quality and efficiency of criminal proceedings as a whole, as it demonstrates the overall result of the consistent exercise of functions by each stage (stages) of criminal proceedings.

K. P. Zadoj rightly asserts that the most «relief» of the simplification of criminal proceedings is reflected in those provisions of the Code of Criminal Procedure which regulate the peculiarities of judicial proceedings in criminal cases [6].

In view of the problems raised and the challenges faced under this article, it seems advisable to study the problem of conducting judicial proceedings on the basis of an agreement within the limits of summary proceedings concerning criminal misconduct.

Under the provisions of the Code of Criminal Procedure currently in force, summary proceedings may therefore be conducted in two ways, with or without judicial review.

Judicial proceedings in respect of criminal offences and judicial review are conducted in accordance with the general rules established by the Code of Criminal Procedure for judicial review, namely, the summoning of participants in criminal proceedings or the questioning of

accused persons or victims, Witnesses, their explanations and opinions on the issues to be examined, the examination of evidence and the like. Consequently, the application of the institution of agreement in criminal proceedings in such proceedings does not pose any particular problems or difficulties in law enforcement, since judicial proceedings concerning criminal misconduct which is conducted in court and is accompanied by active procedural activities of the parties to the proceedings.

However, the use of the institution of agreement in criminal proceedings as part of summary criminal proceedings without trial raises many problematic issues in terms of the application of the rules of procedure.

According to the requirements of art. 302 of the Code of Criminal Procedure of Ukraine, the consideration of an indictment concerning a criminal offence in summary proceedings without the conduct of a trial, that is, without the appearance or participation of the parties, is possible only at the request of the procurator and subject to the following conditions:

- an unequivocal guilty plea of criminal misconduct;
- his failure to reconcile the circumstances established by the pre-trial investigation;
- the consent of the accused to the examination of the indictment in his absence and the absence of any objection by the victim and the representative of the legal entity in question.

In addition, the provisions of the said article of the procedural law oblige the investigator and the prosecutor to explain to the participants in the criminal proceedings the content of the circumstances established by the pre-trial investigation, and that, if they agreed to a summary indictment, they would be deprived of the right to appeal on the basis of the proceedings, in the absence of the parties to the proceedings and the failure to investigate the evidence, confirmation of the circumstances. In addition, it is incumbent upon the investigator and the prosecutor to ascertain the voluntary consent of the parties to the criminal proceedings to the summary consideration of the indictment.

Consequently, two key conditions for the summary examination of an indictment without trial – an unequivocal guilty plea and non-contested criminal proceedings – are, to some extent, the same as the basic conditions, The Code of Criminal Procedure of Ukraine provides for the conclusion of an agreement in criminal proceedings and their subsequent trial. Other common features of these institutions of criminal procedure should also be highlighted: such as limiting the appeal to the parties to the circumstances of the criminal proceedings and the mandatory requirement to test the voluntary position of the participants in the criminal proceedings.

However, unlike criminal proceedings based on an agreement, The consideration of an indictment of a criminal offence in summary proceedings without trial and without the participation of the parties deprives the parties to the criminal proceedings of the opportunity to express their views on matters before the court, which concern the trial itself during the consideration of the merits of the criminal proceedings, including views on the type and penalty to be imposed on the accused, as well as other matters, related to the final decision of the court in criminal proceedings.

Therefore, while acknowledging its culpability for criminal misconduct and accepting the summary trial of the criminal proceedings without trial, The accused is in a state of uncertainty as to the possible outcome of the examination of the indictment against him and the sentencing of him for a criminal offence in which he is found guilty. He is deprived of the opportunity to legitimately influence the opinion of the court on the measure and the type of punishment that may be imposed on him as a result of the consideration of the criminal proceedings, and to draw the attention of the court to any circumstances that may mitigate the punishment of the accused.

Similarly, the prosecutor, when representing the prosecution, does not have the procedural opportunity to formally state to the court his position on the type and measure of punishment for the accused and other issues that are relevant to the determination of the conviction (fate of exhibits, distribution of court costs, etc.).

It is possible to use the institution of agreement in criminal proceedings to fill this gap, since it is by agreement that the parties can agree on the penalty to be imposed on the accused, as well as on other important points in the criminal proceedings, in particular compensation for damages caused by a criminal offence, performance of other duties by the accused, etc.

However, the current provisions of the Code of Criminal Procedure of Ukraine have a number of inconsistent norms, which make it much more difficult for the institution of agree-

ment to be effectively applied in criminal proceedings in summary criminal proceedings without trial.

The procedure for judicial proceedings in respect of criminal offences is regulated by provision chapter 30 of the Code of Criminal Procedure, the provisions of which, in turn, contain no prohibitions or special conditions concerning the possibility of concluding an agreement in criminal proceedings on criminal offences.

The Code of Criminal Procedure of Ukraine does not prohibit the application in criminal proceedings of a special procedure for criminal proceedings on the basis of an agreement, but procedural rules; which regulate the conduct of criminal proceedings in contravention of the rules governing the conduct of judicial proceedings on the basis of an agreement.

From item para. 2 of art. 381 of the Criminal Procedural Code of Ukraine, where the accused does not contest the circumstances established during the initial inquiry, The court may review an indictment concerning the commission of a criminal offence without a hearing in the absence of the parties to the proceedings. It is therefore apparent from the analysis of the procedural rule cited that a court may review an indictment of a criminal offence only on the basis of the materials of the criminal proceedings attached to it, without even communicating with the participants in the proceedings.

However, the conduct of judicial proceedings in this manner is not in conformity with the provisions of the Article 474 of The Code of Criminal Procedure of Ukraine, whose peremptory norms oblige the court, before deciding to approve an agreement during a court hearing, to ascertain from the accused and the victim the substantive circumstances of the agreement, in particular the voluntary nature of its conclusion, correct understanding of the nature of the charge and the terms of the agreement, the agreed punishment, the consequences of the approval of the agreement and its non-compliance, etc.

Let us emphasize that the content of art. 474 of the Code of Criminal Procedure of Ukraine, the court ascertaining the above-mentioned substantive circumstances of the criminal proceedings, in which the agreement is concluded, shall be conducted in a court session and not in any other procedural way, which in our opinion, makes the presence of the parties to the agreement at the head of the proceedings mandatory.

Of course, the Criminal Procedural Code of Ukraine provides for the right of the court to order a hearing of an indictment concerning the commission of a criminal offence and the summoning in court of participants in criminal proceedings, if deemed necessary by the court.

It is obvious that the court may exercise this right and apply the rule of para. 3 in art. 381 of the Ukrainian Code of Criminal Procedure for consideration in court of an agreement concluded in criminal proceedings concerning criminal misconduct in order to meet the mandatory requirements of the Art. 474 Code of Criminal Procedure of Ukraine. However, in our opinion, the appointment of a hearing on criminal misconduct, with the participation of participants in criminal proceedings only for the purpose of considering the conciliation or conviction agreement, where it is not unreasonable to consider criminal proceedings without trial, it will not be in keeping with the objectives and purposes of summary proceedings for criminal offences, because it does not reduce the burden on the court, but, on the contrary, increases it by requiring a hearing with the parties to the agreement.

Conclusions. According to the Code of Criminal Procedure of Ukraine, it is not possible for a court to consider an agreement in criminal proceedings as part of summary proceedings for criminal offences without a trial; because mandatory requirements art. 474 The Code of Criminal Procedure of Ukraine provides for the parties to an agreement to be required to participate directly in the court hearing during the court's decision to approve the agreement.

At the same time, increasing the possibility of using the institution of an agreement in criminal proceedings, together with summary proceedings concerning criminal misconduct without trial, will significantly increase the efficiency of the judicial process production, because it will significantly reduce the workload of the court and consequently save the procedural time and resources that are spent on the litigation of the agreement in court with the parties.

In addition, summary proceedings for criminal offences are conducted in the courts without trial But, by applying the institution of an agreement in criminal proceedings, will enable the parties to the proceedings to agree in advance on their legal positions in criminal proceedings, including positions on the type and measure of punishment of the accused, The extent of the material damage and the procedure for its compensation, and so on, will in itself improve the legal certainty of the participants in criminal legal relations and will be positively reflected in the development of criminal proceedings.

However, in order to implement the idea of combining the institutions of judicial proceedings on the basis of an agreement with the summary procedure for criminal proceedings without holding of a trial, the current provisions of the Code of Criminal Procedure of Ukraine should be qualitatively reviewed, In particular, those who are subject to the legal procedure established by agreement in criminal proceedings.

We therefore propose a change in the art. 474 of the Code of Criminal Procedure of Ukraine, under which the court may, on the basis of an agreement, verify the agreement in order to ensure that it meets the requirements of the law, during summary proceedings for criminal offences, as well as the voluntariness of its conclusion by the parties and the correctness of its understanding of its terms and the nature of the accusation, without the appearance in court of the participants in the criminal proceedings, only on the basis of the materials of the criminal proceedings annexed to the indictment with the agreement.

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Abstract

The article covers topical issues of the effectiveness of the criminal procedure and considers the problematic issues of simultaneous application of the institutions of the agreement in criminal proceedings and simplified court proceedings for criminal offenses without trial. The current provisions of the CPC of Ukraine, which regulate court proceedings on the basis of an agreement in the context of simplified proceedings for criminal offenses and formulate areas for improving criminal procedure legislation for more effective application of the institution of agreements in criminal proceedings.

Keywords: *criminal proceedings, criminal misdemeanors, court proceedings, court proceedings, proceedings on the basis of agreements, simplified proceedings.*

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PREPARATORY STAGE OF INTERROGATION IN THE INVESTIGATION OF A GROUP VIOLATION OF PUBLIC ORDER

Денис Усаткін. ПІДГОТОВЧИЙ ЕТАП ДОПИТУ ПРИ РОЗСЛІДУВАННІ ГРУПОВОГО ПОРУШЕННЯ ПУБЛІЧНОГО ПОРЯДКУ. Висвітлено деякі аспекти розслідування групового порушення громадського порядку. Розглядаються організаційно-підготовчі заходи до проведення допиту для більш швидкого та ефективного їх розслідування. Зазначено, що допит є досить характерною процесуальною дією при розслідуванні злочинів проти громадського порядку. Адже в зазначених випадках майже завжди наявна певна кількість свідків та потерпілих. Так і групове порушення громадського порядку характеризується великою кількістю його учасників. Водночас ефективне проведення допиту надає змогу надалі кваліфікувати діяння відповідно до Кримінального кодексу України. Оскільки поряд із зазначеним складом кримінального правопорушення постійно є вчинення масових заворушень та групового хуліганства.

Автор підтримує позицію, що допит – це регламентований кримінально-процесуальними нормами інформаційно-психологічний процес спілкування осіб, які беруть у ньому участь, спрямований на отримання інформації про відомі допитуваному факти, що мають значення для встановлення істини у справі.

Визначено, що найбільш поширеними організаційно-підготовчі заходи до проведення допиту при розслідуванні досліджуваної категорії правопорушень є такі: визначення предмета допиту та сформованої слідчої ситуації; визначення кола осіб, які підлягають допиту; визначення місця проведення допиту; визначення часу проведення допиту; визначення послідовності проведення допитів.

Наголошено на тому, що в провадженнях стосовно групового порушення громадського порядку можуть бути свідками наступні категорії осіб: особи, яким стала відома інформація щодо підготовки та вчинення даного кримінального правопорушення; особи, які безпосередньо сприймали факт учинення групового порушення громадського порядку; працівники правоохоронних органів або інші особи, які затримали злочинця або вживали заходів щодо його встановлення та затримання. Зазначається, що прагнення свідків надати слідчому правдиві й якомога більш повні показання ще не надає останньому підстав оцінювати показання як достовірні.

Ключові слова: *групове порушення громадського порядку, організація, планування, тактика, слідчі (розшукові) дії, допит.*

Relevance of the study. Interrogation is a very typical investigative (search) action in the investigation of criminal offenses against public order. After all, in these cases there are almost always a certain number of witnesses and victims. And group violation of public order is characterized by a large number of its participants. At the same time, effective interrogation makes it possible to further qualify actions under the Criminal Code of Ukraine. Because along with the specified structure of a criminal offense there are constantly nearby mass riots and group hooliganism. Therefore, the relevance of the study of certain aspects of the interrogation in the investigation of a group violation of public order is beyond doubt.

Recent publications review. Famous scholars such as V. P. Bakhin, V. A. Zhuravel, A. V. Ishchenko, O. N. Kolesnichenko, V. O. Konovalova, M. I. Porubov, K. O. Chaplynskyi, L. D. Udalova, M. P. Yablokov and others studied the tactics of conducting investigative (search) actions during the investigation of certain criminal offenses. But it should be noted that our study is a comprehensive approach to determining the preparatory stage of the interrogation in the investigation of a group violation of public order.

The article's objective is to study the preparatory stage of the interrogation in the investigation of a group violation of public order.

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Discussion. Speaking about the concept of interrogation, we note that the interrogation is a procedural action, which is regulated by criminal procedure information and psychological process of communication of persons involved in it, aimed at obtaining information about known facts relevant to establishing the truth in the case [4, p. 252].

A survey of law enforcement officers found that interrogations of victims of criminal offenses of the studied category are defined as the source from which information is most often obtained to put forward versions of the offender and conduct proceedings in 69% of cases. In addition, the interrogation of victims was marked by the most effective procedural action during the investigation by 72% of respondents.

In general, interrogation is the most common way to obtain evidence in the investigation of a group violation of public order. Of course, a necessary precondition for interrogation is preparation for it. It covers a number of specific activities: study of case materials; acquaintance with the data on the identity of the interrogated; if necessary – drawing up an interrogation plan. The greatest difficulty in investigating cases of this category is the organization of interrogations in the context of the need to gather information about the event, which was witnessed by a significant number of people, many of whom could be participants. In order for investigators to work in a coordinated and purposeful manner, and the results of their actions can be analyzed and used, in each case special questionnaires are compiled, which provide a list of questions that provide all the necessary data [3, p. 20].

The organizational and preparatory measures of interrogation can be determined as follows:

- careful, complete and comprehensive study of criminal proceedings materials;
- determination of the order of interrogation (i.e. the range of persons to be interrogated and the sequence of its conduct);
- obtaining information about the interrogated person;
- acquaintance with some special questions;
- invitation of persons whose participation in interrogation is mandatory;
- planning interrogation;
- determination of the time and place of interrogation;
- preparation of the workplace for interrogation [5, pp. 295-297].

Another group of scientists distinguish among them the following:

- collection of initial data related to the subject of interrogation;
- determination of the circle of persons subject to interrogation;
- study of the interrogated person;
- establishing the method of summons for interrogation and the order of its conduct;
- preparation of the place of interrogation;
- invitation to participate in the interrogation of third parties;
- determination of technical support of interrogation;
- drawing up an interrogation plan [2, p. 39].

Appropriate one is the position of V.H. Lukashevych, who emphasizes that in preparation for any verbal investigative action should be investigated case materials and the results of operational and investigative activities in three main areas: the study of persons with whom to communicate; analysis of factual data and evidence collected in the case; study of the structure of communication of persons of interest to the investigator [7, p. 138].

In our opinion, the most complete and detailed organizational and preparatory measures are defined as follows: 1. Immediately conduct an interrogation, minimize the period of time from the moment of the need for interrogation to its conduct. 2. To choose the right method of summoning for questioning in order to exclude unwanted publicity of this fact and the influence of interested persons. 3. To determine the range of interrogators. 4. To obtain complete information about the identity of the interrogated, use this information to establish psychological contact with the interrogated and determine the tactics of interrogation. 5. To make an environment in which the interrogated could focus on the content of the interrogation, remove items that could distract him, exclude the presence of strangers, telephone conversations. 6. To formulate the most important questions in writing so that they are not suggestive and are understandable to the minor. 7. To conduct interrogation in a calm and confident manner, avoid rudeness, but at the same time prevent reckless behavior of the interrogated. 8. To avoid the duration of the interrogation. 9. To record information after the end of the story. 10. To use scientific and technical means as additional means of fixing of indications for more full display of a course and results of interrogation [6, pp. 114-115].

Based on the survey of respondents, the practice of conducting certain organizational and preparatory activities in the investigation of group violations of public order has been determined:

- full, comprehensive and thorough study of the materials of criminal proceedings;
- determination of the subject of interrogation and the current investigative situation;
- determination of the circle of persons subject to interrogation;
- determining the place of interrogation;
- determination of the time of interrogation;
- determining the method of summoning for questioning;
- determining the sequence of interrogations;
- study of the offender's identity;
- selection of material evidence and other materials for presentation to the interrogated;
- determination of tactics that will be used during the interrogation, and preparation of scientific and technical means of its fixation;
- identification of participants in the interrogation;
- providing favorable conditions for the interrogation, taking into account the need to ensure the safety of its participants;
- planning interrogation.

As we can see, the most common organizational and preparatory measures for interrogation in the investigation of the studied category of offenses are as follows: determining the subject of interrogation and the current investigative situation – 61 %; determination of the circle of persons subject to interrogation – 97 %; determination of the place of interrogation – 96 %; determination of the time of interrogation – 95 %; determining the sequence of interrogations – 88 %.

As for the interrogation of witnesses, it should be noted that they may be the following categories of persons in proceedings concerning a group violation of public order:

- persons who became aware of information on the preparation and commitment of this criminal offense;
- persons directly perceived the fact of committing a group violation of public order;
- law-enforcement officers or other persons who detained the offender or took measures to identify and detain him/her.

Witnesses from among the persons who took part in the measures to stop the riots (police officers, servicemen, firefighters, ambulance crews) answer the question: do they know the active participants and organizers of the riots; about specific criminal actions of the mentioned persons, including – what criminal actions were committed against the witness by the crowd (striking with sticks, throwing stones, committing armed resistance during the cessation of riots); what exactly were his/her actions to stop the riots (he/she was among the main police forces at the time of restraining the crowd; he/she detained the participants of the riots, used special means); can recognize any of the active participants or organizers of the riots? [9, p. 119].

The nature of the interaction during the interrogation of the investigator with the witness depends on the behavior of the latter. The interrogation of honest witnesses usually does not lead to conflicts. The tactical task of the investigator in the process of such an interrogation, which acquires a conflict-free cooperative nature, is to maintain and expand psychological contact, assisting the witness in the correct reproduction of what is perceived and recorded. Such techniques include, in particular: asking questions that promote associative connections that help to remember; presentation of physical evidence; acquaintance with fragments of testimonies of other persons for mention, etc. In conflict situations, the tactical task of the investigator is to persuade the interrogated to reconsider his/her position, which does not meet the objectives of justice, to refuse from the intention to give false testimony [1, p. 52].

Based on the above, the interrogation of a witness is quite important. After all, it allows to obtain information about the offender's identity (87 %), to find out the circumstances of the crime (94%), to put forward the correct investigative versions (69 %) and to determine the sequence and tactics of further procedural actions (57 %).

The desire of witnesses to give the investigator truthful and a complete testimony as possible does not yet give the latter grounds to assess the testimony as reliable. In particular, V.V. Romanov emphasizes that during the interrogation of victims from among the persons against whom criminal acts were directed during the riots, persons who accidentally fell into the field of action of the crowd, resulting in physical, moral and material damage, etc. special attention is paid to clarifying the peculiarities of the perception by these persons of various

objects of the surrounding reality. In order to objectively assess the accuracy of the testimony of such a victim or witness, it is necessary to determine the conditions in which he/she was observing the events about which he/she testified. The influence of external factors on his/her receptors, the interaction of different sensations, patterns of perception, the influence of life, professional experience of the interrogated on the processes of perception, memory, the possibility of distortion of perceived phenomena and other factors are also found [8-9].

Among the preparatory measures an important place is occupied by the establishment of circumstances that require proof, ie the definition of the subject of interrogation. The study of the materials of criminal proceedings allowed to identify the following circumstances to be found:

- whether there was a leader or organizer of certain actions among the group of offenders;
- the emergence of a criminal plan;
- when, where and under what circumstances the illegal actions were committed;
- what exactly did they manifest;
- methods of preparation and commission of a crime, sequence of criminal actions, as well as features of concealment of criminal activity (its nature);
- what is the cause of illegal actions;
- information about the object of encroachment, the motive of the crime, the attitude of the person to the criminal consequences;
- what is the relationship between the perpetrators and the victim;
- the number and characteristics of participants in illegal actions;
- whether the victim resisted;
- if so – in what it was manifested and what traces could remain as a result on a body and clothes of attackers;
- general ability of the interviewee to a certain perception, memorization and reproduction;
- whether the victim showed any marks on his body and clothes;
- conditions under which the interrogated observed any objects or phenomena;
- psychological and physical condition of the person at the time of perception or after it;
- what material damage is caused by the actions of offenders;
- whether the victim met with the suspects or their acquaintances after committing a group violation of public order;
- if so, on whose initiative the meeting took place and what the conversation was about.

Conclusions. Summing up, we note that in the investigation of a group violation of public order the interrogation is a very typical procedural action. The following categories of persons may be witnesses in proceedings concerning a group violation of public order: persons who have become aware of information on the preparation and commitment of this criminal offense; persons who directly perceived the fact of committing a group violation of public order; law enforcement officers or other persons who have detained the offender or taken measures to identify and detain him/her. Effective carrying out of organizational and preparatory actions allows to carry out most effectively the studied investigative (search) action.

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Abstract

The article deals with some aspects of the investigation of a group violation of public order. Organizational and preparatory measures for the interrogation have been considered for a faster and more effective investigation. The author has noted that the interrogation is a very typical procedural action in the investigation of crimes against public order.

It has been determined that the most common organizational and preparatory measures for interrogation in the investigation of the investigated category of offenses are as follows: determination of the subject of interrogation and the current investigative situation; determination of the circle of persons subject to interrogation; determining the place, the time and the sequence of interrogations.

***Keywords**: group violation of public order, organization, planning, tactics, investigative (search) actions, interrogation.*

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FEATURES OF OBTAINING INFORMATION FROM VICTIMS, WITNESSES AND SUSPECTS IN THE INVESTIGATION OF CRIMES COMMITTED IN TOURIST INDUSTRY

Юлія Венгерова. ОСОБЛИВОСТІ ОТРИМАННЯ ІНФОРМАЦІЇ ВІД ПОТЕРПІЛИХ, СВІДКІВ ТА ПІДОЗРЮВАНИХ ПРИ РОЗСЛІДУВАННІ ЗЛОЧИНІВ У СФЕРІ ТУРИСТИЧНОЇ ДІЯЛЬНОСТІ. Стаття присвячена висвітленню проблемних питань та труднощів як процесуального, так і організаційно-тактичного характеру, що виникають під час підготовки та проведення допиту різної категорії осіб при розслідуванні злочинів у сфері туристичної діяльності. Надано рекомендації щодо найбільш ефективної організації і тактики проведення допиту у провадженнях даної категорії.

Розслідування злочинів у сфері туристичної діяльності відрізняється певною специфікою, обумовленою обставинами та механізмом вчинення цього злочину.

Серед усіх учасників потерпілі більш за всіх зацікавлені у встановленні об’єктивної істини і притягненні винних до кримінальної відповідальності, що є цілком логічним. Проте іноді особи,

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які вважають себе потерпілими, можуть приховувати деякі факти, що ставлять під сумнів сумлінність їх дій. Такі ситуації мають місце при оформленні віз, страховок, коли потерпілі навмисно імітують страховий випадок з метою отримання страхових виплат.

При розслідуванні злочинів у сфері туризму як свідки можуть бути допитані: представники консульських установ; працівники туристичного агентства; працівники страхової компанії; працівники банківських установ; обслуговуючий персонал готельно-ресторанного підприємства; перевізники; бухгалтери, касири, які працюють на підприємствах ресторанно-готельного обслуговування та у туристичних агентствах; інші категорії свідків, які володіють інформацією, що має значення для справи та ін. Можуть становити інтерес особи, які працювали на туристичному підприємстві, але згодом звільнилися.

Найсуттєвішою проблемою є брак часу для повноцінної підготовки до допиту, із вивченням законодавства у сфері туристичної діяльності, врахуванням всіх обставин, які підлягатимуть встановленню та складанням плану допиту.

Ключові слова: *злочини, туризм, туристична діяльність, тактичний прийом, допит, свідок, потерпілий, підозрюваний.*

Relevance of the study. The investigation of crimes in the field of tourism has a certain specificity, due to the circumstances and mechanism of this crime. A special place among all other sources of evidence is occupied by testimony, which takes the form of evidence only in the case of observance of the rights, freedoms and legitimate interests of persons who have information about the crime and their proper procedural design. However, during interrogations in the investigation of crimes related to tourism, investigators often face difficulties of both procedural and organizational and tactical nature. Therefore, without information on the basic techniques, methods and methods of interrogation of various categories of persons, as well as the specifics of crimes of this type, it is not always possible to guarantee success, because the investigation in such conditions is carried out in conditions of information insufficiency.

Recent publications review shows that the problems of interrogation have been repeatedly considered in the scientific works of V.P. Bakhin, V.K. Veselskyi, V.O. Konovalova, M.I. Porubov, M.V. Saltevskyi, K.O. Chaplynskyi and others. However, there are still a number of debatable issues regarding the interrogation of various categories of persons in the investigation of crimes in the field of tourism.

The article's objective is to highlight the problematic issues that arise during the preparation and interrogation of various categories of persons in the investigation of crimes in the field of tourism, as well as to provide recommendations on the most effective organization and tactics of this procedure.

Discussion. According to the analysis of judicial and investigative practice, interrogation in the investigation of crimes in the field of tourism is accompanied by a number of difficulties associated with the need to have information about both the event and the regulation of the tourism business. Based on this, the investigator needs to prepare more carefully for interrogation in such proceedings. In particular, not only materials of criminal proceedings, but also regulations and special literature are subject to study.

If you have questions about the procedure for concluding agreements in the field of tourism, the functioning of tourist services and violations in their work, possible abuses in the field of tourism, the investigator should consult in advance in this area to help clarify unclear details and form a range of issues interrogation. Formulation of important questions during the preparation for the interrogation, thinking through various details, as well as predicting the possible behavior of the participants with the choice of ways to respond to each case, will contribute to its quality and prevention. The drafting of an interrogation plan should not be neglected either.

As T.O. Kalyuga rightly points out, that not only citizens of our state, but also citizens of other states – foreigners who have temporarily arrived in Ukraine within the framework of certain agreements on the provision of tourist services to obtain the specified tourist product, may suffer from the actions of fraudsters. but, having become victims of fraudulent schemes, they never received the tourist services promised to them [1, pp. 134-135]. However, this necessitates the interrogation of an interpreter who understands the language of criminal proceedings and is able to prove to a citizen of another state the basic provisions of Ukrainian law when conducting procedural actions. Preparation for such an interrogation is particularly important, as re-interrogation of foreigners is difficult. This is due to the clearly defined terms of the possible stay of a foreigner on the territory of our state. If the interrogated is a representative of a diplomatic mission or consulate, his re-interrogation due to his special legal status

may be conducted in exceptional circumstances. However, the outlined legal status of a foreigner also depends on certain types of international legal acts ratified by Ukraine, which must be taken into account when conducting certain procedural actions with injured foreigners, including interrogation [2, p. 95].

According to the materials of the criminal proceedings, the shortcomings revealed during the direct interrogations were established. Thus, based on the content of the interrogation protocols, a formalism can be traced, which consists in a superficial description of the event of the crime, without specifying small details that could help establish important information. There are many inaccuracies, discrepancies with the testimonies of other participants and other sources of evidence in the testimonies of different categories of persons. While investigative (search) actions aimed at resolving discrepancies were carried out in only 34% of cases.

Regarding the establishment of psychological contact, 37% of investigators answered that they do not have enough time to establish psychological contact and they are often limited to recording mandatory personal data and asking questions that are mandatory for the interrogation procedure. 87% of investigators do not see the opportunity to spend time getting to know the interviewee, as well as to have long conversations on foreign topics of interest to the interviewee, due to the large amount of functional responsibilities and tight work schedule.

Investigators lack the time and technical ability to accompany the process of obtaining testimony by video. In 78% of suspects, after some time they refuse to testify, citing the fact that they were obtained as a result of psychological pressure or physical influence. While video footage could help refute these allegations and prove the legitimacy of the interrogator's actions.

Despite the fact that the testimony given in the pre-trial investigation is not taken into account in court, and the testimony of the suspect is generally his right and not his duty, the video can still help to understand the events and confirm the lack of influence by the investigator.

The most significant problem is the reluctance of investigators to use the full range of tactics that are recommended by forensics and developed in practice. A survey of investigators investigating criminal offenses in the field of tourism showed that the following tactics are the most commonly used:

- establishing psychological contact with the respondent;
- use of positive qualities of the interrogated;
- assurance of taking the wrong position;
- clarification of the possibility of mitigation of punishment in case of a guilty plea and cooperation with the investigator;
- announcement of testimony of other persons;
- mention of the available evidence during interrogation and its presentation;
- creating an inflated awareness of the investigator about the crime;
- concealing the limits of the investigator's awareness of the crime;
- separation from the general flow of information relevant to the case;
- suddenness factor.

At the same time, a number of tactics that could be useful, investigators either did not name at all, or believe that they are not effective, or refer to the lack of time to use them. Tactics such as comparing facts and adjusting the subject of the story were not named at all, while these tactics help to keep the situation under control.

One of the methods of interrogation that is ignored by investigators is to observe the behavior of the interrogated and his psychophysiological reactions. While such observation allows to reveal untruth or inconsistency in the testimony of the interrogated.

In addition, when referring to the presentation of available evidence during interrogation, investigators do not pay sufficient attention to the specifics of presenting such evidence, depending on certain circumstances. In general, each tactic has its own characteristics and forms of application, which depend on the situation. According to scientists, investigative tactics, as a set of techniques for solving investigative problems, are used only where and where there is opposition to the investigation, the actions of the investigator. In this case, the tactics in general is the ability to convince the opposite side [3, p. 11]. Meanwhile, even in the absence of counteraction, when the situation is conflict-free, tactics are indispensable. If, for example, the victim or witness forgets certain facts about the crime, forensics recommends a whole arsenal of techniques that must

be used. Among them: asking reminder questions; demonstration of physical evidence; announcement of testimony of other persons, interrogation at the scene, etc. For example, if the victim does not remember the name of the travel agency that was posted on the office sign before the agency disappeared, you can show him photos, offer to review the contents of the documents signed by him, and so on. The victim may not remember the address of the travel agency, but states that he can show where it is. In such circumstances, you can go to the place, etc.

In general, the choice of interrogation tactics depends on several factors:

- interrogation situations (primary, repeated, presence of psychological contact);
- features of the interrogated person (age, character, level of legal awareness, presence of criminal experience, etc.);
- the nature of the information and evidence available to the investigation;
- procedural position of the interrogated and the level of his interest in the results of the investigation, etc. [4, pp. 60–61].

Regarding the last position, it should be noted that, among all participants, the victims are most interested in establishing the objective truth and bringing the perpetrators to justice, which is quite logical. However, sometimes individuals who consider themselves victims may conceal certain facts that call into question the integrity of their actions. Such situations occur when applying for visas, insurance, when victims deliberately imitate the insured event in order to obtain insurance benefits. There are also cases when due to the negligence of persons responsible for safety in the tourism business, there are cases of injuries, mass poisonings and other events that have serious consequences for tourists. Meanwhile, tourists sometimes blame the subjects of tourism activities while they can provoke such events themselves. It follows that during the interrogation of the victim, the investigator should be critical of his testimony and compare them with other evidence in the case.

Witnesses are generally less interested in establishing the objective truth of the case. However, under Ukrainian law, it is a duty rather than a right to testify about an event observed by a witness. After all, according to Art. 385 of the Criminal Code of Ukraine provides for criminal liability for a witness's refusal to testify.

When investigating crimes in the field of tourism, the following may be questioned as witnesses: representatives of consular offices; employees of a travel agency; employees of the insurance company; employees of banking institutions; service personnel of the hotel and restaurant enterprise; carriers; accountants, cashiers working at restaurants and hotels and travel agencies; other categories of witnesses who have information relevant to the case, etc. Persons who worked at a tourist enterprise but later resigned may be of interest.

It is important for the investigator to establish whether the interrogated are in an official relationship with the head of the tourist or hotel and restaurant enterprise and what their nature is. This need is due to the prevalence of situations where persons who declare themselves as witnesses are involved in criminal acts.

The line between suspect and witness status is so thin that a number of tourism actors may be mistakenly questioned in the wrong status. Hence the red tape, the closure of criminal proceedings, litigation for violation of the rights of participants and the rules of criminal procedure, etc. At the same time, interrogation in the status of a suspect who has not committed a criminal offense causes documentary red tape: a number of complaints and explanations, drafting decisions to close criminal proceedings against this person, and others. That is, the same tourism entities may act as suspects and witnesses in different circumstances. Therefore, the primary task of the investigator is to clearly determine before the interrogation what the person has to do with the crime [1].

Conclusions. Thus, interrogation in the investigation of crimes in the field of tourism is accompanied by a number of difficulties of both procedural and organizational and tactical nature. The most significant problem is the lack of time for full preparation for the interrogation, with the study of legislation in the field of tourism, taking into account all the circumstances to be established and drawing up an interrogation plan. The use by investigators of the full range of tactics recommended by forensics and developed in practice is also not used to a sufficient extent. Investigators lack the time and technical ability to accompany the process of obtaining evidence by audio or video recording.

Therefore, the possession of law enforcement information on the basic techniques, methods and methods of interrogation of various categories of persons, as well as the specifics of crimes of this type, will contribute to the success and establishment of objective truth in the proceedings.

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Abstract

The article deals with problematic issues and difficulties that arise during the preparation and conduct of interrogation of various categories of persons in the investigation of crimes in the field of tourism. Recommendations on the most effective organization and tactics of interrogation in proceedings of this category have been given.

***Keywords**: crimes, tourism, tourist activity, tactical reception, interrogation, witness, victim, suspect.*

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LEGAL ASPECTS OF THE SPACE INDUSTRY DEVELOPMENT IN UKRAINE AND SPACE TOURISM IN PARTICULAR

Лариса Марценюк. ПРАВОВІ АСПЕКТИ РОЗВИТКУ КОСМІЧНОЇ ГАЛУЗІ В УКРАЇНІ ТА КОСМІЧНОГО ТУРИЗМУ, ЗОКРЕМА. Надано хронологію міжнародного космічного права. Проаналізовано основні аспекти основного документу міжнародного космічного права – «Договору про принципи діяльності держав з дослідження та використання космічного простору в мирних цілях». Проаналізовано українське законодавство стосовно розвитку космічної індустрії. Підкреслено, що аерокосмічна діяльність в Україні, окрім міжнародних документів, регулюється низкою національних законопроектів, серед яких основні: Закон України «Про космічну діяльність», Загальнодержавна цільова науково-технічна космічна програма України до 2023 року, Концепція реалізації державної політики у сфері космічної діяльності на період до 2032 року тощо.

Внаслідок хронічного недофінансування підприємств аерокосмічної галузі урядом України, галузь знаходиться в занедбаному стані. Разом з тим, Україна володіє науковими, інженерними та виробничими потужностями для розвитку космічної індустрії, а отже, має всі передумови для виведення цієї галузі з кризи.

Досліджено системні проблеми сучасної авіакосмічної галузі України. Запропоновано дієві заходи виведення космічної галузі з кризи. Серед першочергих заходів відродження космічної індустрії – перетворення підприємств космічної сфери в акціонерні товариства, а також узгодження управлінських функцій між центральними органами виконавчої влади. Також потрібно просувати корпоратизацію державних підприємств, що дозволить залучити вітчизняних та іноземних інвесторів для широкого кола проєктів.

Наголошено, що одним із напрямків комерціалізації космічної діяльності, який останнім часом активно розвивається, є космічний туризм. Надано історичний аспект розвитку космічного туризму як принципово нового продукту на світовому ринку туристичних послуг. Виявлено основні переваги та недоліки космічного туризму.

Запропоновано створення у межах державно-приватного партнерства компанії з орбітального сервісу.

Ключові слова: *космічна галузь, напрями розвитку космічної галузі, аерокосмічна галузь, космічний туризм, польоти в космос.*

Relevance of the study. Space exploration, on the one hand, is an opportunity for countries to develop their economies, and on the other hand, it is a significant limitation due to the high cost of space launches.

One of the areas of commercialization of space activities, which has been actively developing recently, is space tourism. Space travel is a flight into space or Earth orbit for entertainment or research purposes, paid for with private funds. Unlike other types of tourism, participation in space tours requires good health from tourists.

Ukraine has scientific, engineering and production facilities for the development of the space industry, but does not even have its own satellite in orbit.

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The extent to which current legislation in Ukraine supports the space industry in Ukraine, and space tourism in particular, will be discussed in this article.

Recent publications review. Recently, materials on space tourism have become more common in the scientific literature [1-3]. Thus, the scientist Ignatov in [4] points out that in the coming years there should be a differentiation of space tourism by cost, with promising are suborbital travel, which can be organized at much lower prices than orbital tours and expeditions. So far, space tourists can stay on the ISS, but in the near future it is planned to build space hotels. The greatest interest for space travel, and, accordingly, have great commercial interest – is the Moon and Mars [4, p. 343].

The idea of space tourism was first reflected in the works of Barron Hilton and Craft Eric, published in 1967. They first proposed the idea of commercializing space, but it never succeeded.

Space tourism began to develop actively in the late twentieth century. In 1986, a report «Possible Economic Consequences of Space Tourism Development» was presented at the International Congress of Astronautics. Fifteen years have passed and in 2001 the first tourist visited space.

Currently, 2 companies are organizing space flights of tourists: the American «Virgin Galactic» and the Russian-American «Space Adventures». With the help of these companies, seven tourists have already visited space: April 28 – May 6, 2001 – Dennis Tito; April 25 – May 5, 2002 – Mark Shuttleworth; October 1-11, 2005 – Gregory Olsen; September 18-29, 2006 – Anushe Ansari; April 7-21, 2007 – Charles Simony; March 26 – April 8, 2009 – Charles Simony; October 12-24, 2008 – Allen Gerrio; September 30 – October 11, 2009 Guy Laliberte. The trip cost tourists from 20 to 35 million dollars.

Space tourism is gaining momentum. Thus, the company «SpaceX» has signed a contract with the American space tour operator «Space Adventures» for tourist flights. From 2021, the company plans to resume tourist flights on Russian spaceships. Two tourists will go to the International Space Station (ISS) on the Russian «Union». Tourists who wish to go into outer space will have to be prepared for a flight to Star City. Release into outer space will take 1.5 hours [5].

In 2022 it is planned to send 4 people into space. This flight will cost at least $ 100 million. Tourists will fly on the SpaceX Crew Dragon space capsule, which is launched into space by the Falcon 9 rocket carrier. The capsule will travel two to three times farther from Earth than the orbit of the International Space Station. Tourists will be able to choose the duration of the trip.

The Crew Dragon capsule was designed to transport astronauts to the ISS, so the comfort inside the capsule is limited: all passengers have a common space for sleeping and hygiene with an area of 9 m^2. Before departure, future space tourists will have to undergo a training course in the United States.

Virgin Galactic and Blue Origin also intend to offer space travel up to 100 km above the earth's surface. The American concern Boeing, which is developing a new Starliner passenger capsule to send astronauts to the ISS, also intends to provide travel services [6].

In 2015, the President of the United States signed the Competitiveness of Commercial Space Launches Act, which regulates aspects of the US commercial sector's participation in space activities, including space launch services and remote sensing satellite management.

In 2019, 60% of commercial space companies accumulated capital in the United States. Investors have invested more than three billion dollars in space development. Analysts at the investment Bank of America Merrill Lynch predict that by 2050 the world space economy will reach three trillion US dollars [7].

The US government has managed to create a successful commercial project, combining the interests of the state with the interests of business, which allowed in low orbits. It is not only curiosity but also business interests that inspire people to explore outer space.

For example, cargo delivery. According to the results of 2019, there were more than 2,000 satellites in Earth orbit. Every year their number increases by 15%.

A number of new companies are trying to get their piece of the pie in this market. The most famous – Elon Musk. Commercial launches have already been carried out by companies: SpaceX, Blue Origin, package Lab, OneSpace Technology.

Space tourism is one of the areas of potential decent income. One of the founders of space tourism is considered to be the British billionaire Richard Branson, the founder of Virgin Galactic. Another tourist pioneer – Orion Span, plans to open the first suborbital hotel Aurora

in 2024. The American company Virgin Galactic will make the world's first tourist suborbital flight. The cost of a ticket to space is $ 250 thousand. And more than 600 people have signed up for the list of potential tourists.

Space tourism is an important area of activity for SpaceX and Blue Origin. In the near future, flights around the moon are planned, and in the long run – tourist landings on Earth and Mars. According to the UBS forecast, in 2030 the volume of the space tourism market will reach 3 billion dollars.

In addition to tourism, businessmen plan to get to asteroids, which consist of metals, including precious ones. Thus, according to American astrophysicist Neil Tyson, the first thriller will be a man who will begin to extract resources outside the Earth.

For example, the most expensive asteroid in the solar system, David, reaches a diameter of 326 km and consists mainly of nickel, cobalt and iron. This asteroid is estimated at $ 15 quintillion. The cost of all asteroids between Mars and Jupiter, NASA estimates at $ 700 quintillion.

In 2024, it is planned to land a NASA probe on asteroid 16 Psyche, the cost of resources on which is estimated at $ 700 trillion. Similar studies are conducted by private companies, such as the British Asteroid Mining Corporation [19].

As for Europe, the development of the space industry is rather slow. Back in 1975, the European Space Agency (ESA) was established to implement joint space programs. Ukraine has signed a cooperation agreement, but no project has been launched yet.

In Europe, the principle of «geographical distribution» applies – the total budget is distributed among the participants, and they have no objective interest in attracting third-party companies. In Europe, there is also a growing interest in light rockets, which can quickly and inexpensively launch small satellites into low orbit.

The article's objective is to highlight the history and prospects of space tourism as a fundamentally new product in the global market of tourist services.

Discussion. One of the important elements of the reform of the National Police of Ukraine is the creation of The satellite systems of the leading countries in orbit provide telecommunications, climate observation, military espionage, surveillance of the oceans, rivers, forests, mining, and scanning of the Earth's surface for scientific purposes. This allows you to create optimal logistics in various fields. Today, the average launch cost is $ 60-80 million, and the average cost of a satellite is $ 2-3 million. Unfortunately, Ukraine does not yet have any satellite of its own.

Cooperation between states and international intergovernmental organizations in the field of space exploration has led to a separate branch of international law – international space law: a set of rules and principles governing relations between these subjects of international law in space, as well as establishing the legal regime of outer space and celestial bodies. Legal relations between the states – the subjects of space activities have become the basis for the formation of space law and have become an important component of the international legal system.

The chronology of international space law is as follows. On December 13, 1963, the UN General Assembly unanimously adopted the Declaration of Legal Principles for the Exploration and Use of Outer Space [8], and then on December 19, 1966, the draft «Treaty on the Principles for the Peaceful Exploration and Use of Outer Space», including the Moon and other celestial bodies. The Treaty on Space entered into force on October 10, 1967, its members are more than 120 countries, Ukraine – since October 31, 1967 [8; 9].

The significance of the Treaty on Space is that, for the first time in the history of astronautics, the basic principles of international space law were enshrined at the level of a multilateral international agreement: the study and use of space for the benefit of all mankind; equal right of all states to explore and use outer space; ban on national appropriation of space; compliance of space activities with international law; use of the Moon and other celestial bodies exclusively for peaceful purposes; international responsibility of states for all national space activities; international liability of states for damage caused by space objects, etc. [9].

Ukraine could become a country that sells space services because it has the ability to build rockets and spacecraft on its own. But this requires the support of the authorities. For comparison: the budget of Roscosmos (excluding military programs) for 2020 amounted to almost $ 2.5 billion, the budget of NASA – $ 25 billion, and 5-year spending on the space industry of Ukraine – only $ 877 million.

The Law of Ukraine «On Space Activities» [10] identifies the following principles of space activities: government regulation; state support for the commercialization of space activities and attracting investment in the space industry of Ukraine. Space activities in Ukraine are

carried out on the basis of the National Targeted Scientific and Technical Space Program of Ukraine, which is developed for five years and approved by the Verkhovna Rada of Ukraine on the proposal of the Cabinet of Ministers of Ukraine. The Law of Ukraine «On State Support of Space Activities» states that funds for financing space activities for state needs are allocated in the State Budget of Ukraine in separate lines [11].

In order to form the state space policy and create its own state structure of enterprise management, in 1992 the National Space Agency of Ukraine (since 2010 – the State Space Agency of Ukraine) was established with the status of a central executive body, which ensures the formation and implementation of state policy in space [12].

The draft National Targeted Scientific and Technical Space Program of Ukraine until 2023 provides for three options for achieving the goals. The first option involves minimal financial and political support from the state, attracting small amounts of extrabudgetary resources. The second option is to conduct space activities on a commercial basis with a purely regulatory function of the state. The third option: attracting foreign investment together with financial support from the state. At the same time, the state retains full control of the space sphere [13].

The Concept for the implementation of state policy in the field of space activities for the period up to 2032 states that the main reason for the recession in the industry is the long-term lack of effective state support [14]. The concept identifies the following areas of development: ensuring the development of space technology; increase of scientific and technical potential; improvement of rocket and space technology; implementation of effective industrial policy and modernization of production; ensuring the commercialization of space activities; deepening international cooperation. The government's lack of awareness of the importance of developing high-tech enterprises leads to ineffective state regulation of the space industry. The mechanism of cooperation between the state and commercial space does not have a development strategy that affects global competitiveness [15].

International comic law does not define the role and ways of interaction with commercial companies. The legal aspects of the mechanism of state regulation of the space sphere are not agreed at the international level. This slows down technological progress, leads to unbalanced access to technology, information and knowledge of the population. Such inconsistencies may cause conflicts in the geopolitical arena in the future [16].

The space industry in Ukraine belongs entirely to the state. Ukraine has a State Space Agency and a National Space Program, but their funding is limited or non-existent. For example, the leading space company – the design bureau «South» – in 2018 received from the budget of UAH 50 million, in 2019 – zero. Due to the fact that the KB participates in various space programs abroad, the company is still operating. Currently, three spacecraft are being assembled in the shop. The first of them – at its own expense – the satellite «Sich-2-1» for remote sensing of the Earth. The satellite will be presented to Ukraine, it will be the first device that will control the entire territory of the country. The second satellite is Sich-2M, of the highest class. The third – «Microsat-M», a scientific device that will help predict earthquakes [17].

In October 2019, the Law №1071 on the support of the space industry was adopted, which opened opportunities for joint work of the public industry and private companies or customers. Verkhovna Rada of Ukraine is considering the possibility of creating an industrial park on the basis of Pivdenmash on the model of Silicon Valley.

In June 2020, experts from the Ministry of Economy discussed ways to bring the domestic space industry out of the crisis, in particular, planned bills that provide for the transformation of space enterprises into joint stock companies, as well as coordination of management functions between central executive bodies.

For the further development of the industry should promote the corporatization of state-owned enterprises, This will attract investors for a wide range of projects, including the organization of space tourism.

Conclusions. The coronavirus pandemic has highlighted the need to create our «bases» outside the Earth, which will be a kind of insurance to preserve the achievements of terrestrial civilization and the human gene pool. Systemic problems of the modern aerospace industry of Ukraine are: a sharp decline in recent years, the role of Ukraine as an equal partner in international cooperation, mainly the role of supplier of individual elements and components; lack of state order; lack of a transparent mechanism for attracting private investment in the aerospace industry; non-systematic revenues from international contracts.

In order to revive the space industry in Ukraine, it is necessary to: reorganize state-

owned enterprises in the space industry in Ukraine; creation of scientific, technical and industrial parks with the participation of aerospace enterprises, design bureaus and research institutes; introduction of the annual State Space Order system; resumption of aerospace education programs in Ukraine for staffing the industry; creating conditions for the formation of public-private partnership in the aerospace sector; focus on the markets of countries seeking to join the club of aviation and space countries of the world; expansion of the network of foreign representations in the aerospace industry [18].

We live in the era of the birth of suborbital space tourism. The advantages of space tourism development are: maintaining competitiveness in the space technology market; development of new technologies of space engines; profits from the launch of satellites into orbit on our launch vehicles. The disadvantages of space tourism include: significant costs for training and sending people into space; lack of possibility to develop spacecraft without the participation of other countries, etc. In the future, it is possible to create an orbital service company within the framework of a public-private partnership.

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Abstract

The author has provided the chronology of international space law and analyzed the main aspects of the main document of international space law – «Treaty on the principles of activities of states in the exploration and use of outer space for peaceful purposes». She has analyzed the Ukrainian legislation on the development of the space industry.

Due to the chronic underfunding of aerospace enterprises by the Ukrainian government, the industry is in a state of disrepair. At the same time, Ukraine possesses the scientific, engineering and production facilities for the development of the space industry, and therefore has all the prerequisites for bringing this industry out of the crisis.

The author has identified problems of the aerospace industry in Ukraine. She has proposed effective measures to take the space industry out of the crisis, Among them: transformation of space enterprises into joint-stock companies, coordination of management functions between central executive authorities.

A special attention has been paid to space tourism. The historical aspect of the development of space tourism is provided. The main advantages and disadvantages of space tourism are revealed. The author has proposed to create an orbital service company within the framework of a public-private partnership.

Key words: *space industry, directions of development of the space industry, aerospace industry, space tourism, space travel.*

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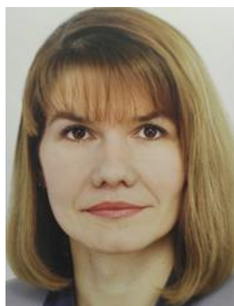

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ADVISORY AND CONSULTING SERVICES AS A MECHANISM FOR PROTECTING THE RIGHTS OF TAXPAYERS

Лілія Фокша, Марина Іванова. **КОНСУЛЬТАТИВНО-РОЗ'ЯСНЮВАЛЬНІ ПОСЛУГИ ЯК МЕХАНІЗМ ЗАХИСТУ ПРАВ ПЛАТНИКІВ ПОДАТКІВ.** Розглянуто сутність, значення та види консультативно-роз'яснювальних послуг як інструменту захисту прав платників податків.

Визначено, що податкове консультування ставить на меті гармонізацію взаємовідносин між контролюючими органами і платниками податків, підвищення рівня податкової дисципліни та забезпечення участі громадськості у формуванні та реалізації податкової політики тощо.

Проаналізовано міжнародну практику надання консультативно-роз'яснювальних послуг фіскальними органами і визначено, що вони базуються насамперед на партнерських відносинах між контролюючими органами і платниками податків.

Визначено основні види консультативно-роз'яснювальних послуг контролюючих органів. Досліджено правовий зміст податкової консультації, принципи надання консультаційних послуг контролюючими органами. Податкові консультації є практичною допомогою платнику податків при виконанні ним податкового обов'язку. Розглянуто передбачену чинним законодавством процедуру оскарження податкової консультації платниками податків. Визначено що податкова консультація не є рішенням суб'єкта владних повноважень чи нормативно-правовим актом, а лише форма офіційного трактування правових норм, що не породжує для платника податків жодних правових наслідків, оскільки не впливає на його права і обов'язки, та містить лише рекомендації для виконання.

Зазначено, що перспективним механізмом захисту прав і свобод платників податків є запровадження інституту податкового консультування в Україні і практики податкової медіації. Проаналізовано фактори, що стримують розвиток податкового консультування в Україні.

Ключові слова: *консультативно-роз'яснювальна робота, податкова консультація, контролюючі органи, платники податків, податкова медіація, інститут податкового консультування.*

Relevance of the study. The current system of taxation in Ukraine is characterized by instability, complexity and ambiguity in the interpretation of tax legislation, which leads to restraint of business development, increasing the number of tax offenses and reducing potential tax revenues to budgets at all levels.

Under these conditions, there is a need for professional legal support of tax payments, which is entrusted to tax authorities.

Consideration of appeals of individuals and legal entities is one of the important activities of tax authorities, aimed at protecting the constitutional rights and freedoms. Article 40 of the Constitution of Ukraine enshrines the right to lodge individual or corporate appeals in written or personally apply to public authorities, local governments and officials of these bodies

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that are obliged to consider the appeal and provide a reasoned response within the statutory period [1].

The rights of taxpayers to receive information on tax liability are also enshrined in the Tax Code of Ukraine.

Recent publications review. Issues related to the organization of advisory services were investigated by: R.Ye. Voloshchuk, O.A. Zhuravsky, M.K. Zolotaryova, O.O. Dolgii, K.P. Proskura, V.I. Teremetskyi, F.P. Tkachyk and others. However, a comprehensive study of the legal basis of advisory and explanatory services from tax authorities, as a mechanism for protecting the rights of taxpayers, has not been carried out in Ukraine so far.

The article's objective is to determine the basic principles of providing advisory and explanatory services as a mechanism for protecting the rights of taxpayers; outline promising areas for improving the mechanism of tax consulting in Ukraine.

Discussion. Tax consulting is an important component of the modern system of tax administration. Tax consulting, or tax advice has the following objectives: harmonizing the relationships between tax authorities and taxpayers; improving the tax discipline; ensuring the due tax receipts to the budgets of all levels; ensuring the participation of public in the formation and implementation of the tax policy; preventing tax offenses; implementation of transparent and effective tax administration.

The practice of advisory and explanatory service rendering by regulatory authorities to taxpayers is widely spread in developed countries. For example, in the United States, the Internal Revenue Service has established the Office of the Taxpayer Advocate and the Office of Information and Coordination, which conduct large-scale explanatory work among taxpayersThe hotline, which is used by millions of taxpayers, is in high demand in the United States. The IRS also provides assistance to taxpayers through emergency consulting centres. In France, in addition to individual consultations, tax authorities provide advisory services through a network of telephone helplines; they also widely practise television broadcasts in which tax officials answer questions from taxpayers. In the UK, individual consultations are provided to taxpayers through the unified national telephone service or via the Internet; in Sweden, advisory and explanatory work is carried out mainly through electronic means [2, p. 3; 39].

The main principle of providing advisory and explanatory services by fiscal authorities in developed countries is ensuring partnership relations between government agencies and taxpayers, which allows them to move from purely fiscal and administrative activities to constructive communication with taxpayers.

In Ukraine, the advisory and explanatory functions of the tax authorities, according to the Tax Code, include: the provision of individual tax advice; information and reference services on tax legislation and other laws within the authority of the taxation bodies; ensuring the public awareness about the implementation of state tax policy; advising taxpayers on the use of information and telecommunication systems in the payment of taxes and fees (Article 19.1 of the Tax Code of Ukraine) [4].

The legal status of tax consulting is currently enshrined in Chapter 3 of the Tax Code of Ukraine (hereinafter TCU). Under Article 14 clause 1 para. 172 of TCU, tax consulting may be individual or generalizing.

Individual tax consultations should be understood as a clarification provided to a taxpayer by the taxation body regarding the practical application of certain norms of tax legislation or other laws within the authority of the taxation body and registered in the unified register of individual tax consultations (Article 14 clause 1 para. 172.1 of TCU) [4].

Along with individual tax consultations, the tax legislation provides general tax consultations by tax authorities, which are interpreted as promulgation of the position of the central executive body that ensures the formation and implementation of the state financial policy, on the practical application of certain rules of tax legislation and other laws within the authority of the taxation bodies; this position may be formed as a result of generalization of individual tax consultations provided to taxpayers by taxation bodies, and / or in case of detecting circumstances that indicate ambiguity of any individual norms of the legislation (Article 14 clause 1 para. 173 of TCU) [4].

As rightly noted by V.I. Teremetsky, tax advice is one of the tools to protect the taxpayer, which gives him the opportunity to find out in advance the position of the tax authority and avoid mistakes in tax accounting, and thus avoid possible problems [2, p. 45].

In general, the advisory and explanatory activities of administering authorities provide a preventive impact on tax offenses, and are aimed at improving the level of tax awareness and

tax culture of the population, ensuring a proper understanding of tax legislation by taxpayers.

Tax consultations are provided free of charge upon apply of taxpayers regarding the practical application of certain provisions of tax law [4]. At the option of the taxpayer, the consultation may be provided verbally, in writing or electronically.

Tax advice by its legal nature is in fact the answer of the taxation body to the taxpayer's question, which should contain specific clarification of the taxpayer's practical form and / or model of his behaviour within a certain range of legal tax relations. The legislator, in turn, requires that the taxpayer, who seeks individual tax advice, correctly formulates the questions, which should be in essence, clearly and intelligibly articulated, and should describe the individual situation [5].

When providing tax advice, the taxation body does not establish (change or terminate) the corresponding norm of the legislation, but only provides clarification on its practical application.

Advisory services from regulatory authorities should be based on certain rules or principles. The general principles of providing consulting services should include: the rule of law, legality, accessibility, validity and motivation, competence, a unified approach to all taxpayers, timeliness, avoidance of conflicts of interest, and so on.

The results of an online survey conducted among legal entities and individual entrepreneurs on the SFS web portal in May 2019, within the Ukrainian-German technical cooperation project GIZ, show that the clarity of advice on problematic issues provided electronically was assessed in 4.23 points out of 6, by mail – in 4.06 points out of 6, and by telephone – in 4 points out of 6. The main requests of taxpayers about the organization of advisory and explanatory work of regulatory authorities are: improving the communication culture and competence of their staff, customer orientation, and clarity of advice [6].

The advisory and explanatory services of regulatory bodies should also include the organization of seminars, meetings of representatives of taxation bodies with taxpayers and the public, radio and television addresses, publications on various issues of taxation, other types of advertising, etc. [7, p. 46].

The TCU contains a rule according to which a taxpayer (both an individual and a legal entity) cannot be held liable, including financial penalties and / or fines, if he acted in accordance with the individual tax advice provided to him in writing, or general tax advice, for an act that contains signs of a tax offense, in particular on the grounds that further on the said tax advice was changed or cancelled [4].

If a taxpayer considers that the written, electronic or general tax advice provided by the regulatory body contradicts the current legislation, establishes new legal norms that are not provided by the current legislation, or creates obstacles for him to conduct business, he may appeal to the court for approval of the general tax consultations or individual tax advice provided to him in paper or electronic form as a legal act of individual action [4].

However, it should be noted that tax advice is not a decision of the subject of authority or a normative legal act, but only a form of official interpretation of legal norms, which does not generate any legal consequences for the taxpayer, as it does not affect his rights and obligations, and only contains recommendations for implementation.

As for appealing tax consultations, the TCU provides exclusively for court proceedings. Administrative appeal of tax consultations is not provided by law. We agree with the point of view of O.A. Zhuravski that this state of matter, firstly, does not give the tax authorities the opportunity to promptly correct their possible faults in consulting, and provide new, high-quality tax advice that would comply with applicable law; secondly, it limits taxpayers in choosing the method of appeal [8].

Tax mediation is a promising area for resolving disputes between regulatory authorities and taxpayers. Unlike judicial or arbitral settlement of tax disputes, where the parties mainly seek to resolve the dispute in their favour, while judges / arbitrators spare no effort to make such a decision, in the mediation process the parties look for a mutually acceptable (compromise) settlement, while the mediator competently and professionally assists the parties in finding such a solution [9, p. 196].

Thus, tax mediation is a process of competent, voluntary, and legal settlement of a dispute on the basis of mutual respect and equality of the parties through a specially authorized competent person – a mediator, who helps the parties to reach a mutually acceptable solution.

The process of introducing the practice of tax mediation in Ukraine is inextricably

linked with the introduction of the institution of independent tax consultants, which will serve to improve legal aid and legal education of taxpayers, protection of their rights.

Researchers distinguish two models of tax advice in European countries:

1. The system of «state regulation» (legislation, uniform standards, measures of responsibility of the tax consultant) involves the adoption of a special law on tax advice and the existence of a professional association of tax consultants (membership required). The professional association is created and operated on the basis of the above law and it supports and monitors the implementation of the law. The countries representing this system in Europe are: Austria, Hungary, Germany, Italy, Poland, Slovakia, France, Croatia and the Czech Republic. Luxembourg and Portugal also belong to this group; however, membership in a professional organization in these countries is voluntary.

2. The system of «self-regulation», which involves the creation of a self-regulatory professional organization (where rules and standards of professional activity are mandatory for all members of the organization). Countries that have a system of «self-regulation» include, for example: Belgium, Great Britain, the Netherlands, Ireland, Spain, Finland and Switzerland [9, p. 185].

The legal status of tax consulting in Ukraine is not enshrined in law. The draft Law "On Tax Consulting in Ukraine" No. 2745 of July 10, 2008 has been developed. However, no legislative act regulating this area has been adopted so far.

In Ukraine, the institute of tax consulting is at the start of development. The Union of Tax Consultants of Ukraine (SPKU) and the Chamber of Tax Consultants of Ukraine (PPKU) were established in 2001 and in 2013, respectively. However, it is too early to speak about a system, level of development and significance of the institute in Ukraine.

Factors hindering the development of tax consulting in Ukraine are:

1) the lack of a proper regulatory framework that would regulate the legal status of independent tax advice;

2) relatively low skill of domestic specialists;

3) low income of both citizens and businesses, which makes it difficult for them to pay for consulting services;

4) psychological unwillingness to trust independent consultants.

It is worth noting that the introduction of the institute of tax consulting in Ukraine should take place in conjunction with the purposeful work on the improvement of legal awareness of taxpayers. In particular, large-scale public information work with taxpayers, formation of tax culture and discipline should be carried out. And this, in turn, will allow the state to save money on other levels of tax administration.

Conclusions. An important direction in the modernization of the tax system should be the formation of a fundamentally new type of relationships between tax authorities and taxpayers, which would be built on a partnership basis and take into account the interests of the government, business and public. The opportunity of obtaining qualified, accessible and prompt information helps to increase tax discipline and prevents illegal actions of taxpayers.

A promising mechanism for protecting the rights and freedoms of taxpayers is the introduction of the institution of tax consulting in Ukraine and the practice of tax mediation, which will allow to reconcile public and private interests, to form a new tax culture.

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Abstract

The article considers the essence, meaning and types of advisory and explanatory services as a tool of protecting the rights of taxpayers. The article puts emphasis on the preventive nature of advisory and explanatory work on the part of tax authorities, which allows increasing the tax discipline of taxpayers. The procedure for appealing tax advice by taxpayers under the current legislation has been considered. It has been pointed out that a promising mechanism for protecting the rights and freedoms of taxpayers in Ukraine is the introduction of the institute of tax consulting and the practice of tax mediation.

Keywords: *advisory and explanatory work, tax consulting, tax authorities, taxpayers, tax mediation, institute of tax consulting.*

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BUDGETARY CONTROL IN UKRAINE: CURRENT STATE AND CHANGES

Тетяна Голоядова. БЮДЖЕТНИЙ КОНТРОЛЬ В УКРАЇНІ: СУЧАСНИЙ СТАН ТА ЗМІНИ. Перспектива удосконалення комплексності бюджетного контролю в Україні залежить від його якості на всіх етапах і своєчасності адекватного реагування фінансових органів, головних розпорядників та інших органів влади за результатами контролю на виявлені факти нецільового і неефективного використання бюджетних коштів, шляхом вжиття заходів щодо відшкодування незаконних витрат, регулювання обсягів фінансування, приведення їх у відповідність з нормативно-правовими актами, що регулюють бюджетний процес України. Чинне законодавство України не надає визначення поняття «бюджетний контроль». У ст. 26 Бюджетного кодексу України використовується термін «контроль за дотриманням бюджетного законодавства» [1]. Бюджетний контроль походить від поняття «контроль», розглядається спеціалістами у сфері права в контексті різних суспільних відносин. Отже, контроль як форма юридичної діяльності, за якої уповноважені органи й особи в межах контрольного провадження для отримання юридично значимих результатів та здійснення (забезпечення) регулятивного впливу здійснюють на підконтрольних об'єктах збір та перевірку інформації про фактичне виконання нормативних приписів, дотримання вимог правових актів та безпосередньо уживають заходи з попередження та припинення допущених порушень для забезпечення охорони інтересів суспільства та держави.

Ключові слова: *розпорядники бюджетних коштів, цільове використання, система бюджетного контролю, механізм фінансової стабільності, надходження бюджетних установ, система контрольних заходів.*

Relevance of the study. The current legislation of Ukraine does not define the term «budgetary control». According to Article 26 of the Budget Code of Ukraine (hereinafter referred to as BCU) uses the term «control over compliance with budgetary legislation», which is aimed at ensuring the effective and efficient management of budgetary funds and is implemented at all stages of the budgetary process by its participants in accordance with the BCU and other legislation [1]. In the definition of monitoring compliance with budgetary law, you can trace its following features:

1) is carried out by special entities – participants of the budget process;

2) is implemented within the legal framework that arises at all stages of the budget process;

3) is carried out in order to ensure effective and efficient management of budgetary funds;

4) regulated by the rules of the BCU and other legislation.

Recent publications review. The most topical theoretical and practical problems of financial control and its types are investigated in the works by E. O. Alisova, L. K. Voronova, K. S. Belskyi, O. P. Hetmanets, A. I. Ivanskyi, M. P. Kucheryavenko, T. O. Latkovska, P. P. Latkovskyi, O. P. Orlyuk, I. H. Ozerova, L. A. Savchenko, M. I. Sidor, I. B. Stefanyuk, A. A. Nechay, E. A. Rovinskyi, N. I. Khimicheva, V. D. Chernadchuk and others.

The article's objective is to study the complexity of budget control in Ukraine, to detect its shortcommings and to suggest ways to improve it.

Discussion. The current legislation of Ukraine does not define the term «budgetary control». According to Article 26 of the Budget Code of Ukraine (hereinafter referred to as BCU) uses the term «control over compliance with budgetary legislation», which is aimed at ensuring

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the effective and efficient management of budgetary funds and is implemented at all stages of the budgetary process by its participants in accordance with the BCU and other legislation [1].

L.A. Savchenko argues that «budgetary control» is the activity of state bodies and non-governmental organizations, the economic entities themselves or their structural subdivisions, natural persons, endowed with appropriate powers or rights, aimed at ensuring legality, financial discipline, rationality in the course of mobilization, allocation and use of financial resources [19, p. 47].

L.K. Voronova provides two understandings of this concept: first, «budgetary control» – is regulated by legal norms the activity of state and municipal and other public bodies to check the timeliness and accuracy of planning, soundness and completeness of funds in the appropriate funds, correctness and efficiency of their use; secondly, it is a special area of state control related to the activities of financial bodies in detecting violations of the law, financial discipline and expediency of forming, distributing and using state and municipal monetary funds [14].

According to Yu. V. Mekh, control should be considered as a threefold component, which should be considered as «management», «social management» and «public administration». The general concept of control is social control. Control in public administration is a special function of public authorities and local self-government bodies; it is also a way of ensuring legitimacy and discipline in government [18].

State control has special features:

1) it is implemented by authorized bodies of state power;

2) carried out within the framework of subordination relations;

3) is a procedure, defined in the established manner, a set of sequential actions regulated by the rules of law;

4) aimed at establishing the degree of compliance with the subject of control by the regulations of legal acts and the implementation of acts of individual action in relation to the controlled object;

5) may have as a result the initiation of the issue of bringing the perpetrators to justice in accordance with the regulations of legal acts.

Control, notes T.O. Latkovska is a management function, that is, the system of observation and verification of the process of functioning of the respective object in order to establish its deviation from the specified parameters, and adds that the control is a system of observation and verification of the compliance of the process of operation of the management object. managerial influence on the managed object, detection of deviations allowed in the process of implementation of these decisions [16, pp. 69-70].

Budgetary control is an independent type of financial control, which is carried out in the regulated norms of law in the budgetary sphere and is aimed at ensuring the legality, reliability and rationality of the activity of subjects of budgetary legal relations. Budgetary control is implemented in a separate sphere of budgetary financial relations, which is a function of the budgetary process. This is a direction of state control, that is, a comprehensive and purposeful system of economics – legal actions authorized by the state entities, aimed at ensuring the legitimacy, rationality, reliability, budgetary discipline of participants in the budget process during the preparation, review, approval of budgets, implementation and amendment, reporting on the implementation of the budgets that make up the budget system of Ukraine. The purpose of budgetary control can be considered to ensure compliance with the requirements of the current legislation at all stages of the budget process as «budgetary process of budgeting, reviewing, approving, executing, reporting on their implementation» (part 1 of Article 2 of the BC of Ukraine) [1].

The need to improve the control activities in the budget process and to direct control over the performance, ie, creating the conditions for compliance with financial discipline and strengthening the fight against budgetary offenses make the relevance of a wide range of issues related to regulatory support for the organization of control in the budget process.

Public financial control in Ukraine is divided into public financial control in the budget process – budgetary control, tax control, customs control, currency control and banking supervision. The budgetary legal relations shall consist of the control legal relations within the framework of which budgetary control is exercised. In view of the above, budgetary control is a type of state financial control, which is an activity of the authorized bodies of state power and local self-government, regulated by the norms of law, which is enshrined at the regulatory and legal level by the procedure of verifying the compliance of budgetary

entities with the requirements of budgetary legislation during the development of budgetary legislation , approving and executing appropriate budgets, as well as acts of individual action taken for their implementation, which may result in the event of a discovery ting violations of bringing the perpetrators to justice.

In addition, in Article 26 BCU also notes that the purpose of monitoring compliance with budget legislation is to ensure effective and efficient management of budget funds, namely:

1) an assessment of the management of budget funds (including the conduct of a state financial audit);

2) the correctness of accounting and the reliability of financial and budgetary statements;

3) achieving budget savings, their targeted use, efficiency and effectiveness in the activities of budget spending units by making sound management decisions;

4) carrying out the analysis and assessment of the state of financial and economic activity of spending units;

5) prevention of violation of budget legislation and ensuring the interests of the state in the process of management of state property;

6) the reasonableness of budgeting and budgeting [1].

In legal science, different approaches have been developed to define the concept of budgetary control, in particular as governed by the rules of budgetary law of a system of audit and legal measures aimed at verifying the legality and expediency of budgetary activities performed. V.D. Chernadchuk thinks that the results of budgetary control can lead to conclusions about the use of budgetary funds, and this indicates the need to create a comprehensive system of budgetary control. « Providing such a system will allow to coordinate the activities of all competent state bodies in the process of organizing and implementing budget expenditures and ensuring the formation of budgetary resources [20, pp. 96-97].

It also defines the budgetary control system from the following elements:

- subjects of budgetary control, among which are the following: controlling entities (authorized by the budget legislation to control the observance of the provisions of this legislation by the bodies, the list of which is defined by the BC of Ukraine) and controlled entities (spending units and recipients of budgetary funds, committed to, or abstain from, certain actions);
- the object of control is the real results of the subjects' budgetary activity as a result of the actions envisaged by the budget legislation, ie the results or, more precisely, the real indicators of budgetary activity;
- the subject of control is the budget indicators, budgetary acts and their projects established by the budget legislation [20].

The subject of budgetary control is considered to be «budgetary resources that are defined by budgetary legislation, ie the law on the State Budget of Ukraine, the decision on local budgets and other legal acts». The essence of budgetary control is to check compliance with the current legislation in the budgetary sphere and to prevent violations of the established procedure for receiving and spending state and local budgets. The current increase in the importance of budgetary control is driven by the following factors:

1) uncertainty of the external and internal environment affecting the budget process: approved plans are not always implemented; subjects of control

2) are not able to motivate economic entities to comply with applicable law; business entities do not always accept the rights and responsibilities delegated to them;

3) crisis prevention – control allows you to identify problems and adjust the activity of the controlled entity accordingly before these problems develop into a crisis;

4) observance of the current legislation in the sphere of formation and use financial resources and strengthening financial discipline.

In Art. 2 of the BCU provides the definition of the budget as a plan for the formation and use of resources to ensure the tasks and functions, which are carried out respectively by public authorities, authorities of the Autonomous Republic of Crimea, local governments during the budget period [1]. Thus, budgetary resources are public finances, the redistribution of which is regulated by special budget legislation and is carried out within the framework of budgetary relationships. Within the framework of budget relations, budgetary control is implemented as a type of state financial control, which has its own peculiarities. Determining the essence of budgetary control is essential not only for the legal science, but also for the legislative and law enforcement practice in Ukraine.

Assessment of the financial position of the budget is an indispensable element of the budget process at its final stage when summarizing the budget execution. At the same time, an important factor in the effective management of budget resources is the overall assessment of the financial state of the budget, which in its content reflects the results of the financial activities of the executive authorities. This assessment analyzes the budget commitments and examines their structure.

Audit should be understood as the form of subsequent financial control, which is a system of mandatory control actions under a pre-approved program, in the form of a documentary and factual verification of compliance with an entity, institution or organization of financial law, the legality, expediency and effectiveness of economic and financial transactions performed, reliability and correctness of accounting and reporting.

A complete audit involves checking all parties to the financial and economic activity of the control entity. Audit in accordance with the resolution of the Cabinet of Ministers of Ukraine «On approval of the procedure of inspection by the State Audit Service, its interregional territorial bodies» of 20.04.2006 №550.

Partial – check only certain types of business transactions or specific areas of activity of the enterprise, institution, organization. Thematic ones are a check of the same institutions, organizations on specific special issues. Comprehensive audits allow you to look more deeply into the broad range of issues that characterize all links and aspects of an entity's business, organization and institution. In a continuous audit, they check all documents that characterize financial and economic activity since the last audit. The sample checks only some documents or all documents, but for a certain period of time. Scheduled audits are carried out in accordance with the plan of control and audit work of the controlling bodies. Unscheduled audits are carried out on the special tasks of superior organizations or at the request of the courts and prosecutors [12].

Today, there is insufficient attention to control activities that provide a preventive control function. Duplication in the work of supervisory authorities at different levels, overloading of some objects with audits and inspections. Therefore, it is necessary to ensure a unified methodological support for the budget, reflecting the state of financial discipline, and methods for calculating them; the mechanism of internal control and compliance with the current budget legislation, as well as the formation of a system of unified procedures for external and internal state control. Today, there is insufficient public relations work to clarify the tasks of budgetary control.

Preliminary budgetary control precedes the implementation of financial and economic operations. This control is carried out at the stage of consideration and decision-making on financial matters, including – at the stage of development and adoption of laws and acts in the field of financial activity, substantiation of financial programs and forecasts in the process of drawing up, review and approval of budget plans of all levels, estimates of extrabudgetary funds , in the process of developing financial plans and estimates, credit and cash applications, financial sections of the business plan, drawing up forecasts, balances of economic entities. At the same time, the activity of financial control bodies is aimed at preventing illegal and irrational use of funds in a timely manner. The preliminary budgetary control is carried out at the parliamentary hearings on budgetary policy issues for the next budgetary period, which are held in the Verkhovna Rada of Ukraine on the draft Budget Policy Guidelines (Budget Resolution) presented by the Cabinet of Ministers ,as well as financial and economic expertise of the State Budget of Ukraine drafts by the Accounting Chamber of Ukraine and draft laws and other normative acts, international treaties of Ukraine, national programs and other documents concerning the state budget and finances of Ukraine. At the stage of financial forecasting and planning, preliminary budgetary control is a prerequisite for making optimal management decisions. It should be noted that during the ex-ante control, the measures of influence are not applied as they are not yet occurring in violation of financial discipline.

The next budgetary control is exercised by the Accounting Chamber, namely when performing Art. 35 of the Law on the Accounting Chamber, stating that:

1. According to the results of implementation of measures of state external financial control (audit), a report shall be drawn up, the constituent parts of which are the act (if any), conclusions and recommendations (proposals). The report on financial and performance audits must make the conclusions based on the criteria established in accordance with paragraphs 3 and 4 of Article 4 of this Law.

2. The report shall be signed and presented at a meeting of the Accounting Chamber by

a member of the Accounting Chamber responsible for carrying out the appropriate measure of state external financial control (audit).

3. Not later than seven working days before the consideration at the meeting of the Accounting Chamber, the draft report shall be discussed by the respective member of the Accounting Chamber and the authorized official of the object of control. Within five days, the audited entity may submit written comments on the content of the draft report to the appropriate member of the Accounting Chamber, who shall review them and provide information on the results of the consideration of the comments. Such comments and help are an integral part of the report.

4. After approval by the Accounting Chamber, the report shall be sent to the subject of control [8].

According to the Resolution of the Cabinet of Ministers of Ukraine «On Some Issues of Internal Audit and Establishment of Internal Audit Units» No. 1001 of 28.09.2011 in the ministries of other central executive bodies, their territorial bodies and budgetary institutions, which belong to the sphere of management of the ministries of other central executive bodies Authorities should set up internal audit units.

According to Part 3 of Art. 4 of the Law of Ukraine «On the Accounting Chamber» of 02.07.2015 № 576-VIII financial audit consists in checking, analyzing and evaluating the correctness of keeping, completeness of accounting and reliability of reporting on revenues and expenditures of the budget, establishing the actual state of affairs regarding the purposeful use of budgetary funds, compliance legislation in conducting transactions with budgetary funds [8].

Financial audit of the use of budget funds covers:

1) during the year of monitoring the financial statements of the budget institution, including using the State Treasury databases;

2) verification of use of budgetary funds, state and communal property, correctness of accounting, reliability of financial statements, in the case of detection of risky transactions as a result of monitoring of financial statements;

3) analysis of the internal financial control system, in particular determining the effectiveness of its organization;

4) preparation of proposals for the management of the budgetary institution for elimination of the identified shortcomings and violations, revealed by the results of the previous stages;

5) providing an opinion on the level of reliability of the financial statements of the budgetary institution, compliance with the legislation on financial issues by officials and completeness of consideration of the proposals during the audit.

Budgetary control is an effective tool to stimulate greater financial responsibility and productivity for both employees, business units and the enterprise as a whole. The tasks of budgetary control can be further specified on institutional grounds, firstly, on the object and object of control, secondly, on the stages of the budgetary process, on the procedure of adopting the relevant budgets that make up the budgetary system; thirdly, the entities with controlling powers. The essence of budgetary control is specified through actions, that is, the system of control measures of authorized entities to compile, review, approve, execute budgets, as well as to review and approve reports on the implementation of budgets, both at the state and local levels.

P. P. Latkovskyi calls budgetary control regulated by the rules of budgetary law the control activity of the authorized (controlling) persons to perform operations of comparing (comparing) the indicators of budgetary activity of obliged (controlled) entities (budgetary-legal reality) with the established rules of budgetary law, that is, knowledge of budgetary activity, as well as detection and elimination of deviations of real performance indicators from the established norms of budgetary law in order to establish compliance with budgetary di of its legal model to achieve a certain result [17, p. 108].

According to the Law of Ukraine «On Prevention and Counteraction of Legalization (Laundering) of Proceeds of Crime, Financing Terrorism and Financing the Proliferation of Weapons of Mass Destruction» of July 14, 2014 No. 1702-VI, financial monitoring is a system of actions of state authorities aimed at exercising control of state authorities on financial transactions in the state and prevention of the legalization (laundering) of proceeds from crime.

Among the violations of fiscal discipline in 2018, the most common were: violations of the legislation on wages, accrual and payment of a single social contribution, illegal payment of compensation, benefits; implementation of expenditures from the state budget, which should be financed from the local budget; unjustified reimbursement of expenses of third parties, natu-

ral persons, or reimbursement at the expense of the general fund of the estimates of expenses of the special fund; illegal alienation of property; misuse of budget funds. Almost 10.2 thousand persons were brought to administrative responsibility for violations of the legislation on financial issues in the regions. Almost 1.9 thousand control measures were transmitted to law enforcement agencies. Thus, the Treasury budget execution system has significantly strengthened budgetary control over local budgets. Therefore, it is advisable to create a comprehensive system of electronic document circulation of the bodies of the State Treasury Service of Ukraine and its integration with the system of electronic interaction of bodies of executive power.

The main achievement of the Law of Ukraine «On Auditing of Financial Reporting and Auditing» №2258-VII of 21.12.2017 is the unification of the legislation of Ukraine in the field of audit activity with European legislation, which should enhance the international prestige of Ukraine, promote its economic and financial integration in the world economy [6]. One of the positive innovations of this Law is the introduction of a unified register of auditing entities. This will greatly simplify their administration of their activities, save time and money in meeting the requirements of various regulators.

From the specified definition of budgetary control, we can distinguish the following features of this type of state financial control:

1.Budget control is carried out in respect of the funds of the State Budget of Ukraine, as well as local budgets adopted in accordance with the procedure established by the current legislation of Ukraine.

2. budgetary control is implemented by the participants of the budgetary process.

3. budgetary control is carried out in accordance with the budget legislation of Ukraine.

4. budgetary control is implemented at all stages of the budgetary process.

INTOSAY Financial Audit Guidelines: The International Audit and Insurance Standards Board's evaluation and resources system, the performance audit mechanism, the exchange of knowledge on the successful performance of the audit function. The problems in the public finance management system facing the state authorities today require the state financial audit of innovations in order to achieve the efficiency of its activity [4].

The International Standards provide recommendations for conducting an audit of legality (financial audit), requirements for auditors, methods of conducting an audit, registration of results. During the state financial audit the accounting documents, financial statements, their compliance with the current legislation and regulations are checked and evaluated. The financial audit is carried out in order to take precautionary measures during the verification of the correctness and appropriateness of the decisions made by a controlled entity for the implementation of the Law of Ukraine "On the State Budget" [9]. Ensuring that the procedures and mechanism of internal control and internal audit of the spending units are in line with the EU international standards and best practices and that a coherent system of public internal financial control in the understanding of international practice is currently being implemented. At the same time, progress is not sufficient to date.. The budget legislation of Ukraine needs further improvement in the direction of improving the principles of budgetary control and regulation of certain procedures, as well as the optimization of the system of controlling entities and control measures.

Conclusions. Duplication in the work of supervisory authorities at different levels, overloading of some objects with audits and inspections, because there is insufficient attention to controls that provide a preventive function of budgetary control. That is why a unified methodological support is needed for a system of economic indicators that reflect the state of financial discipline; also the establishment of an internal control mechanism and compliance with the budget legislation of Ukraine. Introduction of information technologies with the purpose of enhancing information interaction of control bodies, as well as development of mechanism of interaction of legislative and executive bodies; and mechanisms for evaluating the effectiveness and quality of budgetary control in Ukraine are needed.

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Abstract

Today it is necessary to improve the legislation of Ukraine in the sphere of budgetary control, namely: it is expedient by joint implementation of the Ministry of Finance of Ukraine, the State Tax Service and the Accounting Chamber of Ukraine common standards of control over the use of budgetary funds and objects of state (municipal) property. An important requirement to build a modern system of state financial control at all levels of management is to exercise control on the basis of ensuring clear interaction and coordination of efforts of all participants of financial and budgetary relations to solve the problems of budgetary control of Ukraine. The current system of budgetary control of Ukraine must be designed in such a way that it can be quickly and effectively adjusted to meet new challenges and challenges.

Keywords*: managers of budgetary funds, target use, system of budgetary control, mechanism of financial stability, receipts of budgetary institutions, system of control measures.*

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SOME FEATURES OF THE FINANCIAL MECHANISM OF BUDGET INSTITUTIONS OF UKRAINE

Ксенія Косяченко. ДЕЯКІ ОСОБЛИВОСТІ ФІНАНСОВОГО МЕХАНІЗМУ БЮДЖЕТНИХ УСТАНОВ УКРАЇНИ. Статтю присвячено особливості побудови та реалізації фінансового механізму бюджетних установ, також обґрунтовано можливі шляхи вдосконалення фінансового забезпечення як підсистеми фінансового механізму. В умовах трансформації економічної системи України актуальний напрямок наукових досліджень – це розробка теоретичних аспектів фінансового механізму функціонування бюджетних установ, який є складовою господарського механізму держави.

Нині успішне функціонування бюджетних установ має надзвичайно важливе значення, оскільки вони створюються державою для досягнення соціальних, культурних, освітніх, наукових і управлінських цілей стосовно охорони здоров'я громадян, розвитку фізичної культури і спорту, задоволення духовних та інших нематеріальних потреб громадян, захисту прав, законних інтересів громадян і організацій, розв'язання суперечок і конфліктів, надання юридичної допомоги, а також з іншими цілями, спрямованими на досягнення суспільних благ. Виконання поставлених завдань неможливе без побудови ефективного фінансового механізму.

Також важливою умовою для розвитку та формування бюджету України є процес удосконалення системи державних витрат і підвищення ефективності їх використання. Основними заходами реалізації даних цілей є впровадження програмно-цільового методу формування бюджету, оптимізація чисельності та структури бюджетних установ, розширення сфери державних закупівель та посилення державного фінансового контролю. Як наслідок, зміни, що відбуваються в країні, характеризуються переходом функціонування бюджетних установ і державних інститутів на ринкові інструменти та способи управління, активним використанням механізмів ринкової конкуренції.

Основою даного підходу виступає система контрактних відносин у процесі здійснення державних закупівель, що дозволяє розширити можливості регулювання та стимулювання економічного зростання.

***Ключові слова**: бюджетна установа, фінансовий механізм, бюджет, фінансове забезпечення, фінансове регулювання, форма бюджетного фінансування, бюджетний орган, бюджетна організація.*

Relevance of the study. The objectives of the article are to characterize the peculiarities of the functioning of the mechanism of financing budget institutions in Ukraine and to develop practical recommendations for its improvement in the context of economic transformation. Theoretical and practical features of financing of budgetary institutions in the countries with the developed and transformational economy are considered. The main tools for implementing the mechanism of budget regulation in the context of globalization described. The necessity of using the program-target method of budgeting in order to strengthen the effectiveness of structural changes in the economy and social sphere substantiated. The main priorities of budget financing in countries with developed and transformational economies for the medium and long term identified.

Recent publications review. The works of domestic scientists T. Boholyub, O. Vasylyuk, A. Danylenko, I. Zapatrina, L. Lysyak, I. Lukyanenko, I. Lyutyi, V. Fedosova, A. Chuhunov, S. Yuriy and others are devoted to the formation and implementation of budget policy by state authorities. At the same time, in modern globalization it is expedient to improve the system of using foreign experience in the functioning of the mechanism of financial support

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of budgetary institutions as a tool of socio-economic development, which necessitates further study of this issue.

The following authors also pay considerable attention to the formation of the financial mechanism of economic entities: O. D. Vasylyk, V. M. Oparin, V. M. Fedosov, V. V. Burkovskyi, A. M. Podderohin, M. S. Zyakun, S. I. Ogorodnik, I. V. Forkun. The above-mentioned scientists studied the elements of the financial mechanism of economic entities in general, without determining its specificity for budgetary institutions. Therefore, consideration of theoretical aspects of the formation of the financial mechanism of functioning of budgetary institutions is timely and relevant.

The article's objective. Determination of features of construction and realization of the financial mechanism of budgetary institutions and substantiation of possible directions of improvement of financial maintenance that which is a component of the financial mechanism.

Discussion. Among the common features inherent in budgetary institutions are the following: legal personality (legal entities under public law); form of ownership (state or communal); budget form financing (estimated financing); nature of activity (non-productive); economic result activities (non-profit). Specific features of budgetary institutions:

- legal status – a legal entity (budgetary authority, budgetary organization, budgetary institution) or a separate subdivision (structural unit) of the budget organization;
- Legal regime of property – the main administrator of budget funds (budget body), manager of budget funds of the second degree (budget organization), manager of budget funds third degree (budgetary institution);
- Forms of realization of the property right – use (all types of budgetary establishments), orders (budgetary authority, budgetary organization), ownership (budgetary authority) [1].

It should noted that currently the functioning of budgetary organizations is negatively affected by the following factors: unsatisfactory state of funding, lack of funds to upgrade logistics bases of budgetary institutions, limited sources of formation of financial resources and clear regulation directions of their use. The solution to these problems depends largely on efficiency construction and implementation of the financial mechanism of budgetary institutions.

It should note that the financial mechanism of functioning of budgetary institutions has its differences, due to the non-profit nature of the budget sphere, the peculiarities of the sources of mobilization and order distribution of funds.

The effective functioning of the financial mechanism of the budget sphere should base on the following requirements for the interaction of its elements:

- purposefulness of each element of the financial mechanism to fulfill its inherent task;
- directing the action of all elements of the financial mechanism on the process of obtaining the envisaged amount financial resources to cover the costs of relevant activities;
- Feedback of elements of the financial mechanism of vertical and horizontal levels;
- Timeliness of response of the components of the financial mechanism to changes in the macro- and micro-environment.

One of the main issues related to the financing of budgetary institutions is provision the most effective achievement of goals, assigned to each of them, with the optimal amount of resources spent on it. The importance of the studied issues of using budget funds to finance these institutions also lies in their ability to influence to implement the priorities set by the state policy, while fulfilling all previously established obligations to the population, which is typical for socially oriented state.

Problems of financing of budgetary institutions in the world is quite relevant, and therefore the management of budget expenditures through managers of budget funds requires constant improvement of control methods and tools. At the same time, each country determines its own approaches to efficiency financing of budgetary institutions, taking into account previous experience and features of the economic model.

For Ukraine, foreign experience in financing budget institutions can be quite useful, especially in aspect of ensuring control over public expenditures carried out through budgetary institutions – managers of budget funds, which necessitates and the feasibility of studying this issue.

Reforming the budget system as the basis of a modern democratic country and its adaptation to today's conditions is an urgent and necessary task in ensuring the implementation of the strategy of socio-economic development of the country. In this case, the transformation processes have be carried out not in isolation, but comprehensively, taking into account global

trends in financial systems.

The effectiveness of the implemented measures depends on the adequacy of funding, and the dominant factor funds from the state and local budgets remain, because it is the state that owns the formation and implementation and modernization of budget policy in accordance with the requirements economic development [2, p. 37]. Significant value at this play by extra-budgetary sources of funding, development of competition between institutions of different types and socially oriented non-profit organizations.

The main condition for the financial activities of such institutions is the management of the quality of services provided by the state bodies, through the formation of uniform requirements for content and basic parameters of such services, optimization of their standards, ensuring equal access for consumers and the creation of units for measuring the efficiency of budget resources.

The issue of providing central is relevant and local authorities with sufficient financial resources to perform their functions and powers. Depending on the quantitative and qualitative state financial resources, financial potential formed, the level of which is constantly changing and requires evaluation. Ensuring the development of the national economy possible by activating the management of the mechanism financial support of budgetary institutions. Achieving performance and efficiency indicators management of financial resources is possible as a result, study of their essential characteristics, features and relationships, identifying components, factors that affect their formation, and determine the specifics their management [3, pp. 33–34].

Although the activities of budgetary organizations are objective in nature and develops according to certain laws, it needs management by the state. That fact that funding of budgetary organizations carried out at the expense of budgetary funds puts efficiency activities of the state to perform its functions in direct dependence on how rationally organized the planning, distribution and use of centralized funds of monetary resources. In order to achieve the set goals, implementation is necessary the latest mechanisms for planning and use budget funds as the main managers and lower level managers [4, p. 182].

Foreign experience shows a general trend towards transition from traditional mechanisms of financing of budgetary institutions to result-oriented budgeting. This approach is the basis financing of budgetary institutions of most developed countries. The main task that all developed countries seek to solve is a combination of budget expenditures for financing budgetary institutions with the final results of their activities, in the process of implementation functions, within their own powers. Simultaneously especially noteworthy is such a form of regulation as program-targeted planning, which as a form of systemic redistribution of resources involves the implementation of individual programs to address specific tasks, which ensures the creation and implementation of a departmental system and interagency planning and project management on the purposes and results of activity. Another method of implementing the mechanism of financing budget institutions is indicative planning.

The analysis indicated that in countries with developed and transformational economy there is a restructuring of direct taxation by increasing the tax burden on property and personal incomes of citizens with a simultaneous decrease tax rates for corporate income taxation management. At the same time, there is a pan-European tendency to increase indirect rates taxes. Thus, we can state the departure from the methods of stimulating economic development by increasing aggregate demand and returning to neoconservative ideas of promoting economic growth by exempting investment resources from taxation [5, p. 198].

Conclusion. Modernization of the mechanism of financial support of budgetary institutions consists of its adaptation to modern conditions by means of modification of financial methods and financial levers, instruments and forms of financing institutions, as well as synchronization of financial flows at ensuring their activities, in order to implement modern economic, financial and social policy.

Analysis mechanism of financial support of budgetary institutions in countries with developed and transformational economies shows that the expansion of revenues of such bodies allows them to actively implement in their activities financial methods such as lending, investing, self-financing, leasing, factoring, insurance, introduction of new payment systems and payment systems, audit independent control, as well as relevant financial leverage, such as loans, borrowings, securities, profits, depreciation, dividends.

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Abstract

The article deals with peculiarities of construction and implementation of the financial mechanism of budgetary institutions, also substantiates the possible ways to improve financial security as a subsystem of the financial mechanism. In the conditions of transformation of the economic system of Ukraine, the actual direction of scientific researches is development of theoretical aspects of the financial mechanism of functioning of budgetary institutions, which is a component of the economic mechanism of the state.

Today, the successful functioning of budgetary institutions is extremely important because they are created by the state to achieve social, cultural, educational, scientific and managerial goals for public health, development of physical culture and sports, spiritual and other intangible needs of citizens, protection of rights.

Fulfillment of the set tasks is impossible without building an effective financial mechanism.

Keywords*: budget institution, financial mechanism, budget, financial support, financial regulation, form of budget financing, budget body, budget organization.*

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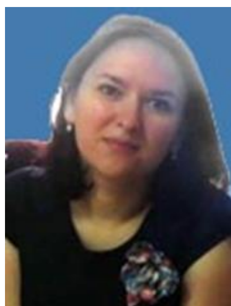

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ECONOMIC COMPONENT OF CRIME AND WAYS TO PREVENT ILLEGAL ACTIONS

Яна Палешко, Ольга Кубецька, Олександр Неклеса. ЕКОНОМІЧНА СКЛАДОВА ЗЛОЧИННОСТІ ТА ШЛЯХИ ЗАПОБІГАННЯ ПРОТИПРАВНИМ ДІЯННЯМ. Тіньова економіка яскраво відображає стан злочинних діянь в економічній сфері. Злочинність посилюється внаслідок стрімко зростаючої економічної кризи, яка відображається в низькій заробітній платні та високим рівнем оподаткування. Саме запобігання та подолання економічних злочинів може стати базою для розробки довготривалої стратегії соціально-економічного розвитку суспільства.

Запобігання злочинам – це система заходів економічного, правового, виховного та соціально-культурного характеру, які проводяться органами державної влади. Головною складовою запобігання злочинів в економічній сфері є практична діяльність правоохоронних органів та справедливе кримінальне покарання.

Перед правоохоронними органами постає завдання створення такого міцного правопорядку, що гарантував би зниження злочинності до мінімуму, з урахуванням особливостей економічних, суспільно-психологічних умов в суспільстві.

Планування розслідувань у справах, які пов'язані з економічною сферою, це багатоетапний процес до якого входять різноманітні структурні елементи. Найголовніші з них доцільно виділити: одержання вихідних даних з їх подальшим опрацюванням та аналізуванням; встановлення завдання розслідування з організацією розшукових дій; встановлення порядку та термінів виконання розслідування. На першій стадії розслідування проводиться прогнозування на основі отриманих даних. Основною функцією розслідування – є встановлення тенденції руху економічного злочину та розробка розшукових дій в конкретному випадку злочину.

Слід зауважити, що успішне запобігання злочинних діянь – це справа не лише працівників правоохоронних органів, а й суспільства. Стратегія громадського впливу на злочинність має полягати, з одного боку, в залученні, а з іншого – в ініціативній участі окремих громадян, громадських організацій правоохоронної спрямованості тощо до охорони правопорядку, участі у програмах профілактики злочинності, надання інформації про вчинені злочини з обов'язковим матеріальним заохоченням цих напрямів роботи з боку держави і приватного бізнесу.

Ключові слова: *склад злочину, злочин у сфері економіки, класифікаційні підходи до поділу злочинів в економічній сфері, адміністративне судочинство, процесуальний розсуд, публічне правонаступництво.*

Relevance of the study. Due to the titanic efforts of law enforcement agencies, crime in economic sphere is shifting towards the development of new technologies to commit illegal acts, criminals are penetrating and trying to control segments of the economy and create corrupt systems for maximum criminal outcome. That is why the fight against economic crime is

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now becoming so relevant and should be the subject of study.

Recent publications review. The problems of the essence of economic crime and its features are given a lot of attention by such scientists as: M. Bazhanov, I. Bazyaruk, V. Bilous, S. Kravchuk, O. Litvak, O. Yakovlev. Significant contribution to the study of criminological aspect of economic crimes have been made by such scientists as: A. Medentsev, O. Pchelina, E. Sutherland, R. Stepaniuk, D. Kharko.

The article's objective. Crime prevention is an established system of overcoming the objective and subjective preconditions of crime, which is realized through the successful operation of all institutions of society. But in the practical sense, crime prevention is the exclusion of crimes by identifying and eliminating the causes and conditions of their commission.

Discussion. One of the main tasks of the state is to avert, eliminate and prevent crimes. The tools by which the state achieves its goal in crime prevention are:

- General social;
- Special criminological;
- Individual.

Socio-criminological instruments are the sphere of influence and activity of state bodies, social organizations, public groups. It is they who develop and implement measures to avert, eliminate and prevent crime and taking that into account, have direct rights and, accordingly, duties and responsibilities.

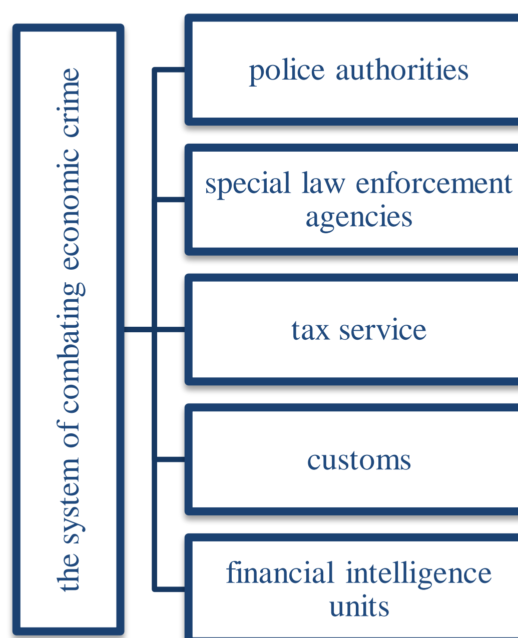

Fig. 1. The system of combating economic crime of the state

The main cause of crime lies in the negative phenomena of society, social, political, especially economic and spiritual problems inherent in community. We note that in the long run, in terms of reducing crime, measures to stabilize and boost the level of economy (namely, increase in employment, development of programs to improve living standards in the country) come to the fore.

It is the increase in the level of economic condition of the state that leads society to reduce in the number of crimes. It is purposeful measures of the state that are able to minimize criminal actions. It should be noted that crime prevention is also a key point. Criminologists distinguish several types of crime prevention, specifically: general, special and individual crime prevention.

The measures of general prevention include the creation of a system of public administration transparent to public control, which inhibits the emergence and operation of corruption schemes.

Basically, the general prevention of crime is aimed at ensuring of the dignified human existence in society, creating conditions for meeting normal needs (housing, wealth, work, leisure and recreation) by legal means.

Table 1

Classification of economic crimes

Economic crimes	crimes in property relations (Articles 190–191 of the Criminal Code of Ukraine)
	crimes in the financial sphere (Articles 199–200, 207–212[1], 215–224 of the Criminal Code of Ukraine)
	crimes in entrepreneurship, competitive relations and other activities of economic entities (Articles 202–206, 213–214 of the Criminal Code of Ukraine)
	crimes in the sphere of protection against monopoly and unfair competition (Articles 228, 231–232[1] of the Criminal Code of Ukraine)
	crimes in the sphere of consumer rights realisation and public services (Articles 225–227, 229 of the Criminal Code of Ukraine)
	crimes in the sphere of privatization of state or communal property (Articles 233–235 of the Criminal Code of Ukraine);
	crimes in customs regulation (Article 201 of the Criminal Code of Ukraine)
	crimes against property – misappropriation, embezzlement of property or taking it by abuse of official position (Articles 185, 186, 188–192 of the Criminal Code of Ukraine);
	crimes in the sphere of economic activity (Articles 199–235 of the Criminal Code of Ukraine)
	crimes in the sphere of electronic computing machines (computers), systems and computer networks usage (Articles 361–363 of the Criminal Code of Ukraine)
	crimes in the sphere of employment activity (Articles 364–370 of the Criminal Code of Ukraine)

The development and implementation of general prevention measures is carried out by all state bodies with the involvement of specialists in various fields: economists, sociologists, politicians, managers, psychologists, etc. Criminologists are also involved in this process, providing analytical reviews of statistics, forecasting the effectiveness of the proposed measures in terms of their impact on crime and conducting criminological examination of regulatory enactments and socio-economic programs.

Economic crimes are a type of crime committed in the course of professional activity within and under the guise of lawful economic activity with the use of legal economic institutions.

Illegal actions in the field of economy and finance are called economic crimes.

Crime in the economic sphere is the basis of the shadow economy and is aimed at property and production relations.

The shadow economy is an economic activity, the subjects of which avoid official accounting and payment of taxes.

As a rule, there are three types of shadow economy, which are presented in the following table.

Table 2

Informal economy	legalized (permitted) economic activity, the subjects of which avoid official registration and motivate their actions by the situational need for physical survival. This is the largest segment of the shadow economy, represented by various types of small-scale production of goods and services (for example, music or photography services at wedding celebrations, transportation of passengers or cargo on a space-available basis, tutoring, repair and construction work by agreement with individuals, sales of home-grown production from homesteads on the unregulated street market). Today one more type of activity is added to these ones, that is due to the latest information technology advances and does not yet fall under the current legislation, which is too difficult to assess for taxation because of its virtual nature (for example, the so-called home office, i.e. you can earn on a computer, without leaving your own home);
Hidden economy	legal economic activity, the subjects of which are usually entrepreneurs who resort to various organizational and financial manipulations in order to obtain extra profits (for example, artificial fragmentation of big business in order to obtain tax preferences set by the state for small business; use of barter agreements for profit, unofficial payments for employees. This economy is also called «gray» economy, because the costs in it are still legal and the income is illegal.
Criminal economy	illegal (criminal) activity in the form of financial fraud, theft, smuggling, bribery, drug trafficking, pimping, racketeering, human trafficking, etc. Such an economy is called «black» economy because it has both illegal income and expenses.

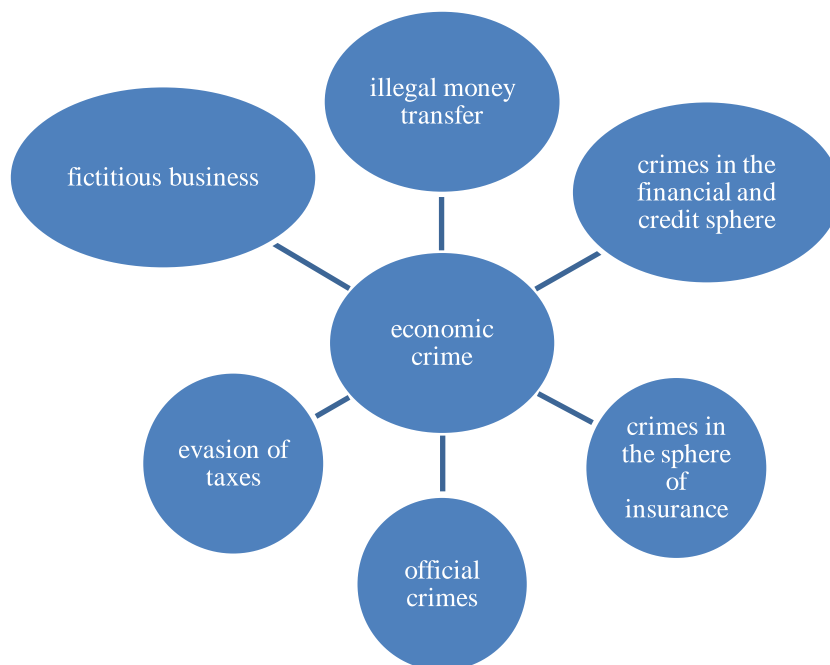

Fig. 2. The most common types of economic crime

According to statistics, a significant part of the created economic structures are liquidated by the founders, not having started their entrepreneurial activity. In many cases, the main reason is the objective difficulties: lack of start-up capital, production facilities, experience, qualified performers, etc. However, many enterprises are registered by their owners without an intention to carry out statutory activities.

Fictitious business.

The motives for creating a fictitious business structure can be various: obtaining loans for purposes, not provided by the statute; misappropriation of funds received; renting premises, property, land plots for non-statutory purposes; legalization of proceeds, obtained by unlawful means; illegal termination of competitors' activity; market monopolization, etc.

Illegal money transfer.

Enterprises use economic crime such as cashing out for a number of following reasons:

• purchase by enterprises of materials and raw materials needed in production for cash. This is beneficial to both the buyer, as the materials are slightly cheaper, and the seller;

• legalization of goods smuggled in or bought for «black» cash, as well as goods made illegally. It is impossible to bring such goods on charge in a warehouse and pay by non-cash payment;

• reduction of expenses for salary payments to employees of the enterprise.

Economic crime in the financial and economic sphere.

One more type of crime is related to obtaining bank loans by fraud. To do this, a network of commercial structures is created, in which, as a rule, the same people occupy key positions. For example, someone who is, say, a director in one firm, is a founder in another, and a chief accountant in the third one and so on. These companies do not produce anything and in fact do nothing, but only conduct various fictitious commercial transactions with each other ("air" trading). Their main task is to take loans from banks. By keeping up the façade of a form of trading with each other, these firms receive credit, for instance, under a contract for the supply of fuels and lubricants, metal, etc. The money received is then transferred from one commercial entity to another until its trail finally goes cold. The funds obtained in this way are immediately converted either right here in Ukraine or transferred abroad, from where it is then impossible to return them. Such loans are usually taken from commercial banks. As for the mechanism for obtaining loans, bribes to officials play a role here. And the size of these bribes can be quite large.

Evasion of taxes.

Today companies are forced to give the state in the form of various taxes and fees about 70-80% of their profits. Therefore, it is not surprising that many legal entities refuse to perform their duties as taxpayers.

Tax evasion is carried out by failure to file an income declaration, inclusion into the

declaration of inaccurate data, non-accounting or improper accounting of income and expenses, for which a mandatory form of accounting is specified.

The following illegal actions in order to evade taxes are as follows:

♦ working only with cash;

♦ creating a company for a short time (three or four months), when the tax inspection does not have time to check economic activity;

♦ conducting their operations using the current account of another firm;

♦ concluding a contract for the supply of products, works (services) with a tax-free enterprise (public organizations of the disabled and Chernobyl victims, offshore companies, etc.);

♦ formalizing the import of excise goods as transit, but selling them within the country;

♦ after selling the documented goods, supply the new ones in their place;

♦ applying the so-called «payoff» while buying and selling, etc.

All these operations can be thought over to the last detail by competent experts. In this case, the accounting documentation will be in order and will not give any reason for questions from the tax inspection.

Crimes in the sphere of insurance.

Another area of economic crime is insurance. The insurance mechanism is widely used to redistribute financial flows, evasion of taxes and other mandatory payments, money laundering, etc. However, the most common here is insurance forgery.

In Ukraine, where the market of insurance services and relations between insurance entities are still being formed, the scale of insurance forgeries is incomparable. However, in the field of financial risk insurance and, above all, the borrower's liability insurance, this problem is already quite acute today.

Official crimes.

A special group of crimes are the so-called official crimes, i.e. crimes committed by officials.

The main official crimes are:

♦ bribery;

♦ official forgery;

♦ abuse of office.

Among official crimes, bribery is the most common.

Bribery is the provision of any material values to an official in person or through intermediaries instead of committing illegal actions or actions in violation of established procedures in the interests of the bribe-giver or in the interests of the third party.

The public danger of such crimes lies in the fact that the official, receiving a bribe, subordinates the national interests to their personal, turning their official activities into a source of personal enrichment. Bribes can be expressed in any form: cash, property, property-related or other benefits.

Conclusions. This article examines the main causes of crime and their link to the economy. Thus, we have come to the conclusion that while investigating crimes in the sphere of economy there is a need to involve economic specialists to conduct inspections of financial and economic activity, provide advisory interpretations in the category, to which the transaction is related.

Also, in order to conduct interrogation properly and avoid concealing or providing false information by individuals related to the offense, it is advisable for investigators to involve specialists of a certain category.

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Abstract

The authors have noted that the successful prevention of crime is a matter not only of law enforcement officers, but also of society. The strategy of public influence on crime should consist, on the one hand, in involving, and on the other – in the initiative participation of individual citizens, public law enforcement organizations, etc. in law enforcement, participation in crime prevention programs, providing information on committed crimes with mandatory material encouragement of these areas of work by the state and private business.

Keywords: *corpus delicti, crime in the sphere of economy, classification approaches to division of crimes in the economic sphere, administrative proceedings, procedural discretion, public legal succession.*

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ORGANIZATIONAL AND LEGAL ASPECTS OF TOURIST FORMALITIES IN THE CONTEXT OF THE IMPACT OF THE COVID-19 PANDEMIC ON THE ECONOMIC SECURITY OF MICRO-ENTERPRISES

Сергій Цвілий, Дар'я Гурова, Світлана Никоненко. ОРГАНІЗАЦІЙНО-ПРАВОВІ АСПЕКТИ ТУРИСТИЧНИХ ФОРМАЛЬНОСТЕЙ У КОНТЕКСТІ ВПЛИВУ ПАНДЕМІЇ COVID-19 НА ЕКОНОМІЧНУ БЕЗПЕКУ МІКРОПІДПРИЄМСТВ. Ключовою проблемою сфери туризму є те, що регіональні мікрокомпанії зазнають необґрунтованих збитків та потребують правової допомоги, додаткових знань щодо нормативного регулювання специфіки ведення бізнесу за умов дії COVID-19, отримання консультацій відносно новітніх туристичних формальностей.

Стаття присвячена пошуку шляхів підвищення рівня економічної безпеки вітчизняних

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підприємств мікробізнесу регіону в умовах дії коронавірусу COVID-19 на основі узагальнення теоретичного досвіду організаційно-правових аспектів міжнародної системи туристичних формальностей і розробки механізму створення правового хабу для їх консультування.

Встановлено, що в коронавірусному економічному середовищі регіональні мікрокомпанії у сфері туризму зазнають необґрунтованих збитків та потребують правової допомоги, додаткових знань щодо нормативного регулювання специфіки ведення бізнесу за умов дії COVID-19, отримання консультацій відносно новітніх туристичних формальностей.

Запропоновано створення правового хабу для захисту інтересів туристичних підприємств мікробізнесу Запорізької області за умов COVID-19, пріоритетним напрямком співпраці в межах якого є консультативна, інформаційна, правоосвітня і правовиховна робота з представниками туристичних мікропідприємств регіону у галузі права. У регіоні які пілотний проєкт передбачається створення за сприяння Торгово-промислової палати на базі Національного університету «Запорізька політехніка» правового хабу, який вирішуватиме звдання підтримки туристичних мікропідприємств, нових підприємств у туризмі та підприємців-початківців, головною ідеєю якого є надання організаційно-правової допомоги мікропідприємцям у створенні власного механізму протидії негативним наслідкам COVID-19 та забезпеченні безпеки туристичного бізнесу.

Важливим напрямком діяльності правових хабів є проведення правового аудиту для мікропідприємств у регіоні, що дозволить систематизувати організаційно-правові потреби підприємств мікробізнесу в сфері надання туристичних послуг.

Ключові слова: *правовий хаб, туристичні формальності, економічна безпека, мікропідприємство, бізнес-структура.*

Relevance of the study. The study of organizational and legal aspects of tourist formalities became relevant during the period of feeding the borders of states. Of course, people have the right to free movement, but they must follow certain rules, which are the tourist formalities introduced by the competent authorities of individual countries. Each of the types of tourist formalities pursues related goals in the general sense, but they are achieved by applying a set of country-specific rules for crossing state borders, sometimes even local borders of certain regions within the country, terms of stay in different countries, import of items and many others.

Traditionally, the basic role in the harmonization and simplification of tourist formalities is given to the state. State regulation of tourist formalities involves the introduction of a set of state measures of one or a group of states, which are aimed at creating integrated conditions and simplified rules that allow everyone to join international tourism. Issues of direct detailing of organizational and legal norms, rules, lists, tariffs, instructions, which cover various types of tourist formalities, in a particular country deal with the relevant authorities. It should be noted that tourist formalities are duly established by the constitutional authorities of the country concerned. When introducing them, the following formulations should be present in the normative act: «Based on the Constitution ...», «In accordance with the Law ...», «On the basis of an article of the Code ...», «Guided by a Government resolution ...», etc. [1; 3; 13].

Today, despite the declared freedom of movement, international tourism activities will remain under strict state control for a long time. This is due primarily to the existing differences in the levels of socio-economic development of countries and peoples, their different legal understandings of such categories as order, morality and legality. Significant differences now exist in the essence of ideas about the level of general civilization, culture, organizational and legal norms and procedures for preventing new global threats, reactions to COVID-19 and methods of restricting tourist flows. From this point of view, in the context of a global pandemic, quarantine and restrictions on foreigners visiting countries have been introduced in most countries of the world in order to prevent the spread of coronavirus, which, of course, has led to a crisis in tourism. Currently, the political decisions of the world to respond to the pandemic are divided into two groups: the first – the isolation of sick and infected households without the introduction of quarantine and cessation of movement of citizens; second – tougher measures: such as quarantine, restriction of movement of citizens, closure of public institutions until the complete cessation of any business or social activity. Most governments choose the second course of action, but, of course, such harsh measures have a very high economic cost [22].

In Ukraine, in the field of tourism, small and microbusiness enterprises have been critically negatively affected by COVID-19, as they are the main sellers of a comprehensive tourism product. Thus, the practice of operation over the past year confirms a large number of claims and complaints from buyers of travel services about the insignificance of ordered

products and cases of rejection of travel plans due to restrictions because of the entry into force of coronavirus threats. Under these conditions, micro-companies suffer unjustified losses and need legal assistance, additional knowledge on regulatory regulation of the specifics of doing business under the conditions of COVID-19, obtaining advice on the latest tourist formalities. That is why the chosen problem area of research is timely and relevant.

Recent publications review. Theoretical-methodical and conceptual approaches to the functioning of certain mechanisms of legal regulation in tourism are presented in the works of M. Boyko, M. Bosovska, M. Buromensky, A. Voytsikhovskyi, M. Hnatovsky, O. Yevtushenko, T. Lutskaya, E. Makarenko, S Melnychenko, I. Melnyk, T. Mizerna, V. Mytsyk, A. Nalyvayko, T. Pulina, N. Sviridova, T. Tkachenko and others [2; 12; 15]. Specific features of the regulation of the development of tourist formalities are occasionally highlighted in the studies of such domestic and foreign scientists as: Yu. Alekseeva, A. Durovich, Yu. Karpenko, V. Kifyak, K. Pavlyuk, Yu. Solovyova, V. Udovychenko, R. Harrod, V. Tsybukh, etc. [6; 17; 19], the presentation of whose opinions made a significant contribution to the classical knowledge of the issue. Practical aspects of realization of organizational and legal tools in local tourist business groups in the conditions of pandemic COVID-19 are considered in scientific works of H. Brusiltseva, A. Vindyuk, S. Gres-Evreinova, V. Ermachenko, V. Zaitseva, L. Ivashova, T. Kuklina, A. Mazaraki, D. Stechenko, Y. Filei, P. Shelepnytski and others [4; 5; 11]. However, in the presence of a significant number of scientific ideas of domestic and foreign scientists today there are almost no comprehensive studies on the formation of effective organizational and legal approaches, tools and mechanisms for sustainable development of domestic tourism microenterprises in the coronavirus economy of Ukraine in the context of pandemic impact on economic security of the subjects of our state.

The article's objective is to summarize the theoretical experience of organizational and legal aspects of the international system of tourist formalities and develop a mechanism for creating a legal hub for advising microbusiness enterprises in the region during the COVID-19 pandemic to improve their economic security.

Discussion. The study of the essence of the concept of «tourist formalities» of a state allowed us to claim that, first of all, formalities are introduced to ensure national security, combat illegal migration, international terrorism, drug trafficking, prostitution, etc., as well as to ensure the safety of travellers and environmental protection. The most important thing is the protection of state borders from uncontrolled migration and the country from terrorism, which is one of the most pressing global problems of mankind. The rigidity of the establishment and compliance with formalities affects the formation of international tourist flows, while complicating the free movement of people. In theoretical terms, the order of entry of foreign tourists to a country and the associated degree of «hardness or softness» of tourist formalities is in a kind of balance with the interests of the state on its security, public order, and the rights and freedoms of citizens. At different historical stages of development of the world, this balance is disturbed, as more or less weight periodically becomes one or the other side. At the same time, there is a «Global Code of Ethics for Tourism», which should become a valid document, including the issues of streamlining tourist formalities. In particular, in Article 8 of the «Freedom of Travel Code» it is stated that administrative border crossing formalities imposed by states or resulting from international agreements, such as visas, sanitation and customs, should be adapted as far as possible to facilitate the freedom of travel and access of as many people as possible to participation in international tourism; encourage agreements between countries aimed at harmonizing and simplifying these formalities; gradually abolish or edit special taxes and fees that burden the tourism industry and harm the development of competitiveness [8; 9; 16]. Under the tourist formalities, the authors understand the procedures related to the verification of compliance with the conditions and requirements established for this purpose by persons crossing the state border. From the standpoint of organizational and legal space, it is advisable to distinguish the following groups of tourist formalities: police, passport, visa, customs formalities and currency control, health and insurance formalities (Fig. 1).

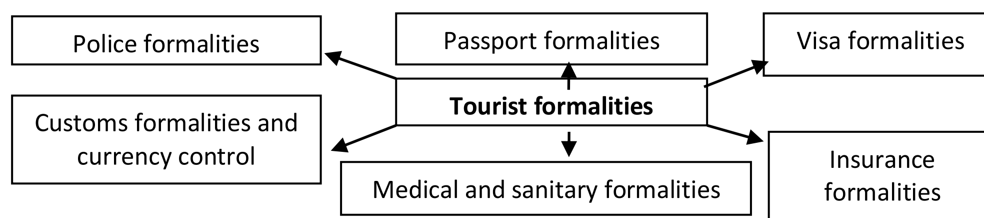

Fig. 1. Modern active types of tourist formalities in a global environment [14]

In the context of the coronavirus pandemic, health formalities come to the fore, which means procedures related to the verification of compliance with the established vaccination requirements by persons crossing the border. The World Health Organization (WHO) has developed Vaccination Certificate Requirements for travelling abroad, which is a practical guide for tourism organizations and tourists. International health regulations have been in force since 1951, which show that quarantine diseases of international importance include: plague, smallpox, cholera, yellow fever, and since 2020 – COVID-19. Thus, to prevent the spread of these dangerous diseases, health authorities resort to special sanitary measures. International human rights law guarantees everyone the right to the highest level of health and obliges states to take measures to prevent harm to the health of the population and to provide medical care to those in need. International human rights standards also stipulate that restrictions on certain rights and freedoms are permissible in situations of serious threats to the health of the population and emergencies that endanger the life of the nation. Such restrictions must be scientifically justified and legally enforced. If their application is not arbitrary or discriminatory and is limited in time, and human dignity is respected, then such restrictions lead to the achievement of the goal. On the one hand, tourists should receive reliable information about the disease and protection from it before travelling to certain countries, and it is usually submitted in the form of a reminder to citizens, certified by the signature of the tour operator and the seal of the travel agency. On the other hand, in the conditions of the COVID-19 pandemic, additional organizational, legal and economic burdens fall on the operators of the tourist services market, which are micro-enterprises. Of course, the state authorities of our country are trying to urgently find ways to address economic issues related to compensation to large and medium-sized businesses, as well as the development of compensation for microbusiness. However, so far no effective mechanism has been found to solve information and consulting problems of organizational and legal nature [20]. It would be appropriate to cite the fact that in accordance with Art. 2 of the Law «On Accounting and Financial Reporting in Ukraine» from 01.01.2018 applies a new classification of enterprises divided into micro, small, medium and large (Table 1).

Table 1

Definition of the category of enterprises (micro, small, medium and large) [7]

Company category	Evaluation criteria for the year preceding the reporting year		
	Book value of assets, euro *	Net income from sales of products (goods, works, services), euro *	Average number of employees, persons
Microenterprises	up to 350 thousand	up to 700 thousand	up to 10
Small	up to 4 million	up to 8 million	up to 50
Medium	up to 20 million	up to 40 million	up to 250
Large	over 20 million	over 40 million	over 250
* The official exchange rate of hryvnia to foreign currency (average for the period), calculated on the basis of NBU exchange rates set for the euro during the respective year, is applied.			

The specifics of the organization of tourism microbusiness shows its advantages (low start-up costs, full control over the company, ease of management, mobility, flexibility) and disadvantages (limited capital, zero competitiveness in relation to medium and microbusiness, high economic security, complex digitization, low level of organizational-legal support). Based on the experience of developed countries, it is concluded that in Ukraine institutions for micro-

entrepreneurship in terms of COVID-19, regardless of their name and organizational form, should perform the following functions: ensuring scientific and legal cooperation of domestic tourism micro-enterprises with European partners; legal audit, adjustment of information, innovation and service technologies from research institutions to microbusiness companies, cooperation with local authorities in the field of dissemination of innovations in tourism, organization of entrepreneurship training, research of innovative tourism potential of the region, organization of information, consulting, financial, legal and educational services, cooperation with microbusiness support organizations and experts in the field of tourism law.

The term «hub», which came to us from England, is becoming an increasingly popular organizational and legal structure, and its general essence increasingly covers European countries, and Ukraine is no exception. Unfortunately, not all microbusiness entities are familiar with hubs and not everyone understands the purpose. Literally «hub» from English translates as «node, fork». Consumers are more familiar with the following meanings of this term: first, the settings for connecting multiple devices via USB; secondly, hub airports where you can change to another plane for further travel. However, within the framework of this study, such a virtual «node» should be defined as «meeting point», «meeting place», «communication space». That is, the legal hub should be the result of a community of like-minded people whose interests are focused on making microbusiness in tourism economically safe, protected in the legal field, attractive and effective by providing modern, quality and unique services to consumers. The practice of domestic formation of hubs give evidence of their emergence on the basis of transformation, mainly of social phenomena (development of the city, district, community, etc.). From the standpoint of combining legal interests to increase the level of economic security of microbusiness companies, such a virtual place should be the center of legal initiatives and creativity, the area of birth of projects, consultations, non-formal learning, workshops, legislative initiatives.

The authors propose to create a legal hub to increase the level of economic security and protect the interests of tourism enterprises in the micro-business of Zaporizhzhia region in terms of COVID-19. The priority area of cooperation is advisory, informational, legal education and legal education work with representatives of tourist micro-enterprises of the region in the field of law. Understanding the mission and the need to create a legal hub, first of all, must be mastered by microbusiness entities. However, the general goal may be as follows: the legal hub should take place as a center of information and consulting activities, a digital educational space that unites the interests of stakeholders in the field of microbusiness in Zaporizhzhia region, who want to constantly develop, looking for new ideas on survival, increasing the level of their own economic security and sustainable development in the conditions of the corona environment, seek not only theoretical knowledge but also practical skills in the legal solution of issues in tourism and hospitality.

The organization of a regional legal hub for micro-entrepreneurship with the assistance of the Chamber of Commerce and Industry (CCI) can be a promising and effective measure aimed at creating a legal basis for the development of processes of mastering tourist formalities in the field of microbusiness in modern conditions. The organization of activity of this hub is necessary both for regional authorities, and for subjects of tourist activity. The main task of the legal hub is the organizational and legal support of businessmen operating in the field of tourism and developing tourism micro-firms. These firms begin to interact with public or private entities on the basis of agreements that provide for their participation in regional and local development. The wide scope of coverage makes it possible to provide various information and consulting services for the development of companies and to establish cooperation with specialized services to assist in obtaining legal assistance. In the Zaporizhzhia region, as a pilot project, a legal hub will be established with the assistance of the Chamber of Commerce and Industry (CCI) on the basis of the National University «Zaporizhzhia Polytechnic» (NU «ZP»), which will solve the problem of supporting tourism micro-enterprises, new enterprises in tourism and start-up entrepreneurs. The main idea of the legal hub is to provide organizational and legal assistance to micro-entrepreneurs in creating their own mechanism to counteract the negative consequences of COVID-19 and ensure business security.

The goals of the legal hub are defined: creation of a virtual «section» (using the Internet technologies) for public acquaintance of potential participants with world changes in tourist formalities (1); providing comprehensive organizational and legal support and educational, training, consulting and information services to start-up entrepreneurs and existing business

entities in the Zaporizhzhia region in the field of studying tourist formalities (2); development of entrepreneurial innovative thinking in students through the introduction of training programs with practical tools to work on changes in tourism formalities (teamwork, collective legal decision-making, time management, discussion, development of legislative initiatives in tourism, information and communication perception of legal information, consultations, webinars with the participation of representatives of microbusiness enterprises for the exchange of experience of survival in the conditions of COVID-19) (3); involvement in active cooperation of legal and law departments of state local authorities in the context of updating and promoting the idea of micro-entrepreneurship in the field of tourism in Zaporizhzhia region (4); discussion of practical issues of development of domestic micro-entrepreneurship in the conditions of COVID-19 and leading experience of obtaining knowledge of tourist formalities in the EU between students and entrepreneurs (5).

The creation of such a structure will significantly help in overcoming the sectoral and territorial separation of the tourism process and will promote the gradual inclusion of organizational and legal mechanisms of self-regulation and adaptation of microbusiness in the region to the coronavirus environment. It should be added that the combination of the principles of centralism characteristic of the Ukrainian mentality and equal business partnership inherent in the market economy will create the most favorable conditions for the adaptation of the scientific and legal sphere of Ukraine to the crisis in tourism. In addition, the presence of such integration structures in the domestic regions will greatly facilitate the solution of organizational, technical and financial issues related to the formation of regional legal data banks and networks of information support of tourism, including state management of organizational and legal support of tourism.

Ensuring the development of state and regional tourism infrastructure through the establishment of regional legal centers as part of a large-scale nationwide project to support microbusiness, which should provide a demonstration effect by 2025, and after analyzing annual monitoring data, it is advisable to develop recommendations for a national network of regional legal hubs, as an organizational and legal basis of entrepreneurship in tourism of regional subsystems of the general national system. The purpose of creating legal hubs in the regions is to form a structure to support business in the field of tourism, which will ensure greater effectiveness of local authorities, public associations and other institutions in the field of regional tourism development planning.

The organization of a legal hub will contribute to the comprehensive solution of important tasks for the region, namely:

– creation of bases for regional integration and development of business contacts in the field of tourism;

– equalization of conditions of access of microbusiness enterprises to legal and regulatory resources;

– formation of a system of information and legal support of tourist processes and their monitoring;

– organization of a mobile information-analytical channel on the sphere of tourist formalities;

– legal assistance to micro-enterprises in developing a digital strategy for finding partners in tourism;

– stimulating micro-business tourism enterprises to develop a post-coronavirus strategy;

– formation of a favorable business climate in micro-entrepreneurship for transformation.

In general, the activities of public authorities to implement the proposed provisions for the formation of a legal hub at the regional level and organizational measures aimed at intensifying the processes of legal support for tourist micro-enterprises will help solve such important problems of economic security of micro-business as: formation of the foundations of the organizational and legal system of monitoring tourist formalities at the level of micro-entrepreneurship in the region (1); modernization of the tourist complex, overcoming structural deformations, increasing the share of tourist products of the final redistributions (2); increasing the competitiveness of the tourist product of the region's enterprises in the world and domestic markets (3); creation of fundamentally new organizational and legal regional centers on the basis of micro-enterprises that use the latest information and communication technologies (4); effective use of digital resources for the legal mastery of tourist formalities (5); formation of an efficient mechanism for the transfer of the results of the interaction of partners in the legal hub

(6); accelerating the adaptation of regional micro-entrepreneurship to the coronavirus economy (7); involvement of new information and legal partners in the tourism sector (8).

Conclusions. The role of the state is not only to generate a system of rules for the functioning of tourism market entities and control compliance with them through the formation of a favorable institutional environment and organizational-legal infrastructure, but also to assist micro-companies in overcoming crisis factors in the tourism business. Government institutions should facilitate the provision of legal assistance, additional knowledge on the regulation of the specifics of doing business in the context of the COVID-19 pandemic and obtaining advice on the latest tourist formalities. An important area of legal hubs is to conduct a legal audit for regional micro-enterprises, which will systematize the organizational and legal needs of micro-enterprises. The prospects for further research should be the mechanisms of integration of legal hubs within the country, information and analytical agencies, research and consulting legal centers, higher education institutions, private entrepreneurs in tourism in national networks to support micro-enterprises to justify their postcoronavirus strategy.

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Abstract

The article is devoted to finding ways to increase the level of economic security of domestic microbusiness enterprises in terms of COVID-19. It is established that regional micro-companies in the field of tourism suffer unjustified losses and need legal assistance, additional knowledge on the regulation of the specifics of doing business, obtaining advice on the latest tourism formalities in the world. It is proposed to create a legal hub to protect the interests of travel microcompanies of the Zaporizhzhia region, the priority cooperation of which is advisory, informational, legal education and legal work, as well as providing organizational and legal assistance to micro-entrepreneurs in creating their own mechanism to counteract the negative effects of COVID-19.

Keywords: *legal hub, tourist formalities, economic security, microenterprise, business structure*.

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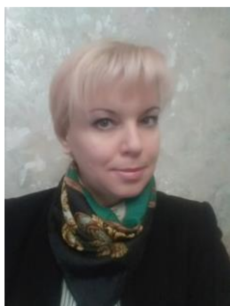

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CLUSTER CONCEPT AS A DIRECTION OF EFFECTIVE USE OF INVESTMENT POTENTIAL

Ольга Ядловська. КЛАСТЕРНА КОНЦЕПЦІЯ ЯК НАПРЯМОК ЕФЕКТИВНОГО ВИКОРИСТАННЯ ІНВЕСТИЦІЙНОГО ПОТЕНЦІАЛУ. У статті розкрито особливості інноваційного шляху розвитку в нестабільних економічних умовах на сучасному етапі розвитку України. Проаналізовано переваги кластеру як функціонального механізму та системи, що надає можливість отримати значно більший економічний ефект від діяльності об'єднань підприємств, їх синергетичної дії порівняно з результативністю роботи окремого підприємства. Охарактеризовано пряму залежність між залученням обсягу капітальних інвестицій та прямих чистих інвестицій від моделей економіки певної країни та рівня її економічного розвитку. Підкреслено, що побудова економіки із залученням кластерних моделей стає запорукою формування привабливого інвестиційного клімату країни. Розглянуто необхідність реалізації кластерної концепції як інноваційного процесу розвитку економіки України та необхідність залучення світового досвіду розвитку кластерних моделей. Наголошено, що міжнародний досвід свідчить про високу ефективність економічної діяльності кластерів. Акцентовано увагу на тому, що у країнах Європейського Союзу розроблено законодавство щодо забезпечення розвитку кластеризації як однієї з умов підвищення конкурентоспроможності економіки як окремих регіонів, так і держави. Звернено увагу на недосконалість законодавчої бази України стосовно комплексного впровадження кластерної економічної концепції та необхідності створення та реалізації Національної програми кластерного розвитку в Україні. Зазначено, що у подальшому задля розбудови держави слід звернути увагу на більш широке впровадження кластерної концепції в національній економіці України.

Ключові слова: *інноваційний розвиток, інноваційне підприємство, інвестиційний потенціал, конкурентоспроможність, кластер, кластерна концепція, кластерна політіка, законодавство.*

Relevance of the study. Currently, the attention of economic science is turned to the problem of the formation and development of a competitive model of the national economy. In our opinion, the most promising direction of effective use of investment potential is an innovative development, in which the concept of clusters − new forms of the spatial organization of production − has acquired its relevance. Increasing competition of commodity producers, physical and moral wear of production assets, qualitative lag of domestic technology from the world analogs, depletion of scarce resources, market saturation predetermines the transition to this way of development. As the world practice shows, the successful economic systems of developed countries are innovative, which is a process of technology change, which determines the conditions for the creation of new industrial systems in changing institutional conditions. Investigating the problem of effective use of investment potential revealed the need to analyze some issues: the features of the innovative way of development to determine the position of modern competitive advantage; the choice of the cluster concept around new technologies as a new economic system with the optimal use of resources. The implementation of the cluster concept in Ukraine has revealed several problems in its accomplishment − certain aspects of this issue require consideration. Also, in the Ukrainian legislation, there are several dozen legislative and regulatory acts that mention clusters. However, no legal action, in which the cluster development would be the object of state regulation, has ever been adopted. This issue is only dispersed in various legislative acts.

Recent publications review. The study of the results of the effect of clusters in various aspects of the economy is devoted to the works of many foreign scientists, such as M. Porter, A. Marshall, E.Dahmen, J. Toledano, L. G. Mattson, M. Enright, as well as in the works of

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Ukrainian authors M. Voynarenko, T. Kompanietz, L. Nekrasovoj, G. P'yatnitskoj, L. Rineyskoj, O. Smirnov, S. Sokolenko, O. Tischenko, I. Turskii and others, who reviewed the study of the nature of clusters and their classification, the world experience of the organization, implementation and operation.

The article's objective. To reveal the features and advantages of innovative development as an opportunity to increase the competitiveness of the national economy. In the context of this problem considering the cluster concept and its role in the effective use of investment potential and coverage of the implementation of this issue in the legislative framework of Ukraine.

Discussion. A group of Ukrainian scientists gave the following definition of the term «innovative development» of the subject of economic activity − the process of economic activity, which relies on the continuous search and use of new ways and areas of realization of their potential in changing environmental conditions within the chosen mission and the adopted motivation of activity and associated with the modification of existing and the formation of new sales markets [1, p. 30]. Certainly, for this purpose essentially new approaches to management and organization of manufacture and marketing multifactorial analysis of a market conjuncture with forecasting of its rates and directions of development are necessary. This analysis reveals market opportunities for innovative development, allows making a choice of optimal options, taking into account the potential of the economic entity and external conditions, as well as determining the formation of a new target market.

Management of processes of innovative development of subjects of economic (business) activity implies the presence of an appropriate criteria base as a basis for making effective management decisions. It should include criteria for assessing alternatives at all stages of decision-making: from choosing the directions of development of market opportunities of business entities, and within them, specific options, to the formation of the structure of investment resources needed to implement the adopted options for development, carried out based on innovations [2, p. 176]. This specificity allows us to make an effective assessment of the choice of decisions on the management of innovative development projects because the stage-by-stage selection criteria system allows us to display the specifics of decision-making at each stage of assessment, the choice of options for innovative development, which improves the quality of direction determination and in conditions of rapid market changes and shortage of financial resources, compared to traditional methods, more quickly identify and use them.

Innovative enterprise can respond flexibly and timely to all changes in the environment and, at a certain point, implement the changes unknown before today, without large labor and material costs for the reorientation of production. Such a possibility is provided by the application of deep optimization of material flow processes and production processes, which provide this movement. The basis of this optimization is the principle of "three *Co*'s": communication, computerization, control, as well as the basic technologies of flexible automation and organizational approaches of operational management.

New technologies make it possible to create completely new products and production processes, some of which can radically improve the economic condition of Ukraine. It is also possible that as a consequence of technological progress, production will shift to the use of more affordable and efficient resources, i.e., the demand for oil, petroleum products, and metals will decrease [3, p. 53].

Innovative scientific and technological way of development provides the following principles: self-organization, self-development, self-regulation, adaptability, dynamism. This is the innovation environment, where practice-oriented knowledge in the form of technological solutions is brought to new systems of activity in various industries, which creates conditions for the emergence of new forms of production organization.

The transition to an innovative way of development in the unstable economic conditions of the transition period (in market conditions in general only changes are constant) requires appropriate marketing tools and methods that will effectively manage the activities of economic entities in the search for ways to implement the available potential concerning changes in economic conditions [1, p. 43]. Regional and industrial clusters, which are an integral part of innovative development, can be such a mechanism for solving this problem quite successfully. These are new forms of the spatial organization of production, which are highly competitive. The famous American economist M. Porter gave a classic definition of the cluster concept: "A cluster is a group of geographically adjacent, interrelated companies (suppliers, manufacturers, etc.) and related organizations in specific areas of the economy (educational institutions, public

administration, infrastructure companies), which compete, but at the same time are characterized by common activity and complement each other" [4, p. 58]. Their advantages are reflected in the indicators of production efficiency and high labor productivity due to the fact that companies and suppliers are located in a cluster geographically close to each other, thus facilitating the coordination of actions and transactions between them.

Systematizing scientific views on the formation of clusters, we can conclude that these theories are based on the cluster approach, which is an innovative form of economic modernization of the territory.

Cooperation between business and academia stimulates the invention of innovations, complex and modern business processes emerge, as new ideas pass from one company to another. Clusters, as network forms of production organization, in global and national markets, are high-tech tools that generate new knowledge and resources to ensure the competitiveness of countries.

The vast majority of developed countries and many developing countries have national cluster programs. At the same time, each country develops a convenient policy of forming cluster associations, and clusters have their specifics of organization and functioning. The cluster approach to the development of territories is adopted in many countries at the state level [5, p. 9], among them are the United States, Canada, Germany, the United Kingdom, Denmark, Finland, India, China, Belarus, Kazakhstan, Indonesia, Malaysia, Mexico, Nigeria, Chile, Morocco, Jordan, Syria, Lebanon, etc. [6, p. 45]. For example, the Australian authorities have attempted to create analogs of the Silicon Valley, but experience has shown that in Australia a more effective way to combine scientific accomplishments, advanced technology, nano development, and their practical implementation is the formation of technology parks, combining the advantages of universities and innovative technology-oriented business structures. Common features of Australian technology parks are the location on a large territory of a pre-existing industrial facility (railway depot, exhibition center); cooperation with a nearby institution of higher education; a short distance from the city center; location of city services and institutions; availability of significant space for exhibitions, conferences, symposiums; participation in projects of graduates of local universities.

Cluster policy is most relevant at the regional level, where the competitive advantage of countries is created, rather than at the national level. And the main role is played by the historical preconditions of regional development, diversity of business cultures, organization of production, and obtaining education [7, p. 25]. The common feature of the states with the cluster approach to economic development is the presence of objective preconditions, monetary incentives, reduction of regulatory barriers in innovation programs, the formation of competitiveness centers, creation of economic zones, and preferential taxation of effective clusters.

Exploring the problem of competitiveness and place of Ukraine in the global community, according to scientists, the success of an enterprise or firm, and especially in innovation, when the implementation of innovation requires the efforts of several firms depends on the immediate surroundings, cooperating and competing organizations.

This creates conditions for profitable financial investments, with the possibility of replication of such packages in different territories of the country. Thus, cluster policy is an effective mechanism for attracting investments, as well as the basis of cluster initiatives aimed at improving competitiveness, since the implementation of this policy contributes to the growth of business competitiveness through the effective interaction of cluster participants associated with geographically close location, including increased access to innovation, new technologies, specialized services, and highly qualified personnel [8, p. 129].

The creative activity of the cluster is also expressed in the fact that most of its participants do not compete directly with each other, but serve different segments of the industry. Their creation is extremely important for the transition of the economy to the innovative way of development, which requires constant contact between the participants of the innovation process, which allows adjusting scientific research, experimental development, and production process. Such interaction has its features due to corporate interests, which ensure innovative integration of any organization regardless of their size [6, p. 47]. In general, the most important organizational principles of clusters are: application of knowledge, received in laboratories of institutes, in industrial production technologies of various branches; turnover of knowledge, making a complex of technological solutions; development of special financial-investment schemes and innovative strategies; retraining of managers and developers of the formed cluster, capable of working in conditions of high uncertainty.

There is a classification of the stages of development of national economies according to the main factors:

1) factor-based economies, where attention is paid to basic requirements (institutions, infrastructure, macroeconomic environment, health, and education);

2) efficiency-oriented economies, where attention is paid to efficiency enhancers (higher education and training, goods market efficiency, labor market efficiency, financial market level, technological readiness, market size);

3) innovation-oriented economies, where attention is paid to the main factors of development and innovation potential of which are the level of business development and innovation.

According to this classification, Ukraine is in the transition from the first stage to the second one, like the following countries are: Algeria, Angola, Armenia, Azerbaijan, Botswana, Brunei, Guatemala, Guyana, Honduras, Georgia, Egypt, Iran, Kazakhstan, Kuwait, Mongolia, Paraguay, Philippines, Qatar, Saudi Arabia, Sri Lanka, Syria, Venezuela. Jamaica [4, p. 267].

Researchers concluded that the situation in Ukraine can be changed only by large-scale and purposeful actions of the national and regional authorities aimed at activation of innovative activity of enterprises and their associations (clusters) [9, p. 269]. It is necessary to finance the enterprises whose activities will be aimed at the possibility of building a new industrial multi-system, involving the construction of infrastructure with a sophisticated combination of serial and unique solutions, both in control systems and in the choice of construction materials.

Examples of developed and developing countries convince us that modern competitive products can be based on the processes of integration: horizontal, regional, vertical. Progress is produced not by individual firms, but by associations, groups, clusters, and networks. This experience is particularly relevant for post-Soviet countries, for which the transformation into technological states is an objective necessity. The program of clustering in Ukraine will ensure the high competitiveness of the national economy [5, p. 15].

The formation of an institutional environment based on clustering provides a powerful impetus for an effective innovative economy on the condition of an integrated modernization. The present stage of modernization should include primarily large-scale renovation of production influenced by the formation of advanced technological structure. Due to the instability, the extreme variability of the basic elements of Ukrainian society, and the presence of residual effects of previous development, before the government of the country there are fundamentally new tasks that it should decide during the institutional transformation [10, p. 201].

The practical manifestation of the implementation of the cluster concept is reflected in various spheres of the economy. Until now, the cluster approach, in our opinion, has been implemented partially and its implementation is not comprehensive. The following analysis also shows the absence of some elements of the criteria framework for the implementation of cluster policy development in Ukraine.

State and private research centers, which could be a platform for the exchange of knowledge, experience, development of innovation, are experiencing important times. This can be explained by both the exodus of highly skilled labor force abroad and the lack of investment. Developers of innovations finance their activities independently. More than 80% of investments in business in Ukraine were made at the expense of enterprises, indicating an undeveloped financial-economic system. The public investment covers only 0.35% of the total costs of innovation activity in the national economy as of 2017 [11].

Global tendencies of creative industries development are based on the development of digital technologies and, accordingly, access to the Internet, and its quality is a prerequisite for the successful formation of creative industries. In Ukraine 53% of the population has access to and uses the Internet, which is close to half of the population of the country, in Germany − 90%, in Poland − 80%. The low share of the Ukrainian Internet segment has not impeded the significant development of the market of information technology in the last ten years, which now amounts to more than 4 billion dollars. The number of people employed in the information and telecommunication technology sector is about 273 000 [12]. It was an innovative activity and the potential of information technologies that led to the establishment of IT clusters in many Ukrainian cities. Such creative cluster structures are functioning and are being created in Kyiv, Kharkiv, Odesa, Lviv, and other urban areas of the country.

At the same time, there are also significant negative manifestations of the development of investment potential as one of the bases for the implementation of the cluster concept. According to the World Bank, the balance of payments of Ukraine on net direct investments is

passive [12], thus there is a constant outflow of funds exceeding their inflow. In particular, from 2010 to 2019 (data for 2020 has not been generated) the passive balance on private direct investment was (in millions of dollars): in 2010 – –5,759,000; 2011 – –7,015,000; 2012 – –7,195,000; 2013 – –4,079,000; 2016 – –3,794,000; 2017 – –3,684,000; 2018 – –4,460,000; 2019 – –5,212,000. Only in 2014, the passive balance was significantly lower (13-23 times) – 299,000, and for 2015 the characteristic was an active balance of payments (inflows of funds) – + 407,000. For comparison, the balance of payments in developed countries during the same period was predominantly active according to the above-mentioned indicator. For example, in Sweden from 890,000 to 26,576,115 in different years (except 2016 – 14,370,2111). In general, the analysis shows the wariness and reluctance of foreign investors to invest due to several factors: political, economic, social, infrastructural, and corruption.

One of the manifestations of successful cluster activity is the attraction of capital investments. This type of investment determines the market value of enterprises of the cluster, accordingly, real capital investments will indicate the development (if they are absent or low – stagnation) of both these enterprises and the cluster, as well as the economy of Ukraine as a whole. For example, analyzing the capital investments in Ukraine for the sources of funding in 2019 (without taking into account the temporarily occupied territories of the Autonomous Republic of Crimea, the city of Sevastopol, and part of the Ukrainian economy as a whole. Sevastopol and part of the temporarily occupied territories in Donetsk and Luhansk regions) [11], it was found that the largest amount of investments was made at the expense of own funds of enterprises and organizations, which amounted in different financial quarters from 68.1% to 74.1% of the total amount (100% amount of 4,305,945.2 million UAH). UAH 4,305,945.2 mln). However, other types of funds are used for much less: the state budget – 1.7% – 5%; local budget funds – 4.2% – 9.6%; bank loans and other loans – 7% – 9.1%; funds of the population for housing construction – 5.6% – 7%; other funds – 2.6% – 4.1%. And separately distinguish the coffers of foreign investors, which were received from 4.2% to 9.6%. This signals a very uncomfortable investment climate in Ukraine and requires additional effective development of the mechanism of guarantees and protection of foreign investments. It should be noted that the main role in the creation of favorable and stable development of the country is played by foreign investments.

The problem of creating a favorable investment climate and investment-friendly privatization is relevant today, as it will be a prerequisite for the development of clusters as a further source and generator of investment potential of the national economy.

The environment for conducting creative business in Ukraine is also not very favorable. In particular, in the international rating "Doing Business 2019", which is composed based on 11 indicators of the business regulation sphere and signals of potential investors about the possibilities, conditions, and prospects of doing business in some states, Ukraine took only the 71s place among 190 countries, although it demonstrates the growth in the development of a favorable business environment in comparison with the previous years [34, p. 13].

Of fundamental importance in the implementation of the cluster concept as an innovative activity is the implementation of relevant legislation, as well as the use of and accession to European legislative initiatives in this matter. According to the mentioned tense, i.e., reporting to international legislation, the EU Clustering Manifesto (2007) and Cluster Memorandum (Stockholm, of January 1, 2008) should be ratified. Furthermore, it is worth referring to the system of other documents of the Council of Europe and EU international treaties such as the European Framework Convention on Transfrontier Cooperation between Territorial Communities or Authorities (Madrid, of May 21, 1980); Joint European Parliament and European Council Decision no. 1082/2006 on European groupings for territorial cooperation (July 5, 2006); Lisbon concept of cluster development of European countries in 2000; Recommendation No. R(84)2 of the Committee of Ministers of the Council of Europe on the European Charter for Regional/ Spatial Planning (Torremolinoska Charter, May 20, 1983); Recommendation of the Committee of Ministers of the Council of Europe № (2002)1 on guiding principles for the old spacious development of the European continent (Hanover, September 7-8, 2000) and others.

Even though the cluster approach to the regional economy in many countries of the world back in the early twentieth century became part of state policy, which contributed to the formation of different types of models of cluster structures (Italian, French, Japanese, etc.), Ukraine has not yet created the appropriate legal framework for their creation and functioning today Ukraine has not created a proper legal framework for their establishment and functioning, although from the beginning of the 2000s the legislation from time to time mentions the necessity of

forming clusters, including such initiatives: The decree of the government "On Approval of the State Program of Industrial Development for 2003-2011". Decree 1174 of June 28, 2003; "On Approval of the Concept of the State Target Economic Program "Creation of Innovation Infrastructure in Ukraine for 2008-2012". On June 6, 2007, № 381-r; "On Approval of the Program for the Development of Investment and Innovation Activity in Ukraine" of February 2, 2011, № 389; "On approval of the action plan for 2010-2011 years for the creation of innovation and technology cluster "Sorochinskiy Fair" to support the development of rural areas" from 27 September 2010. No. 165-r; "On the implementation of a cluster model of development of folk artistic industries" of June 27, 2010, № 145-r and others. In 2009 the project of the Concept of the National Strategy of Formation and Development of Trans-Caucasian Clusters was developed, but it was not legitimized. The Law of Ukraine "About Priority Areas of Innovation Activity in Ukraine" of June 8, 2011. No. 3715-VI established that for the implementation of medium-term priority areas of innovation activities the state implements measures for the development of innovation infrastructure, including innovation clusters [14, p. 60].

The partial cluster approach is characterized in the draft Law of Ukraine "On Agriculture". It specifies that interstate organizational and management structures in the form of independent state cooperative associations and cluster regional cooperation in the organizational and legal forms of partnerships can be established in the rural economy, Associations, Consortiums (Article 11. 4). So, for the development of clustering of the agrarian sector of economic activity, the above-mentioned normative document should be adopted [15, p. 24].

In 2016 the Ministry of Education formed a new division − Department of Strategic Planning and Development, which is responsible for the strategy of creative progress of the country and regions. This structure also includes the sector of creative industries development. In some aspects, these initiatives correspond to the cluster concept. In February 2018, a bill on amendments to the Law of Ukraine "On Culture" was adopted, which defines the concept of "creative industries" in the legal field [16]. According to the basic provisions of the law, the government must approve the types of economic activities related to the creative sector within 6 months. Frequently cluster concepts are implemented in the sphere of culture and tourism, but the latter has mainly local and regional influence (as a manifestation, "green tourism"), and in general clusters in the sphere of culture, education are characterized by project nature.

Platform Industry4Ukraine, a group of experts of the cluster committee, presented a draft of the National Program of Cluster Development until 2027. The document argues the need to accelerate cluster development, defines the main principles and guidelines for development up to 2025, and contains some recommendations for the executive branch of the national and regional levels, as well as for managers of cluster structures [17]. Developed by the platform, program must be approved by the Ministry of Economy for further development of the cluster concept in Ukraine.

The law on clusters should be significantly refined: a clear definition of the legal status (organizational and legal form) of the cluster is necessary, it should indicate all the rights and obligations of cluster participants by the status, as well as the rules of operation and standards of the cluster, taking into account international standards for product certification.

Conclusion. Clusters are a chance to create a system of modern industrial platforms in Ukraine with adaptation both to the system of domestic and global demand. This involves advancement from fundamental scientific groundwork to new techno-industrial and socio-cultural mode, to new types of technologies and techniques, and on their basis − to new generation products, using systemic marketing for guaranteed demand for them. Formation of associations based on cluster approach creates conditions for concentration of capital, which can be used to implement long-term economic development strategies, which, in turn, is a condition for increasing the level of investment attractiveness, contributing to the expanded recovery within the cluster. The high interest of the state and business in clusters in the global and national markets is due to their high competitiveness, which predetermines the priority direction of effective use of investment potential.

Innovative development of the economy of Ukraine together with strategic goals and objectives should have national priorities, in the implementation of which is the economic reforms of the state. This requires changes in the legislative and legal framework of the state, taking into account both its own mistakes, and the experience of cluster development in other countries. The main reason for finding an effective model of the economy is market competition, in which the cluster concept on the example of developed countries has shown itself as an effective direction of the organization of economic activity of enterprises.

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Abstract

The article reveals characteristics of the innovative way of development in unstable economic conditions. During the research, the advantages of cluster conception have been analysed as a mechanism of the implementation of innovative development and a new economic system with optimal usage of resources. The International experience testifies high efficiency of cluster associations. The necessity of implementing the cluster concept as an innovative process of Ukrainian economy development and the necessity of acquiring world experience in the development of cluster models have been proved. It was announced that the international experience give evidence of high efficiency of economic activity of clusters.

Keywords*: innovative development, innovative enterprise, investment potential, competitiveness, cluster, cluster concept, cluster policy, legislation.*

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STRUCTURAL-LOGICAL MODEL OF THE STRATEGY OF INVESTIGATIVE COUNTERACTION TO CRIMINAL OFFENCES (ECONOMIC CRIMES) IN THE AGROINDUSTRIAL COMPLEX OF UKRAINE

Володимир Єфімов. СТРУКТУРНО-ЛОГІЧНА МОДЕЛЬ СТРАТЕГІЇ ОПЕРАТИВНО-РОЗШУКОВОЇ ПРОТИДІЇ КРИМІНАЛЬНИМ ПРАВОПОРУШЕННЯМ (ЕКОНОМІЧНИМ ЗЛОЧИНАМ) У СФЕРІ АГРОПРОМИСЛОВОГО КОМПЛЕКСУ УКРАЇНИ. У статті досліджено організаційні особливості побудови структурно-логічної моделі оперативно-розшукової протидії кримінальним правопорушенням (економічним злочинам) у сфері агропромислового комплексу України. Акцентується увага на тому, що кримінальні правопорушення економічної спрямованості, які вчинюються на підприємствах агропромислового комплексу, мають кілька характерних рис, зумовлених специфікою виробничо-господарської діяльності цих об'єктів економіки України. Зазначено, що сучасна криміногенна ситуація у сфері агропромислового комплексу характеризується такими ознаками: зростанням кількості виявлених злочинів, наявністю значної латентної злочинності; поширеністю організованої злочинної діяльності; значних матеріальних збитків, що заподіюються кримінальними посяганнями.

Також зосереджується увага на важливості того, що вивчення способів здійснення досліджуваної категорії злочинів продемонструвало, що вони відрізняються значною різноманітністю, особливою витонченістю, активної адаптацією злочинців до нових форм і методів підприємницької діяльності. Наявні статистичні дані, які характеризують особистість злочинців, необхідно враховувати при виявленні, запобіганні і документуванні аналізованої категорії злочинів, організації належного оперативного обслуговування.

Проведене дослідження дозволило визначити низьку ефективність діяльності оперативних підрозділів Національної поліції у протидії економічним злочинам у досліджуваній сфері. Більшість дослідників свідчать про необхідність забезпечення оперативних підрозділів науково обгрунтованими рекомендаціями щодо протидії кримінальним правопорушенням (економічній злочинності) у сфері сільського господарства в усіх напрямках їх діяльності.

Ключові слова*: агропромисловий комплекс, слідчі (розшукові) дії, огляд документів, обшук, допит свідків, слідчий, оперативний працівник.*

Relevance of the study. The process of reforming of economic relations in Ukraine can be described as sluggish, reforms are not always consistent, and sometimes contradictory. For almost thirty years of independence, the law on combating economic crime which would clearly define the composition of crimes related to the economic sphere has not yet been adopted. Although in 2002 some political forces supported the bill «On Combating Economic Crime», it has still remained unaccepted. The importance of ensuring the economic security of the agro-industrial complex of Ukraine is given to the bodies of the National Police of Ukraine. However, the reorganization of the Ministry of Internal Affairs, which has been carried out in recent years, has brought about a number of problems, which have affected the provision of one of the functions of the National Police – the protection of the economy, namely the counteraction to economic crimes. The analysis of the situation in the sphere of the agro-industrial complex shows that criminogenic factors largely determine not only its current state, but also its development prospects. Confirmation of the process of active criminalization is the number of crimes of economic orientation committed in the specified sphere, as well as the amount of material damage caused.

Recent publications review. The legal bases of peculiarities and organization of exposing economic crimes, especially the implementation of this activity in relation to certain sectors

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of the economy in the specialized literature is discussed in great detail, in particular in the works by: K. V. Antonov, A. I. Berlach, V. I. Vasylynchuk, V. Ya. Horbachevskyy, E. O. Didorenko, O. F. Dolzhenkov, V. P. Zakharov, Ya. Yu. Kondratiyev, V. S. Kubarev, M. I. Kamlyk, I. P. Kozachenko, A. I. Kapitansky, V. V. Kikinchuk, V. V. Matviychuk, D. Yo. Nykyforchuk, V. L. Ortynskyy, V. I. Lytvynenko, V. I. Lebedenko, K. M. Olshevskyy, I. V. Servetskyy, V. D. Pcholkin, O. O. Savchenko, O. P. Sniheryov, A. I. Fedchak, V. V. Shendryk, I. R. Shynkarenko and others.

The article's objective is to analyze some aspects related to organizational peculiarities of conducting separate investigative (police) actions in investigating crimes in the sphere of agroindustrial complex of Ukraine.

Discussion. The focus of the study is to create a structural and logical model of the strategy of investigative counteraction to criminal offenses (economic crimes) in the agro-industrial complex of Ukraine carried out by operational units of law enforcement agencies.

To solve a scientific problem it is necessary to perform the following tasks:

– to formulate theoretical and methodological bases of the strategy of operative-search counteraction to economic crimes in the sphere of agro-industrial complex of Ukraine;

– to study the current state of legal regulation of operational and investigative activities, current legislation and departmental regulations and develop suggestions for their improvement and correspondence to the needs of practice;

– to study the socio-economic and criminogenic situation in the field of agro-industrial complex of Ukraine, its impact on food security of the state;

– to define the concept and structure of economic crimes in the field of agroindustrial complex, provide their classification and comprehensive characteristics;

– to clarify the essence of operational and investigative characteristics of economic crimes in the field of agroindustrial complex and formulate its author's definition taking into account the current level of development of scientific knowledge in the field of investigative activities and other sciences of the criminal law cycle;

– to study the peculiarities of the organization of investigative activities at the objects of the agroindustrial complex of Ukraine, to formulate suggestions on the improvement of their operative service and to develop its author's variant for application in modern conditions;

– to identify areas for improvement of informational and analytical support, forecasting and planning of investigative activities of operational units of law enforcement agencies to combat these crimes;

– to suggest ways of increasing of the effectiveness of the cooperation in the sphere of interaction of operative divisions among themselves, other law enforcement and controlling bodies in the course of investigative counteraction to the specified crimes to define its forms, methods and levels, taking into account previously developed research and changes made by the new Criminal Procedure Code of Ukraine;

– to develop conceptual provisions that determine the specifics of the organization and tactics of investigative counteraction to economic crimes in the field of agroindustrial complex of Ukraine;

– to improve the modern methodology of organization of operative service of objects of agroindustrial complex;

– to develop recommendations aimed at improving the tactics of documenting and implementing operational materials and their use during the pre-trial investigation;

– to identify areas for improving the interaction of operational units with investigators in the course of covert investigative (search) actions, as well as overcoming the resistance to the criminal environment.

Analyzing the laws and regulations adopted during the years of Ukraine's existence as an independent state, the speeches of the leaders of our state, we can conclude that there is a lack of understanding of the need for a systematic approach to combating economic crime in Ukraine.

The priority task is to combat theft and misuse of budget funds allocated by the state in support of various sectors of the economy, including state programs for the development of agriculture in Ukraine. Such objects are the executive bodies that implement the state socio-economic policy in the field of agriculture, large agricultural enterprises and

other enterprises of different organizational and legal forms, which carry out their activities in the field of agroindustrial complex. The country's agricultural sector, as an analysis of law enforcement shows, remains one of the most criminal of all sectors of the economy. The main reason is the fact that criminal structures are trying to actively participate in the distribution of budget funds that are allocated for the development of the agroindustrial complex.

Comparing the indicators of work on the detection of crimes in the field of agriculture for 2014-2019, we can conclude that the effectiveness of this area has decreased. The reasons for the decrease in the effectiveness of crime detection in the agro-industrial complex are the following factors:

- lack of a balanced state policy on the development of the agricultural sector of the economy, which is formed, not always in accordance with the real needs of Ukraine, as well as the demand for certain types of agricultural products;

- lack of effective software to eliminate the causes and conditions that have led to the constant criminalization of the agricultural sector of the economy and reduce the level of proper control and non-use of adequate criminogenic measures by the Cabinet of Ministers;

- lack of state support for technical and technological re-equipment of production and development of market infrastructure. Reduction of expenses in support of domestic agricultural machinery and the Government's guarantee for the purchase of foreign equipment;

- the existence of an intersectoral price disparity inherent in the whole economy. The argument may be the difference in prices several times when selling the same groups of goods [3].

In the conditions that have developed, it is necessary to organize the work of operational units, taking into account the achievements of positive experience in the areas noted above. The concentration of efforts in the following priority areas will make it possible to increase the efficiency of operational-search activities in the field to identify economic crimes in the agroindustrial complex: ensuring the savings of budgetary funds allocated for the development of the agroindustrial complex; identification of malfeasance, including facts of illegal gain; identifying the facts of misuse of subsidies and subventions that are allocated from the state and regional budgets to support agricultural producers, including within the framework of state programs and targeted programs for the development of the agro-industrial complex; identification of crimes committed in the field of agricultural land use in the course of business processes in the food and processing industry [4, p. 197].

In order to establish the signs of crimes, it is worth classifying the methods of committing crimes according to the origin of financial funds that acted as the object of encroachments, and also to determine the characteristics of the subjects – recipients of funds.

The subjects of crimes in the field of the agroindustrial complex can be: officials of state bodies who carry out the functions of implementing the state agrarian policy; heads of agricultural enterprises; individuals in the status of individual entrepreneurs (farmers), other individuals who are recipients of social assistance [4, p. 235].

Conclusions. Criminal offenses of economic nature, which are committed at enterprises of the agroindustrial complex, have a number of characteristic features due to the specifics of production and economic activities of these objects of the Ukrainian economy.

The modern criminogenic situation in the agricultural sector is characterized by the following features: an increase in the number of detected crimes, the presence of a significant amount of latent crime; the prevalence of organized crime; significant material damage caused by criminal offenses.

The study of the methods of implementation of the investigated category of crimes showed that they are distinguished by significant diversity, special sophistication, active adaptation of criminals to new forms and methods of entrepreneurial activity.

The above data, which characterize the personality of criminals, must be taken into account when identifying, preventing and documenting the analyzed category of crimes, organizing proper operational services.

The study made it possible to determine the low efficiency of the activities of the operational units of the National Police in countering economic crimes in the studied area. Most researchers give evidence of the need to provide operational units with scientifically based recommendations on combating agricultural crime in all areas of their activities.

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Abstract

The organizational features of conducting individual investigative (police) activities in investigating crimes in the sphere of agroindustrial complex of Ukraine are researched in the article. Attention is drawn to the sequence of investigative (police) activities in the investigation of economic crimes committed in the agroindustrial complex, which depends on the method of detection, consolidation and preservation of information, as well as the sequence of detection and fixation of traces of criminal encroachment.

***Keywords**: agroindustrial complex, investigative (police) activities, examination of documents, search, examination of witnesses, investigator, operational unit.*

PSYCHOLOGICAL AND EDUCATIONAL ASPECTS OF MODERN PROFESSIONAL ACTIVITIES

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ORGANIZATION OF METHODOLOGICAL WORK WITH YOUNG TEACHERS IN HIGHER EDUCATION INSTITUTIONS WITH SPECIFIC EDUCATIONAL CONDITIONS

Юлія Короткова, Вікторія Ромашенко. ОРГАНІЗАЦІЯ МЕТОДИЧНОЇ РОБОТИ З МОЛОДИМИ ВИКЛАДАЧАМИ В ЗАКЛАДАХ ВИЩОЇ ОСВІТИ ЗІ СПЕЦИФІЧНИМИ УМОВАМИ НАВЧАННЯ. Статтю присвячено проблемі удосконалення методичної роботи з викладачами закладів вищої освіти зі специфічними умовами навчання, стаж педагогічної діяльності яких не перевищує трьох років.

З'ясовано, що методична робота - це цілісна, заснована на досягненнях науки, освітніх інноваціях, конкретному аналізі стану освітнього процесу система діагностичної, пошукової, аналітичної, інформаційної, організаційної діяльності та заходів, спрямованих на всебічне підвищення професійної майстерності кожного педагога, розвиток творчого потенціалу педагогічного колективу загалом та удосконалення якості освітнього процесу. Виокремлено функції методичної роботи, до яких віднесено: планувальну, організаційну, діагностичну, прогностичну, моделювальну, коригувальну. Висвітлено досвід організації методичної роботи з молодими викладачами у Донецькому юридичному інституті МВС України на прикладі роботи Школи підвищення педагогічної майстерності. Зокрема зазначено, що навчання у Школі проводиться шляхом організації лекційних, практичних та семінарських занять загальним обсягом 120 годин. Типовий план складається з трьох змістових модулів: «Теорія і практика навчання та виховання у вищій школі», «Інформаційно-комунікаційні технології і освіті», «Психологічні аспекти викладацької діяльності». Наголошено, що особливий інтерес у слухачів викликає модуль «Інформаційно-комунікаційні технології в освіті», під час викладання якого молоді викладачі знайомляться з новими технічними методами та засобами ведення заняття за допомогою різноманітних мобільних додатків таких, як Plickers, LearninApps, Padlet та інших.

Організована в такий спосіб методична робота сприяє вирішенню багатьох важливих завдань, а саме швидкій адаптації до нових умов праці, ознайомленню педагогів не лише з традиційними, а й з інноваційними формами, методами і засобами навчання і викладання у вищій школі, оволодінню техніками і прийомами ефективного спілкування, командної роботи, саморегуляції свого психічного стану, усвідомленню необхідності постійного вдосконалення своєї психолого-педагогічної та методичної компетентності.

Ключові слова: *методична робота, заклади вищої освіти зі специфічними умовами навчання, викладачі-початківці, Школа підвищення педагогічної майстерності, мобільний додаток.*

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Relevance of the study. In the modern conditions of radical reform of the higher education system of Ukraine, the problem of updating and optimizing the system of methodological work aimed at the formation and improvement of psychological, pedagogical and methodological competence of a novice teacher, covering the ability of a person to acquire new knowledge and skills during life, to form personal qualities and values that are necessary for professional activity in accordance with new social requirements, requires an urgent solution. During a well-thought-out methodological work, the scientific and methodological level of the teacher is improved, his preparation for mastering the content of new programs and technologies for their implementation; constant familiarization with the achievements of psychological and pedagogical disciplines and teaching methods; the study and implementation in educational practice of pedagogically valuable domestic and foreign experience; creative fulfillment of proven recommendations; enrichment with new methods and ways of teaching; improving the skills of self-educational work of the teacher; providing him with qualified assistance in theory and practice.

Recent publications review. Today, the issue of methodological training of scientific and pedagogical staff is given due attention by scientist. Fundamental works to the theoretical and methodological basis of methodological training are devoted by E. Abdullina, L. Archazhnikova, L. Bochkareva, I. Zyazyun, A. Kozyr, O. Oleksyuk, O. Otych, V. Orlova, G. Padalka, O. Rudnytska, O. Rostovsky, O. Khyzhna, O. Shevnyuk, V. Shulgina, O. Shcholokova etc.

Modern scientific concepts on the problems of interaction of pedagogical and performing skills are covered in the works of V. Belikova, M. Davidov, O. Markova, V. Moskalenko etc. Issues of formation of professional and methodological competences were studied by such scientists as: N. Andriychuk, S. Barvik, T. Bordova, L. Pastushenko etc.

However, the problem of improving the methodological work in a higher education institution with specific learning conditions remains out of the attention of researchers and needs to be addressed.

The article's objective. Taking into account all mentioned above, the aim of the article is to highlight the ways to improve methodological work with novice teachers in a higher education institution with specific educational conditions.

Discussion. The need for high-quality improvement of professional level of the teachers is noted in such regulatory documents as the law of Ukraine «On higher education», the Project of the Conception for the development of education in Ukraine for the period of 2015-2025, the Procedure for advanced training of teachers and research and teaching staff, and others [1; 2; 3]. The problem of organizing of systematic work with young teachers whose teaching experience is less than three years is of particular relevance in this regard. In ordinary institutions of higher education, this category usually includes young teachers that are graduates of the same institutions. In institutions with specific educational conditions, they are also accompanied by experienced law enforcement specialists who have significant professional experience, but do not have any pedagogical experience at all.

Methodological work is an integral, based on the achievements of science, educational innovations, a specific analysis of the state of the educational process system of diagnostic, research, analytical, informational, organizational activities aimed at comprehensive improvement of professional skills of each teacher, development of the creative potential of the teaching staff as a whole and improvement of the quality of the educational process [4, pp. 497-498].

Let's find out the functions that properly organized methodological work performs. S. Azariashvili singles out the following functions of scientific and methodological work: informational and instructional, educational; providing assistance to teachers in the scientific understanding and design of their pedagogical activity, its prospects and ways of improvement; generalization, promotion and dissemination of promising pedagogical experience; stimulating pedagogical self-education and pedagogical creativity.

L. Vashchenko identifies the following functions of the methodological work of a teacher:

1. Planning function. This function is a projection on the future of methodological activity to achieve an imaginary goal, turning the information about the future into directives for purposeful methodological activities.

2. Organizational function. This function is carried out through the implementation of methodological work plans, professional development at all levels and in all forms.

3. Diagnostic function. Determination of the quality of existing methodological compe-

tence is a necessary condition for predicting a professional development in the nearest and further terms, improving the system of methodological work.

4. Predictive function. Forecasting is a scientific study of a special kind, the subject of which is not only trends, but also prospects for the development of a certain pedagogical phenomenon.

5. Modeling function. This function covers the development, formation and implementation of models of pedagogically valuable experience, their experimental verification, after which they can be used as samples for implementation.

6. Corrective function, which is aimed at correcting the defects in the teacher's activity that are associated with the use of outdated methods that do not meet the new requirements, conditions and opportunities of society [5].

M. Potashnyk identifies three groups of functions: in relation to the teacher; the teaching staff; the achievements of pedagogical science and the experience of teachers of other institutions [6].

The first group of functions aimed at the teacher: formation of necessary competencies, enrichment of teachers' knowledge; development of the worldview, value orientations; development of motives for creative activity; development of stable moral qualities of the individual; development of modern style of pedagogical thinking; development of pedagogical technique, performing arts, artistry; development of emotional and volitional self-regulation.

The second group of functions aimed at the teaching staff: consolidation of the teaching staff as a team of like-minded people in the main; development of a single pedagogical position, common values, traditions; organization of diagnostics and self-diagnosis of real educational opportunities of students, pupils'/students' collectives, professional opportunities, needs and requests of teachers; expert assessment of author's programs, curricula, textbooks, manuals, teaching and upbringing tools created in this collective; control and analysis of a specific educational process and its results, namely, the quality of knowledge, skills, breeding and development of students; identification, generalization, promotion and implementation of progressive pedagogical experience.

The third group of functions concerns both each teacher and the collective as a whole: creative understanding of the social order, new regulations and documents, bringing them to the consciousness of each teacher, introducing the achievements of advanced pedagogical experience, innovation, prevention of typical for all educational institutions difficulties and shortcomings in pedagogical activity; introducing and use of the achievements of psychological and pedagogical science, other disciplines; spreading outside the educational institution of the best practices achieved by this collective.

In order to implement the above-mentioned functions in higher education institutions that are part of the structure of the Ministry of internal affairs of Ukraine, mandatory classes with teachers whose teaching experience does not exceed three years are provided. In particular, the Donetsk Law Institute of the Ministry of internal affairs of Ukraine provides the work of a *School for improving pedagogical skills* (hereinafter referred to as the School), the *aim* of which is to adapt young and just appointed teachers with up to three years of scientific and pedagogical experience to work in a higher education institution with specific educational conditions.

The implementation of this aim involves resolving the following *tasks*:

- familiarization with the peculiarities of the functioning of the higher education system of Ukraine in general and in institutions with specific educational conditions in particular;
- formation of skills and abilities of maintaining of the Institute documentation;
- familiarization with modern educational technologies, strategies, innovative methods, forms and ways of teaching, formation of skills in their development and implementation;
- identification of interrelations of research and educational processes in a higher education institution with specific educational conditions, using the results of scientific research to improve the educational process;
- improvement of communication skills of teachers, formation of psychological readiness to work in a higher education institution with specific educational conditions;
- improving the quality of teaching academic disciplines;
- formation of professional thinking, development of a system of values, semantic and motivational spheres of the individual aimed at humanization of society;
- prevention of professional burnout, formation of skills of effective interaction and teamwork;

- assistance in formation of personal acmetrajectory of professional and personal development [7].

Training at the school is carried out by organizing lectures, practical and seminar classes with a total volume of 120 hours. The standard plan consists of three content modules.

Content module 1 «Theory and practice of teaching and upbringing in higher education school» covers the following topics:

Topic 1. Organization and provision of higher education in Ukraine.

Topic 2. Maintaining Institute documentation. Features of assessment of academic achievements of students/cadets in the Donetsk law Institute of the Ministry of internal affairs of Ukraine.

Topic 3. Fundamentals of pedagogical skills of a teacher.

Topic 4. Traditional and innovative methods and forms of education in a higher education institution with specific educational conditions.

Topic 5. Psychological adaptation of students/cadets.

Topic 6. Culture of speech of the teacher. Ways to improve it.

Topic 7. Nonverbal means of communication.

Topic 8. Stylistic norms of business speech. Rules for composing business papers.

Content module 2 «Information and communication technologies in education» consists of the following topics:

Content module 2. Information and communication technologies in education.

Topic 1. Virtual classroom of the teacher.

Topic 2. Learning management system Moodle.

Topic 3. Methods of teaching in higher education institutions using information and communication technologies.

Topic 4. Technology of creating and presenting a video lecture.

Topic 5. Technology of organizing and conducting a webinar.

Topic 6. Online tools for creating web quests.

Topic 7. Computer program «MIA: Osvita».

Content Module 3 «Psychological aspects of teaching» provides the study of the following topics:

Topic 1. Skills of restoring a psychological state.

Topic 2. Prevention of professional burnout among teachers.

Topic 3. Stress tolerance as one of the components of professional and psychological competence of teachers.

Topic 4. Bullying in higher education institutions: prevention, causes, consequences, help.

Topic 5. Effective professional communication and teamwork.

Topic 6. Philosophy of nonviolence.

It should be mentioned that the module «Information and communication technologies in education» is of particular interest to the students. During such classes, young teachers get acquainted with new technical methods and means of conducting classes using a variety of mobile applications.

At present, teachers and scientists [8-11] have studied the peculiarities of work with such applications as Plickers, LearninApps, Padlet and others.

For example, the application *Plickers* is used to conduct a quick rapid survey of students as a kind of a test. Test results are received instantly and immediately displayed on the screen of a computer (TV, projector) connected to the Internet. The application does not require smartphones or computers for every student, and only the teacher needs a smartphone with internet access. The app reads QR codes from students' paper cards and they can already see the survey results immediately after testing. It is quite convenient that the application displays response statistics and builds a table of results. The disadvantage of this application is that each test in the free version cannot include more than five questions.

Teachers are very interested in the online service *LearninApps*, which allows you to create interactive exercises. It is a constructor for developing and storing interactive tasks in various academic disciplines, with the help of which applicants can test and consolidate their knowledge in a form of a game. During classes at the school, teachers will learn how to upload such exercises to the distance learning website.

Another convenient and easy tool for organizing joint work of participants in the educational process with various content in a certain virtual space, which is considered during the

classes in the School, is the *Padlet* service. This service is used for creating, editing, and storing various types of resources. You can place texts, graphic images, multimedia files, links to the Internet pages, notes, etc. on the whiteboard. In the system, you can create an arbitrary number of «virtual walls» to which you can attach photos, files, links to the Internet pages, notes, etc.

At the end of their studies at the School, students pass a credit in the form of testing and defend a portfolio in which they present their methodological developments.

Conclusions. Thus, properly organized methodological work with teachers whose teaching experience is less than three years can contribute to solving many important tasks. Firstly, it is a quick adaptation to new working conditions. Secondly, teachers are introduced not only to traditional, but also to innovative forms, methods and ways of teaching in higher education institutions. Thirdly, it is mastering the techniques of effective communication, teamwork, and self-regulation of your mental state. Fourthly, it is awareness of the need to constantly improve the psychological, pedagogical and methodological competence.

The conducted research does not cover all aspects of the problem that is under consideration. Pedagogically valuable experience in organizing of methodological work with novice teachers in other developed countries of the world in order to apply it creatively in the educational process of domestic higher education institutions, including those with specific educational conditions requires the further research.

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Abstract

The article deals with the problem of improving of methodological work with teachers of higher education institutions with specific educational conditions, experience of pedagogical activity of which does not exceed three years. The experience of organizing of methodological work with young teachers in the Donetsk Law Institute of the Ministry of internal affairs of Ukraine in the School for improving pedagogical skills is highlighted. In particular, it is noted that training at the School is carried out by organizing, practical and seminar classes with a total volume of 120 hours. The standard plan consists of three content modules: «Theory and practice of teaching and upbringing in higher education school», «Information and communication technologies in education», «Psychological aspects of teaching».

Keywords: *methodological work, higher education institutions with specific educational conditions, young teachers, School for improving pedagogical, mobile applications.*

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PECULIARITIES OF TRAINING OF POLICE OFFICERS FOR PERFORMANCE OF OFFICIAL DUTIES IN EXTREME CONDITIONS

Андрій Краснощок, Дмитро Діхтяр. ОСОБЛИВОСТІ ПІДГОТОВКИ ПОЛІЦЕЙСЬКИХ ДО ВИКОНАННЯ СЛУЖБОВИХ ОБОВ'ЯЗКІВ В ЕКСТРЕМАЛЬНИХ УМОВАХ. Професійна діяльність поліцейських відбувається у напружених, конфліктних ситуаціях, загрозливих для життя обставинах. Це вимагає від правоохоронців відповідальної підготовки до дій у нестандартних ситуаціях, володіння навичками швидкої орієнтації та прийняття оптимального тактичного рішення щодо вибору алгоритму дій у різних обставинах.

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Стаття присвячена проблематиці професійної підготовки майбутніх поліцейських взагалі, та підготовки до виконання професійних обов'язків в екстремальних умовах зокрема.

Розкрито особливості підготовки майбутніх поліцейських е сучасних умовах. Е статті досліджується вплив екстремальних ситуацій на здатність працівників поліції виконувати свої професійні обов'язки.

За даними наукових джерел, висновків, зроблених на підставі аналізу практичного досвіду фахівців правоохоронних органів, лише 12–15 % особового складу зберігає здатність розумно діяти в екстремальних умовах, 75 % – тимчасово втрачає її, 10–12 % – втрачає на тривалий час.

Професійну активність у службовій діяльності зазвичай виявляє не більше ніж 20 % працівників, ще 20 % – приречені на професійні психологічні травми.

Під час здійснення правоохоронної діяльності в тривалих екстремальних умовах у близько 30 % особового складу тією чи іншою мірою спостерігаються такі негативні явища, як ослаблення самодисципліни та зниження психологічного й морального контролю за своєю поведінкою, що виявляється у розв'язності, вульгарності, зневажанні нормами службової етики, субординації, а також озлобленості, немотивованій грубості та надмірному пияцтві.

Екстремальність у правоохоронній діяльності вимагає від майбутніх працівників поліції відповідної підготовленості до дій у нестандартних ситуаціях.

Ключові слова: *правова держава, професійна діяльність, алгоритм дій, екстремальна ситуація, професійна підготовка.*

Relevance of the study. The nature of the tasks that national police officers have to solve in the context of socio-economic reforms and the transformation of Ukraine as a state governed by the rule of law places high demands on the professional training of future police officers.

The professional activity of police officers takes place in intense, conflict situations, life-threatening circumstances. This requires law enforcement officers to responsibly prepare for actions in unusual situations, to have the skills of quick orientation, and to make the optimal tactical decision on the choice of the algorithm of actions in different circumstances. Lack of such training is often the reason for the reduced efficiency of operational tasks, injuries to police officers, and even their deaths. The negative consequences for police officers are usually the result of their inability to assess the situation correctly and to act effectively in situations where criminals threaten their lives or health; ignorance of the grounds and conditions for the use of service weapons and, as a result, fear of using them for destruction in cases permitted by the law of Ukraine «On the National Police» [8]; weak physical training and lack of skills in mastering the techniques of hand-to-hand combat.

A special danger is the high probability of inaccuracies, tactical miscalculations, and mistakes made by psychologically untrained police officers in the most responsible psychologically stressful moments of performance of the official task when the quality of actions should be the best.

Recent publications review. The study of aspects of professional training of future police officers is devoted to the work of various scholars and practitioners. Accumulated considerable teaching experience, which should take into account time training future police officers. Substantial is the scientific achievements of M. I. Anufriev, O. M. Bandurka, A. E. Korystin, V. M. Synyov, V. V. Sokurenko, V. I. Plisko, H.H. Yavorskyi and others [1-3; 9].

The article's objective is to analyze the peculiarities of training a future police officer in modern conditions.

Discussion. In the process of professional training of future police officers, first of all, the ability to make important decisions is formed using an algorithmic approach to the imposition of a model of the event, facts with procedural law, which can be used to consistently solve the following tasks :

1) procedural possibility to perform actions;
2) the necessary conditions for the implementation of actions;
3) resolving the issue of the means necessary to perform the actions.

The concept of «algorithm» is associated with the definition of the strategy of solving tasks facing the police officer in the performance of his professional duties, the strategy is the dominant trend in the intellectual behavior of the subject solving the problem. The strategy envisages the ability to set and analyze a new task, to search for the most accurate solution hypothesis and the solution itself [10, p. 35].

Properly constructed, preparation for action in extreme conditions will allow future police officers to master the necessary theoretical knowledge, gain new experience in action in extreme conditions, psychologically prepare for complex professional tasks and confidently

tune in to their successful implementation. In our opinion, such methods of professional training as theoretical and practical classes, role-playing games with modeling of the most common situations of official responsibility taking into account the effective solution of problems of professional and psychological training, formation (improvement) of skills and abilities of tactics of actions of future policemen. The specifics of concrete units of the national police and the already gained practical experience of being in extreme situations, as well as the use of the latest psychological technologies and training programs to prepare future police officers to perform professional duties.

Training of future police officers in modern conditions requires the need to create an effective system for the formation of special professional skills and abilities.

In modern conditions, the task of developing practical skills that allow you to effectively solve problems, quickly navigate, and make optimal tactical decisions in difficult situations comes to the fore. At the same time, in no case should the theoretical training of future police officers be underestimated.

The creation of the rule of law in Ukraine, first of all, requires the formation of highly professional employees of the national police, able to effectively, at a high level to solve problems in the field of law enforcement.

Modern society requires from the national police clear and professional actions to ensure law and order in the country, successful steps to combat crime, the ability to properly interact both in the professional environment and among the general population under any circumstances.

In such circumstances, it is urgent to prepare future police officers for action in emergencies (extreme) situations.

Extremely psychologically saturated situations that arise during the service of police officers and differ from normal (optimal, favorable).

The most common sources of such situations are:

1) committing group crimes, mass offenses, and riots;

2) direct struggle of workers with offenders, criminals;

3) introduction of a state of emergency in the region or country;

4) illegal use by citizens of sources of increased danger;

5) performance of official duties in the conditions of conducting special operations (detention of an armed criminal, cessation of mass riots, anti-terrorist special operations, etc.);

6) the action of natural, natural forces, man-made events, etc.[5, p.77].

Such situations, conditions, circumstances can have a significant psychological impact on police officers, creating great difficulties in solving professional problems.

The main feature of extreme situations (regardless of their nature) – the load that affects both the human psyche and the physiological systems of his body. The main components of such a load are:

- a sharp violation of the usual life stereotype;
- various changes in living conditions (work), which can very quickly disable the body and nervous system;
- fear, anxiety – further indispensable companions of emergencies;
- load on the nervous system – most clearly manifested in conditions of high human stress, when he more often than usual, has to restrain himself, hide various reactions;
- physical activity, etc.

The activities of police officers take place intensely, conflict situations, life-threatening circumstances. Extreme conditions create difficulties in solving professional tasks, affect the success of activities, require employees to have tactical, special physical training, psychological stability, motivation to succeed despite the difficult circumstances of the action. Extreme conditions objectively contain characteristic features of activity that have a psychological impact on police officers, namely:

- variety and complexity of professional tasks;
- the presence of operational situations, the implementation of which is associated with risk and danger to life;
- high level of mental stress;
- strict time constraints in achieving the required professional level;
- increased social responsibility for professional mistakes;
- high probability of causing professional harm to other people, etc.

According to scientific sources, conclusions are drawn from the analysis of a practical

experience of law enforcement officers from more than 30 countries, only 12-15% of personnel retain the ability to act intelligently in extreme conditions, 75% – temporarily loses it, 10-12% – loses for a long time.

Professional activity in official activities is usually found by no more than 20% of employees, another 20% – doomed to professional psychological trauma.

During the implementation of law enforcement activities in prolonged extreme conditions in about 30% of the staff to some extent, there are such negative phenomena as weakening of self-discipline and reduced psychological and moral control over their behavior, which is manifested in recklessness, vulgarity, disregard for ethics, subordination, as well as resentment, unmotivated rudeness, and excessive drunkenness [4, p. 67].

The same extreme situations that arise in professional activities, given the differences caused by them in the mental state of the police officer, may, accordingly, be perceived differently by him, as stressful, frustrating, conflicting, or crisis. Therefore, it is very important that the employee and the police, perceiving extreme situations, have appropriate training, on the one hand, on the nature of the content of extremity that they can cause, and on the other – on the psychological mechanisms for solving certain types and factors of extreme situations.

Thus, extreme situations that arise in the activities of law enforcement officers have their specific meaning, are manifested in appropriate forms, and can be classified as follows:

- a situation that occurs suddenly;
- long lasting;
- situation with elements of uncertainty;
- a situation that requires readiness for extreme actions.
- a situation that combines surprise and lack of time.
- the situation with the receipt of erroneous information.
- critical situation [3, p. 123].

Depending on the specifics of peculiarity operational and service tasks and the conditions in which they are solved, the police officer is affected by various psychogenic factors that negatively affect the effectiveness of professional actions in extreme situations, namely:

1. Unpredictability of circumstances. Extreme situations of increased complexity do not occur every day, suddenly, they are unusual for employees and require them to be able to navigate properly in unforeseen circumstances, flexibility, ingenuity, prudence in action.

2. The speed of events. Most difficult situations develop quite quickly, sometimes in a flash. This requires the employee to be vigilant, the ability not to get lost in a shortage of time, to respond adequately to changes in the situation and the course of events, readiness for any complications, including the likelihood of a threat to their safety.

3. Significant mental and physiological loads. Under unusual circumstances, employees may be exposed to complex mental, emotional, volitional, physical exertion, changes in eating habits, deteriorating conditions for personal hygiene, rest and sleep, adverse climatic and man-made factors, and so on.

4. Uncertainty. Almost always, police officers have to act based on information uncertainty: uncertainty about the course of events, lack of information, various, sometimes contradictory data.

5. The level of personal endurance. Professional activity is carried out in conditions of constant haste, the need to solve complex tasks, violation of plans for other urgent tasks, without breaks, in tightness, sometimes without proper lighting, ventilation, heating, in the field, and more. This requires from police officers high self-control, restraint, the ability to mobilize themselves to continue quality work and prevent possible risks.

6. Ability to make decisions. In extreme conditions, each employee undergoes significant, and sometimes even excessive, loads, watching what is happening and performing the necessary professional actions. He thinks a lot and intensely, evaluates, compares, draws conclusions, makes the necessary decisions, thinks of different ways of behaving, mobilizes his strengths and opportunities to achieve a certain goal.

7. Risk. There is a risk in any profession and any business. However, it is almost always present in the law enforcement activities of police officers, and the degree of risk, the probability of making a mistake, and the responsibility for their actions are too high. Mistaken actions of the police, their untimely response to current events can lead to serious consequences, including:

- loss of one's life or serious injury, which can further lead to serious physical or mental defects;

- threats to life and health of the environment;
- destruction of one's social status, prestige (dismissal or criminal prosecution due to unprofessional actions);
- avoidance of criminal liability by criminals;
- the emergence of revenge by crime, the likelihood of physical violence, etc.

These factors can put a police officer in a phase of subjective extreme experience inherent in a frustrating situation.

In a situation of real threat to health and life, police officers often have negative psychological states and emotions: psycho-emotional tension, stress, anxiety, fear, confusion, and others that negatively affect their psyche and health and interfere with the performance of official duties.

To ensure effective action, preservation of life and health in psychologically difficult conditions, today much attention is paid to the formation of a state of high professional and psychological readiness of police officers for immediate and highly effective action in extreme situations. This condition is characterized by:

- a clear understanding of future actions, the conditions in which they will be performed, the difficulties, the means of overcoming them, the compilation of the algorithm of actions;
- high observation, fast and clear thinking, balanced and justified by the real threat of vigilance;
- the optimal level of mental stress, reasonable self-confidence, a serious attitude to possible resistance from offenders (criminals);
- full mobilization, concentration, self-control, willingness to show initiative and independence;
- high efficiency, sufficient power reserve, etc. [5, p. 87].

The considered notions of extremity, its manifestation in law enforcement, and special requirements for professional training of police officers are part of a single system that underlies the training of police officers to act in extreme conditions associated with their professional activities.

The behavior of police officers in emerging extreme situations has universal and specific features. The correctness of such behavior is determined by the level of formation not only of tactical and psychological readiness but also, to a large extent, professional knowledge, skills, and abilities that allow independently and often in a very short time to assess the situation, predict possible scenarios, consequences of various actions (offenders) and make the most optimal decision, based on the principle of causing the least harm to protect law and order, preserve life, health, ensure the safety of all persons involved in the situation.

With the emergence of an extreme situation and the entry into combat martial arts, the actions of a police officer will be determined by the level of his professional training and ability to manage their mental state under stress. His tactical and psychological readiness to make a decision will be determined by several factors:

- knowledge of laws and regulations governing operational and service and combat activities of police officers ;
- attitude to service and desire to perform their duties;
- ability to quickly assess the situation;
- ability to constructively resolve conflict situations;
- the ability to take responsibility;
- work experience, professional experience, and intuition;
- the instinct of self-preservation [11, p. 85].

Taking into account these factors, the police officer will decide to perform actions that can be characterized as active or passive.

In the first case, with sufficient professional training, the police officer will actively influence the situation, in the second case, under insufficient training, he will take a wait-and-see attitude, which will be the result of the dominance of negative qualities. The formation of psychological readiness of police officers should take into account the impact of anxiety not only on motor manifestations, but also on thinking and perception, namely on the ability to adequately perceive, evaluate, analyze the situation and, consequently, make optimal decisions.

Optimal can be called solutions that in one way or another are better than others.

The key point in decision-making is the ability to calmly, reasonably, and objectively set a goal, the implementation and outcome of which will be optimal [5, p. 98].

Thinking over the plan, a person imagines the course of future action, builds a model,

makes decisions.

The main point of management of conscious human activity is the organization of actions.

Decision-making on the organization of actions is reduced to answering the following consistent questions:

1) what actions should be performed?
2) who must perform each action?
3) in what order and in what terms they should be performed?
4) how should each action be performed?

The decision-maker must always choose the «key» to understanding a situation. It is the situation, tasks, and operational goals that set the system of actions and determine the logic of decision-making [10, p. 67].

The decision-making process is largely related to the individual's personality, his information weapons, needs, interests, ie with the inner world of man (and in this sense the inner world of man is a source of means of developing tactics of decision-making).

Making a decision is the process of choosing one of the possible alternative courses of action by a police officer to perform the task.

The development of a decision to perform actions by a police officer subconsciously occurs according to the following algorithm:

- assessment of the situation;
- analysis of their possible actions and the actions of the enemy;
- preliminary elaboration of the ultimate goal of martial arts;
- choice of method of counteracting the offender.

The optimality of decisions and their further implementation will be determined by the presence of strong professional skills that allow you to independently and often in the shortest possible time to assess the situation, to predict possible scenarios of its development or consequences [5, p. 145].

The ability to make decisions involves the following skills:

- turn complex tasks into simple ones;
- highlight the main, analyze, systematize and summarize the available information;
- use the opportunities of science, professional experience of specialists and at the same time act independently.

The made decision should be seen not as a single act, but as a sequential process. The following scheme of decision-making by the police officer is offered:

1) determine the purpose of the decision;
2) to make an assessment, calculations of all possible decisions leading to the goal;
3) compare the assessment and choose the best solution;
4) make decisions and actions to achieve the goal.

The decision-making process consists of the following stages:

- problem statement and collection of necessary operational information;
- processing and systematization of material;
- solving the task and summarizing.

Setting the task and collecting the necessary operational information is the main stage on the way to decision-making.

Every police officer, regardless of profession, needs to be able to gather operational information and assess the situation.

The situation is understood as a set of all factors that to varying degrees, directly or indirectly, can affect the training, course, and results of the actions of a police officer.

The assessment of the situation consists of the sequential study and analysis by the police officer of the available information on all elements of the situation, in the identification of conditions that complicate or facilitate the task and the reasons that prevent the effective use of favorable conditions.

At this stage, you need to learn to filter out unnecessary, redundant information; it is necessary to operate with the facts, to use the normative documents defining the professional activity of employees of law-enforcement bodies.

We receive all the required information about the situation with the help of the relevant senses and the brain. From the organs of sight, hearing, smell, and touch, it is transmitted to the cerebral cortex, to random access memory, and then to the permanent memory of the brain, and a person can remember this information and reproduce it in action.

The ability to process and systematize information ensures the unity of analysis and

synthesis of mental activity, which is necessary for decision-making.

The main purpose of this stage is to master the ability of police officers to structure their thoughts and feelings. This is necessary for the mental process to take place smoothly and calmly, which will significantly increase the efficiency of mental activity.

It is requisite to learn, systematize, and analyze the available information.

An analysis is a division of the whole into components, a step-by-step consideration of the problem. Generalization allows us to look at the situation in general, to combine everything related to the issue we have been solving [7, p. 52].

Making the final decision – the most important moment of analytical human activity. The simpler and more defined the action plan, the better. The simplicity of thinking is the basis of the right decision. Before making any decision, every police officer must know what the alternatives are and what the consequences will be.

One of the effective methods to help make the right choice and make the best decision is the so-called brainstorming.

The method of brainstorming is the ability to process and systematize information, to set tasks correctly in a very short period. The most important thing in brainstorming is that developing one version leads to dozens of others. It is possible to consider the problem from different points of view. After each such action, the employee has a large number of original versions. With this method, you can find a way out of quite difficult situations.

Conclusions. Thus, extremity in law enforcement requires future police officers to be properly prepared to act in unusual situations, to have the skills of quick orientation in difficult circumstances; the presence of high moral and volitional qualities (courage, determination, ability to quickly recognize the danger and react instantly, without losing self-control); the ability to make the only right decision, using the methods of psychological influence on the offender.

This necessitates an increase in the level of training of police officers to act in typical and extreme situations.

Thus, the process of making an optimal and practical decision by a police officer in a given situation is one of the important prerequisites for achieving a successful result of his professional activity. The search for these solutions often takes place within the algorithmic approach.

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Abstract

The article deals with issue of professional training of future police officers in general, and preparation for professional duties in extreme conditions in particular.The peculiarities of training future police officers in modern conditions are revealed. The article examines the impact of extreme situations on the ability of police officers to perform their professional duties.

During the implementation of law enforcement activities in prolonged extreme conditions in about 30% of the staff to some extent there are such negative phenomena as weakening of self-discipline and reduced psychological and moral control over their behavior, which is manifested in recklessness, vulgarity, disregard for ethics, subordination, as well as resentment, unmotivated rudeness, and excessive drunkenness. Extremes in law enforcement require future police officers to be prepared to act in unusual situations.

Keywords: *constitutional state, professional activity, the algorithm of actions, extreme situation, professional training.*

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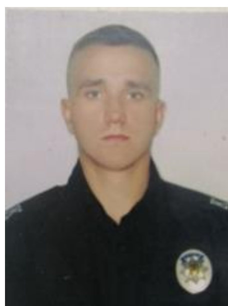

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IMPROVEMENT OF FIRE AND PSYCHOLOGICAL TRAINING OF POLICE

Віталій Покайчук, Едуард Голобок, Ріпсіме Сароян. УДОСКОНАЛЕННЯ ВОГНЕВОЇ ТА ПСИХОЛОГІЧНОЇ ПІДГОТОВКИ ПОЛІЦЕЙСЬКИХ. У статті на основі аналізу чинного законодавства та підзаконних нормативно-правових актів, що регламентують організацію професійного навчання поліцейських розглянуті проблемні питання вогневої підготовки поліцейських та їх психологічної готовності до застосування (використання) табельної вогнепальної зброї та запропоновані шляхи вдосконалення нормативно-правового забезпечення підготовки поліцейських.

Заважено, що на сьогодні основний вектор розвитку країни направлений на вдосконалення та демократизацію суспільства, європейську інтеграцію, боротьбу з антагоністичними проявами Російської федерації та внутрішніми проявами сепаратизму. Одним із найважливіших напрямків діяльності держави є форсоване реформування сил сектору безпеки та оборони України, одним із наріжних каменів реформування якого є професійне навчання поліцейських як складової сектору безпеки. Формування професіоналізму поліцейського повинно базуватись на вивченні практично-орієнтованих дисциплін, таких як: вогнева підготовка; тактична підготовка; загальнопрофільна підготовка (безпека життєдіяльності, домедична та психологічна підготовки); фізична підготовка, які повинні підготувати майбутніх правоохоронців до виконання ними своїх службових обов'язків.

Резюмовано, що існує необхідність поєднання технічного навчання стрільбі, спрямованого на формування впевненості у своїх діях при веденні вогню в обмежений час, створення ситуативних сценаріїв з метою моделювання стресових (нестандартних) ситуацій та стандартних завдань, що дозволяють не тільки практично вдосконалити навички стрільби, але й допомагають працівникам психологічно підготуватися до законного використання зброї у службовій діяльності.

Ігнорування психологічної складової професійного навчання може призвести до того, що вся технічна підготовка залишатиметься неефективною, оскільки стресова ситуація зводить нанівець всі навички працівника, якщо він не може впоратися із собою та своїми тривогами.

Ключові слова: *Національна поліція України, професійна підготовка працівників поліції, професійне навчання, вогнева підготовка, психологічний тренінг.*

Relevance of the study. Use of forced decisions during critical incidents for the safety of public is an ongoing source of concern for both public as well as police department. Prior research in the area of police performance revealed that the psychological and physiological stress responses during critical incidents could shape the outcome of the incident, either positively or negatively.

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Even today, whenever there is a movement to improve and democratize society, European integration or the fight against internal and external aggressors, one of the most important responsibility of the state is to reform it by the internal affairs system. It must include the issue of professional training of police officers for their official activities. It must include complexes in fire, physical, psychological, tactical-special training and a number of other disciplines, which would prepare future officers to perform their duties.

Police must be trained for law enforcement practices so that they can easily encounter unusual situations during service. It can include activities related to cope up with stress etc because they are directly related to our health.

Working in law enforcement requires a great personal courage, ingenuity, figurative memory, a high level of organization, perseverance and emotional stability, the ability to make quick and cold-blooded decisions.

They must be able to:

- think logically and organize their activities;
- carry out urgent actions provided by special tactics of operative and investigative divisions;
- work effectively with people, establish psychological contact;
- to reduce the negative influence on the participants during an inquiry process;
- quickly navigate the changing conditions;
- apply different approaches to assess the situation without difficulties and stereotypes of thinking.

Recent publications review. Increasing the level of psychological, physical readiness while performing their official duties and by increasing the stress endurance of police officers to act in extreme situations has been studied by a lot of scientists. Some of them are Babenko I. V., Klimenko V. O., Kryvolapchuk L. A., Kiriнenko Yг. V., Kotlyar V. O. and many others.

The main legal acts regulating the training and education of law enforcement officers are:

- The Law of Ukraine «On the National Police» [1],
- The Resolution of the Cabinet of Ministers of Ukraine «On Approval of The Regulations on the National Police» [2],
- The Order of the Ministry of Internal Affairs of Ukraine «Official training of employees of the National Police of Ukraine» [3].

The article's objective is to analyze the current legislation and bylaws governing the organization of professional training of police officers and the development of proposals to improve the regulatory and legal support of fire training and psychological readiness of police officers to use firearms.

Discussion. With the growing requirements of possession for service weapons, the issue of improving the fire training of cadets (students) of educational institutions of the Ministry of Internal Affairs of Ukraine is relevant.

The quality of the tasks performed by an employee of the Ministry of Internal Affairs directly depends on the level of mastering the initial training, so when recruiting, special attention must be paid to the initial training of employees.

In order to develop scientific and applied recommendations to improve the effectiveness of fire training of cadets and students of educational institutions of the police of Ukraine, it is necessary to solve the following tasks:

1. To analyze the state of problems of fire training of cadets and students of educational institutions of the Ministry of Internal Affairs of Ukraine, to study the domestic experience of training students (cadets) of educational institutions of the Ministry of Internal Affairs of Ukraine in the field of firearms;
2. To study foreign experience of fire training for law enforcement officers in training students (cadets);
3. To investigate the development and state of the process of training cadets and students of educational institutions, while using the firearms as well as its criteria and effectiveness;
4. To develop recommendations for improving the process of training cadets (students) of educational institutions in while using the firearms.

The readiness of cadets (students) of educational institutions of the Ministry of Internal Affairs of Ukraine to use firearms has a special structure, which consists of several basic ele-

ments, such as:

- Safety measures while handling weapons and ammunition;
- Knowledge about the history of weapons like new models of domestic and foreign weapons;
- Stability skills according to fire training standards;
- Excellent skills for preparatory exercises;
- Training for target shooting;
- Legal preparedness;
- Individual and tactical preparedness;
- Professional and psychological training which includes having a strong will power;
- Basic knowledge of science.

This is especially important for female cadets, whose number have been increasing significantly past these years both in the police and in educational organizations of the Ministry of Internal Affairs.

Fire training is a purposeful process that develops cadets (students) of educational institutions with skills for the use of firearms.

Due to the methodical organization of fire training classes with the use of modern material and technical base. It aims to increase the theoretical and practical level of knowledge while using the firearms; we can affirm that these activities form a high level of theoretical knowledge and practical skills in cadets (students) educational institutions of the Ministry of Internal Affairs.

For better training of cadets during fire training classes we must use the device made of new technology which includes laser target and helps to master the techniques of target shooting, adjust the fire, choose and practice a comfortable rack for shooting.

The advantage of this device is that it allows you to detect gross errors and eliminate them at the initial stage of training. The use of the device allows cadets to independently control the training process, detect mistakes and eliminate them.

The disadvantage of this technique is that students quickly adapt to the device, and begin to aim not at the sighting device, but at the laser beam, which can lead to low performance during the shooting.

When repeating the same exercise, but only without a laser pointer, the mistakes significantly reduced.

However, the main problem is that none of the normative documents that directly regulate the activities of law enforcement officers pays enough attention to their psychological preparedness. This manifested the need to explain to trainees during their initial training how to improve interaction with individuals during communication, to resist internal and external stressors, the possibility of improving the conditions of adaptation to the sociopsychological climate in the terms of practical units, opportunities to resist corruption, etc.

The use of weapons is also a very important factor influencing the psychological and emotional state of police officers.

It is always stressful, especially when it comes to a person's life and health. Because of it, we must introduce a psychological training program on the use of firearms.

In such classes, law enforcement officers must be trained to speak and deal with situations of confronting with ordinary citizens, because with weapons in their hands, it threatens the lives and health of not only the police but also ordinary citizens.

Nowadays the classical techniques in fire training are not effective enough for the development of applied thinking, since most parts of training are aimed at mastering the correct handling of weapons and the accuracy of a shot at ordinary targets. Professional training must be aimed at preparing for situations requiring a high level of proficiency in firearms during conditions of high psychological stress.

Firepower training allows you to solve these problems, resulting in an active approach for the formation of professional competencies in employees. According to a number of researchers, shooting from firearms is not much associated with physical strength but with mental process along with their development and it has a positive effect on all aspects of trained employees, contributing to the effectiveness of their performance during official duties.

It is important to remember that while comforting with an armed criminal, it is always accompanied with a threat to the life and health of a police officer, in that case he needs to be capable so that he can navigate quickly in the worse situations and successfully use firearms,

extinguishing negative psychological effects.

Trusting your abilities which arise on a subconscious level is possible only with an increase in performance and achievements associated with the development of sustainable shooting skills, and, ultimately, achieving the automatism of all actions with weapons. In this case, the best simulator is the weapon itself.

During the preparation process, the employee's confidence grows, which reflects during the shooting performance. If an employee do not have confidence in himself and his weapon, then high results and accuracy cannot be expected from him during extreme situations.

In addition, it should be remembered that a person do not have to shoot every time in order to kill, as this is a serious burden on the psyche. To overcome this barrier, there is a technique, which can be achieved by attaching a personal photograph of the trainee over the head of the target, which he must have to hit from a distance of 5-7 m.

As you can see in practice, not everyone can do this for the first time, because you have to shoot at a photograph of yourself. However, after doing this psychological exercise, most employees will become more confident in shooting to kill.

Today, specialists distinguish three levels of psychological training of an employee

1. The ability to focus only on your actions, to exclude everything else;
2. The ability to think positively, controlling each stage of the shot production process;
3. The employee's confidence that he would be able to accurately repeat the same actions repeatedly, confidence in his ability to make shots that are correct from a technical point of view.

In our opinion, only when the second level of psychological preparation is achieved, the effectiveness of the service is possible, which implies the control of all processes and emotions associated with shooting. However, based on practice, it is obvious that it is very difficult to reach the second level of psychological preparation.

It should be noted that many young employees have a weapon in their hands and this is already stress to a certain extent. When performing a shot, hand tremors often occur due to internal psychological stress and poor technical readiness. For experienced employees, this is due to negative attitudes towards the result, especially during long breaks in fire training classes. To solve this problem of sleep, trainers must tune employees in order to cope with anxiety, give themselves a positive attitude, and build confidence in the correctness of the actions performed by them. Training of shooting with the help of new technologies certainly helps in this case. When an employee has stable results in the classroom while shooting, then their self-confidence builds up.

In addition, it is necessary to learn the psychology of offenders who try to misuse arms. Training law enforcement officer about how to control when he finds himself in such a situation like this and how to take adequate actions to prevent and neutralize such situations is very necessary.

As practice shows us, there are many cases not only in Ukraine but also abroad when law enforcement officers could not control themselves in those situations and this led to sad consequences. Therefore, such training is necessary while training police officers.

In addition, I would like to highlight the fact that such trainings must be added to the training system and enshrined in the lists at the legislative level.

Conclusions. Taking into account the above, it should be noted that there is a need to combine technical shooting training aimed at building confidence in their actions when shooting shots in a limited time, and training to create a stressful situation, simulate an unusual situation and non-standard tasks that allow not only practically improve shooting skills, but also help employees to psychologically prepare for the lawful use of weapons in official activities.

Ignoring the psychological component of vocational training can lead to the fact that all technical training will remain ineffective, as a stressful situation will nullify all the skills of the employee if he cannot cope with himself and his anxiety.

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Abstract

Based on the analysis of current legislation and bylaws regulating the organization of professional training of police officers, the article considers the problematic issues of fire training of police officers and psychological readiness to use firearms and suggests ways to improve the legal support of police training.

Keywords: *National Police of Ukraine; professional training of police officers; job training; fire training; psychological training.*

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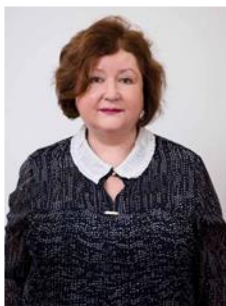

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SOCIO-PSYCHOLOGICAL STRUCTURE PROBLEMS OF CRIME VICTIM PERSONALITY

Інна Шинкаренко, Наталія Давидова. ПРОБЛЕМИ СОЦІАЛЬНО-ПСИХОЛОГІЧНОЇ СТРУКТУРИ ОСОБИСТОСТІ ЖЕРТВИ ЗЛОЧИНУ. Проблеми злочинності у сучасному суспільстві є одними з найбільш актуальних на сьогоднішній день. Стаття присвячена висвітленню ролі жертви злочинну і соціально-психологічній структурі особистості жертви. Встановлено, що віктимологія, яка виникла на перетині юридичної і соціальної психології, визначила якісні і кількісні характеристики та інші питання, пов’язані з особистістю і поведінкою постраждалих від фізичної, моральної або майнової шкоди.

У процесі дослідження проаналізовано наявні у науковій літературі визначення віктимності,

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виділено декілька основних підходів до цього явища. У результаті узагальнення існуючих думок науковців у роботі віктимність визначено як потенційну здатність людини опинитися в ролі жертви злочину в результаті негативної взаємодії особистісних якостей індивіда з зовнішніми факторами, а також як схильність деяких осіб внаслідок певних обставин ставати жертвами злочину.

Окреслено, що віктимна поведінка як відхилення від норми безпечної поведінки реалізується в сукупності соціальних (статусні характеристики рольових жертв і поведінкою відхилення від норм індивідуальної і соціальної безпеки), психічних (патологічна віктимність, страх перед злочинністю та іншими аномаліями) та моральних проявів. Показано, що саме потерпілі, маючи високий рівень віктимності, сприяють здійсненню злочинного діяння. Розглянуто основні вікові етапи та типові небезпеки, які можуть привести особу до віктимізації у певний період життя. Перелічена низка стабільних типових соціальних і соціально–психологічних властивостей особистості – жертви злочину. Проаналізовані причини віктимності неповнолітніх, які обумовлені їх психофізіологічними особливостями та роллю сім'ї як фактора соціалізації у формуванні девіантної віктимності підлітка. Зазначено, що вивчення зв'язку «злочинець – жертва» стане в нагоді і психологам, і правознавцям, і правоохоронцям.

Ключові слова: *віктимність, психологія жертви, підлітковий вік, віктимологія, девіантна віктимність.*

Relevance of the study. The number of external causes and conditions, which are in complex interaction, determines crime as social phenomenon. But above all, crime is not the will of chance. This person behavior act is able to be aware of events and specific phenomena.

The criminal behavior specificity, in our opinion, is due to the following circumstances:

- biological and mental characteristics of the individual;
- social, cultural, moral and other views of the person;
- external circumstances under the influence of which these views were formed;
- specific life situation, which interacting with the identity of the offender, causes criminal acts.

Domestic and foreign scholars pay considerable attention to the offender identity study and crime in general. But the crime in the vast majority of cases is a systemic formation, which arises as a result of three elements combination: the offender, wrongful act or omission and the victim [8, p. 124].

Thus, the success of the crime causes study and the conditions that are conducive to the individual offenses commission, will be more significant, can deepen the criminal behavior aspects study at different pre-crime situation stages and in connection with the victim behavior.

Recent publications review. Certain aspects of this problem have been considered by well-known scientists – criminologists, proceduralists, specialists in psychology, psychiatry, philosophy. A significant contribution was made by such scientists as: O.M. Bandurka, V. V. Bed, O. A. Bovt, O. M. Vasilyev, M. I. Hoshovskyi, N. V. Hryshyna, B. Z. Zahurskyi, V.P. Kazmirenko, L.I. Kazmirenko, V.O. Konovalova, M.V. Kostytsky, G.V. Lavryk, V. O Lefterov, V. T. Malyarenko, A. V. Mudryk, M. A. Odintsova, V. I. Olefir, V. I. Polubinskyi, T. I. Prysyazhnyuk, D. V. Rivman, V. M. Synyov, V. Yu. Shepitko and others. According to V.Y. Rybalska. Victimhood should be distinguished depending on the factor that determines it as a set of socio-psychological qualities of the individual associated with its socialization peculiarities. The victimhood is an exclusively social «impersonal» quality due to the performance of social functions (professional victimhood); victimhood as a biophysiological quality of a person (age victimhood); victimhood because of the pathological person condition [4, p. 116].

The scientific research results convincingly indicate the need for a systematic approach to this phenomenon, within the interdisciplinary analysis framework. From this point of view, victimhood can be considered as a social phenomenon, as an individual psychological characteristic of a person with his victimological activity, as a biopsychological features complex of the individual. There is opinion, that this legal and psychological aspect is subject to further consideration and study and requires new research.

Thus, **the article's objective** is to identify and analyze a set of personal characteristics associated with the tendency to various forms of victimhood, to determine the victim behavior characteristics in adolescence.

Discussion. The "victim of crime" history doctrine and its role in various life situations, in which a person is harmed, dates back to ancient times. People, who have suffered physically, morally, or lost property because of adverse circumstances, certain personal qualities or character traits have attracted the attention of others. Sources of art, that have described the victims , the literature outlines claimed the victim's behavior, his specific relationship with the offender

and a number of other ideas, that were important for general and special doctrine aspects deeply and in details. The works of F.M. Dostoevsky, A.P. Chekhov and others rightly belong to the literary sources of victimology due to the fact that they reveal the idea of the active victim role in the emergency and crime development [14, p. 73].

Psychoanalytic paradigm followers explain the tendency to be a victim of unconscious guilt or shame and the desire to be punished, as well as the projection of their own aggressive impulses on the offender, which allows to force aggressive reaction and thus to get these impulses satisfaction. [1, pp. 164-175].

The basic theories of victimology analysis offered by foreign authors allows allocating some basic approaches.

The first approach is lifestyle theory, which states that victimization depends on the general concept of lifestyle (Michael J. Hindeland, Michael R. Gottfredson and James), explains the temporary or territorial consolidation of crime situation patterns.

Another theory arises from understanding the extent of the own victim's victimization impact. Victim Precipitation Theory. This theory basic idea is that victim can provoke their own victimization.

Foreign literature presents such as the molecular interpersonal victimization, which describes violence in the interpersonal victim relationships, which occurs due to individual characteristics of the person or abnormal interpersonal relationships; model of domestic violence, which considers violence as a way of socio-economic factors [17, p. 43].

We agree with another approach to the phenomenon of victimization, which aims to study such an effect as «secondary victimization». The essence of this theory is to obtain victimhood through direct contact with victims of crime. The category of high risk (secondary victimization) includes professionals who provide primary care of victims: police, doctors, psychologists, social workers [17, p. 46].

We also pay attention to the fact that interpersonal interaction researchers in the framework of educational relations show a special interest in the phenomenon of «peer victimization». The problematic nature of peer interaction and the interpersonal interaction phenomenon consequences seriousness leads to the need for extreme attention to the victimization processes. Researchers highlight the following negative consequences of this phenomenon: low self-respect of the victim, depression of victims, decreased self-respect in all participants in the process. Another form of active discussion by the authors is intimidation, which involves the use of the Internet and mobile phones, which allow anonymous pressure on the victim.

People who consciously or unconsciously choose the social role of the victim (helplessness, unwillingness to change personal status without outside interference, low self-respect, intimidation, increased readiness for victim behavior, assimilation of victim stereotypes by society and community) often fall into various criminogenic crisis situations with the subconscious goal to get as much compassion, support from the outside, the victim role justification.

In victimology – the science that studies the victims, there is such a thing as victimhood, i.e. acquired physical, psychological, social traits and characteristics that can make him prone to become a victim of crime. In other words, this is a special feature of the victim of the crime, which consists of its tendency to be, under certain conditions, a victim of the crime [5, pp. 6-13].

O.O. Bantysheva notes that young people who commit criminal acts have a low level of education, do not have a real socio-professional status, often deviate from education and work [1, p. 168]. Such young people are characterized by alienation, maladaptation, as well as leading an immoral and illegal lifestyle, which determines their victimhood.

The act of violence depends on the victim's behavior before and during it, and the behavior is closely related to the individual structure and is its function. However, it is important not to fixate on the wrong actions of the victim. The involvement in anti-social and criminal groups; advance or psychosexual development lack; frequent family relocations; divorce of parents are the main questions.

The variety of victim behavior manifestations provide the grounds for its classification.

Rivman D.V. distinguishes provocative, frivolous, illegal and socially useful victim behavior in a particular life situation [11, p. 107].

Provocative, called such negative victim behavior, in which an adequate person loses emotional balance and resorts to sudden aggressive actions [10, p. 83]. Passive provocation is expressed in the constant non-fulfillment of responsibilities to family, work team, friends and business partners. Active provocation occurs when the victim is deliberately exposed to danger, while recklessly expecting to avoid serious consequences (severe insults to strangers, boasting

of wealth, hints of intimacy, ostentatious disregard for personal safety basic rules). Reckless behavior consists of excessive trust to strangers, naivety of minors, disregard for traffic rules and more. Illegal behavior is expressed in the victim's requirements of criminal law violation (fraud, theft, infliction of bodily harm), which led to the crime against him commission. Publicly useful behavior related to the performance of official, public and professional duties, unfortunately, also leads to harm to its subjects (law enforcement, public, military activities, the powers of government exercise of, local government, medical care etc.) [10, p. 122].

The researchers attribute a deviation behavior to negative factors that disrupt the socialization process. The following: dissatisfactions with basic social needs are among them: violation of the system of interpersonal relationships, influences and interactions in the family, school and the person inability to individualize and then integrate into a particular social environment.

According to D. V. Rivman, the victim is mostly an individual who has been directly harmed. There are individuals who are the main subject of victimological study [11, p. 75]. A person has a tendency to become a victim of a crime in certain circumstances or an inability to resist a criminal, which is determined by a combination of objective and subjective factors.

N.V. Tarasenko's work proposes the following definition: a victim is a person who has lost significant values for him as a result of being influenced by another person (party to the interaction), a group of people, certain events and circumstances. The victim, in the understanding of it, from the criminological victimology standpoint can be in the community of people, but only in a certain form of their integration, which determines the addictive victimhood.

Summarizing the theoretical concepts, we can say that the main characteristics of the victim are feelings of fear, guilt, anxiety, in adequate attitude. Reaction or behavior of others fear is the main motive for the victims behavior. When making choices or making decisions, they experience many feelings [12].

Scientists believe that the main factors of victimization are [13, p. 87]:

- social or sociological characteristics of the victim (age, sex, social status, financial status, etc.);

- criminological characteristics (the presence of a certain victiogenic situation, the victim's behavior before the crime, at the time of the crime and after its commission);

- psychological characteristics (activity – passivity, orientation, conscious, unconscious, insufficient response to the need for communication, family conflicts, long-term troubles, brutality of the social environment, lack of approval, intellectual retardation, emotional neglect, reduced personal responsibility, cumulative , depressive and masochistic features in the non-pathological dimension, existing pathological conditions, etc.);

- socio-psychological features (inability to self-defense or lack of readiness for it, special appearance, mental or material attractiveness, self-doubt, negative previous or past experience, social living conditions, urban overload, provocative or favorable behavior, etc.);

- genetic features (poor heredity, biological conditioning, etc.).

At each age stage, we can identify the most typical dangers, collisions with which are most likely to lead a person to victimization [17, p. 42]:

- in the period of fetal development: parental illness, their drunkenness and (or) chaotic lifestyle; poor nutrition of the mother; negative emotional and psychological state of parents; medical errors; unfavorable ecological environment;

- in preschool age (0-6 years): diseases and physical injuries; emotional coldness and (or) parents immorality , parents' neglect of the child and his neglect; family poverty; employees inhumanity of children's institutions; antisocial neighbors and (or) their children; the nature of watching programs, sites (entertaining, aggressive, etc.); fellows ignoring;

- in primary school age (6-10 years): immorality and stupidity of stepfather or stepmother behavior; family poverty, hypoprotection or hyperopia; the nature of viewing sites, programs; undeveloped language; unwillingness to learn; negative attitude of teachers and (or) peers; negative influence of fellows and (or) older children (involvement in smoking, drinking, theft); physical injuries and defects; loss of parents; rape;

- in adolescence (11-14 years): drunkenness, alcoholism, immorality of parents; family poverty, hypoprotection or hyperopia; the nature of viewing sites, programs; mistakes of teachers and parents; smoking, drug addiction; rape, loneliness; physical injuries and defects; bullying by fellows; involvement in anti-social and criminal groups; advancement or lack of psychosexual development; frequent family relocations; divorce of parents;

-in early adolescence (15-17 years) they may have antisocial family; family poverty;

drunkenness, drug addiction, prostitution; early pregnancy; involvement in criminal and total-?tarian groups; rape; physical injuries and defects (attributing to oneself a non-existent physical defect); misunderstanding of the environment, loneliness; bullying by fellows; romantic fai?-res; suicidal tendencies; contradictions between ideals, attitudes, stereotypes and reality, loss of life prospects; internet – addiction;

-in adolescence (18-21 years) – drunkenness, drug addiction, prostitution; poverty, unemployment; rape, sexual failure, stress; involvement in illegal activities in totalitarian groups; solitude; the gap between the level of claims and social status; inability to continue education;

-in our opinion, every citizen can become a victim of criminal aggression. However, this does not mean that every victim is a victim and has become a victim due to certain circu-?stances. A person does not acquire victimhood in the process of life, but is victimized from birth to death. He can not be victimized, because he lives in a society where crime is not eradicated, therefore, there is an objective possibility to become a victim of crime [4, p. 112].

Victims behavior analysis of various offense types in the pre-crime situation, at the time of the crime and after its completion shows that many victims have a number of negative traits, namely:

1) the victim of murder is characterized by carelessness, excessive risk, conflict, propensity to aggression, egocentrism, alcohol abuse;

2) victims of violence (bullying) are mostly acquainted with the criminal or depend on him (wife, roommate, child, parents); by nature they are usually weak willed, do not have stable life positions, formed interests, the most often they have an immoral lifestyle, sometimes their social status is higher than the status of the offender;

3) victims of fraud are overconfident, incompetent, gullible, in some cases greedy or experiencing financial difficulties, sometimes superstitious;

4) victims of sexual crimes are characterized by personal immaturity, infantilism; tendency to suggest; presence of «bad reputation», eccentricity, incomprehensibility in acquaintances; lack of a sense of security, a sense of insecurity (from the family, the state, society as a whole); features of fatalism; timidity, indecision and fear, which make the victim incapable of resisting the rapist; frivolity, lack of sexual experience.

O. A. Klachkova identifies the following systemic victimhood factors as emotional rigidity, demonstrativeness, necessity in protection. Each factor has its own characteristics [7, p. 102]. VV Boyko defines emotional rigidity as intransigence, rigidity, inflexibility, which is expressed in the fact that the individual is weak and selective, inflexible and is in a limited range of emotional reactions to various external and internal influences [3, p. 153].

The content of emotional rigidity consists of such psychological qualities as:

1) meticulousness, which is characterized by rigidity, inertia of mental processes, prolonged experience of traumatic events; punctuality, neatness, perseverance;

2) neuroticism, which characterizes emotional stability or instability;

3) paranoia, which is characterized by rigidity, stability of interests, stenotic attitudes;

4) personal anxiety – the tendency to experience anxiety [7, pp.100-101].

Individuals with a high level of anxiety are characterized by frequent manifestations of anxiety in various life situations (although sometimes they do not encourage it), the tendency to perceive the world as a threat and danger, it exposes to stress.

Demonstrative personality is characterized by demonstrative behavior, mobility, ease of establishing contacts, a tendency to fantasize, lie and pretense, the need of recognition, a tendency to provoke conflict.

Victim personalities are closed, prefer solitude, find it difficult to get closer to other people, do not seek to be a leader, feel uncomfortable in company, stay away. They are less compliant, show indifference. Often feel stressed, constantly worried, anxious [15, pp. 1050-1055].

The victim of the crime personality structure biological element also allows to disti-?guish a number of victim characteristics, such as addiction to alcohol and drugs, drug addiction and alcoholism, musculoskeletal diseases, vision and hearing, mental disorders, etc. For example, criminals can take advantage of the fact that a person suffers from a mild degree of dementia, mislead him and with the help of fraud to seize property.

It should be noted that definite victim personality characteristics have different meani?-ngs in the victim's personality studying process. Thus, certain characteristics are involved in the formation of a criminogenic situation (for example, morally). Victimology specialists

deserve special attention to such a category of victims as children and adolescents. Increased victimization of this age group is due to psychophysical features of children and adolescents, namely: gullibility, instinctivity, curiosity, thirst for adventure, inability (and sometimes unwillingness) to adapt to certain conditions, helplessness in conflict situations, in some cases – physical weakness [16, pp. 353-358]. Specific factors of victim behavior of adolescents include: lack of support (especially from parents), experience of observing the violence facts, that formes a set of psychological qualities (emotional instability, anxiety, inadequate self-respect).

The literature has repeatedly expressed the view that the main reason for the victimhood of minors and its rapid growth is the sharp deterioration of the economic situation and rising tensions in society. Of course, all this affects adult victimhood, however, the decline in living standards has the strongest impact on adolescents, because at all times minors have been and remain the most vulnerable part of society. The vulnerability is that certain features of minors (not finally formed value system) make them more susceptible to the influence of factors that adults resist much more successful) [9, p. 63].

Thus, the causes of victimhood of minors can be divided into two major groups: those related to the personal characteristics of minors and those that are caused by social problems. Thus, the study of minor victim behavior is an urgent and timely task.

From the analyzed material, the tendency to victim behavior arises in childhood, when the family environment largely plays a decisive role in the formation of the main future behavior patterns. On the other hand, the development of victim behavior of a young person is imprinted by his current activities, which can affect the nature of provocative behavior, which will lead to negative consequences.

Victimism or sacrifice is manifested in the active or passive provocation of aggression against them, the unconscious desire to harm their own physical or mental health [6, p. 54]. Anxiety, fears, anxieties push the individual at times cardinal behavior ways that contribute to the achievement of the psychological comfort state.

The data of L. O. Shevchenko's research testify the emotional and communicative disunity in families.Its members are presented as "victims" of this disunity. In such a family atmosphere, deviant behavior is an attempt to transform it. The attitude to the parents family role of adolescents with deviant victimhood is similar: feelings of self-sacrifice, family conflicts and indifference, non-involvement in family affairs by parents and dissatisfaction with their own role on the part of mothers [16, p. 355].

Deviant victimhood is a stable individual propertyl as a victim of adverse subjective and objective socialization factors, which expresses its maladaptation and manifests itself in various victim behavior forms. The role of the family as a factor of socialization in the deviant victimhood formation of adolescents is determined by a number of conditions of family influence. They are formal sociological characteristics, intra-family relations, parental positions, styles of family upbringing. The marker of the well-being of the family space is, first of all, family relations.These relations are closely connected with educational influence,but not with the formal family sociological characteristics.

Thus, certain psychological features characteristic of adolescence is identified. It increases the risk of falling victim to adverse conditions: emotional immaturity, increased suggestibility, desire to become an adult and assert themselves, lack of ability to control their behavior, ability to restrain their desires and opportunities to meet needs.

Numerous studies show that trends, which are specific for children and adolescents, persist into adulthood. Thus, men show more physical aggression, and women – verbal [2, pp. 131-138].

Conclusion. Thus, the «criminal – victim» relationship study is the real basis for predicting the criminal reality, identifying not only future perpetrators but also potential victims. Thus, the victims study psychological characteristic is an urgent task today. This trend is important for legal professionals not only to have the issue legal aspect, but also to be acquainted with the basic psychological knowledge about the crime identity victim, taking into account the victimological aspect in crime prevention strategies.

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Abstract

The article deals with highlighting the victim of the crime role and the victim's personality socio-psychological structure. Victimology, which emerged at the legal and social psychology intersection, has to identify qualitative and quantitative characteristics and other issues related to the personality and physical, moral or property damage victim's behavior.

In the course of the research, the definitions of victimhood available in the scientific literature are analyzed, and several main approaches to this phenomenon are identified. Becouse of existing scientific opinion generalization, the work defines victimhood as a potential ability to be a victim of a crime as a result of negative personal qualities interaction with external factors, as well as the some people tendency to become the victims of a crime.

***Keywords**: victimhood, victim psychology, adolescence, victimology, deviant victimhood.*

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USE OF TECHNOLOGY IN SPORTS – A BOON OR BANE?

Рам Мохан Сингх, Ірина Скрипченко. ВИКОРИСТАННЯ ТЕХНОЛОГІЙ У СПОРТІ: ПЕРЕВАГА ЧИ НЕДОЛІК? Спорт сьогодні переріс у велику галузь. Професійний підхід до спорту, його комерційна цінність та глядацькі інтереси спричинили суттєві зміни у способі сприйняття того чи іншого виду спорту. Ці зміни призвели до збільшення привабливості виступів гравців, де все більше глядачів насолоджуються спортом. Отже, виникає необхідність при суддівстві змагань правильно застосувати закони, норми та правила, що регулюють діяльність видів спорту, які також різко змінюються. Як ніколи раніше, сьогодні збільшується тиск на суддів, рефері, арбітрів та емпайрів щодо уникнення помилок у своїй професійній діяльності. З огляду на вище зазначені обставини, розвиток подій в процесі гри, формування інтересів глядача, значення будь-якого рішення судді на гравця стає все більш важливим ніж будь-коли раніше. На цьому тлі було розпочато опитування для збору думки різних зацікавлених сторін, щоб дійти логічного висновку про те, як технологія впливає на законодавство, правила та норми спорту й ігор та чи потрібно їх змінювати. Спеціальна анкета була розроблена та розповсюджена серед зацікавлених учасників не лише на місцевому рівні, а й у всьому світі. Отримані результати опитування свідчать про підтримання використання технологій у спорті сьогодні, хоча деякі учасники вважали, що технологія не може бути надійним методом подолання людських помилок.

***Ключові слова:** технологія, спорт, емпайри, рефері, судді.*

Relevance of the study. Tim Paine the Australian Cricket team Captain responds to the Decision Review System (DRS) by criticizing the umpiring decision that went against his team. Ian Taylor from New Zealand, who invented and introduced DRS in Cricket offered an open invitation to the Australian captain to learn how the technology works before comment-

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ing. Paine was irate with the two decisions made using DRS technology and suggested that the system was «a bit off.» He added that what he saw with naked eye, or watched in real time on television and what came up during replays was a little bit off the mark.

Ian Taylor, on the other hand insisted that there was «no question» that any of the decisions were wrong. He said that his company had invested in making the technology as accurate as possible and Paine was more than welcome to have a look at how they reached the decisions [1].

The above NEWS report is a classic case of how the pros and cons of using technology in sports officiating played out. The quantum of effort put to have technology in place is quite enormous. However, how real technology can get and how easy it is for the stakeholders to understand is a big question that has to be addressed.

Sports officials (umpires, referees, judges) play a vital role in every sport, and sports governing bodies, fans, and players now expect officials to maintain the highest professional standards than ever before. Many experts have studied the factors that influence the officials during different situations and different games. Though each game has its own uniqueness and it will be unfair to compare officials of all games with a common idea, certain qualities which could apply to officials in general is listed below. These are qualities that any successful official tends to possess. This includes the officials' skill, technique and physical requirements.

– Judging the events accurately and taking decisions on its basis.
– Manage psychological demands of self and also deal with emotional state of the players.
– Quick visual processing.
– Effective and timely communication and practical approach to game management.
– High fitness level to see through the entire game(s) or sports.
– Performance evaluation after every officiating duty.

The official should be able to understand the use of technology and be comfortable with its usage if he has to survive the modernization of the games and rapid changes the electronic media is bringing about at present.

"The development of officials, umpires and referees is increasingly recognized as an important area of sport management [2-5]. As with all programmatic areas, including coach training and athlete development, officiating structures are under increasing pressure to "modernize". This imperative stems from a number of pressures, including the state's insistence that modern partner organizations are both 'what matters and what works', and the importance ascribed to effective recruitment, training and retention strategies by the sports themselves" [6].

There are strong proponents for use of technology in sports officiating. S. S. Bordner [7] in his study entitled «Call 'Em as they are: What's Wrong with Blown Calls and What to do about them» has highlighted the various mistakes committed by the officials which have gone on the change the outcome of games, championships, and even the record books. He argued that the impact of such crucial calls are very much deplorable in sport. He goes on to even label them as unjust. He concludes by recommending that due to the nature of sport in the scenario today one has to use technology to aid officials in making their judgments. He adds that doing so would prove more effective than relying on unaided human perception.

Increasingly, it can be observed that technological support for officials are being provided to aid their decision making in many sports. To analyze the impact of such an innovation the authors studied the role of the television match official (TMO) on offences committed by the players and corresponding decision made by officials in matches played in the group stages of the European Rugby Cup and European Rugby Champions Cup over 15 seasons from 2000/01 to 2015/16. It is a sport where home advantage tends to be relatively high. 65% of the matches analyzed resulted in home wins. Results suggested that crowd effects and referees' experience influenced their decisions which further varied according to the kind of incident. The main finding of the paper was that, the introduction of the television match official had influenced the incidence of punishments issued to both teams. The study further proposed that referees may have been consciously or unconsciously seeking to avoid contributing to home bias before the introduction of a further official who was not influenced by crowd effects [8].

Another study [9] analyzed the accuracy of Leg Before Wicket (LBW) decisions of umpires in the game of Cricket. Umpires are expected to be highly accurate LBW decision makers. However, their judgments on LBW law differed while officiating in different formats of

the game. The point to be noted is that the ability to judge by the same person varied just by a change in the format even though the game and the laws were the same.

On the contrary, there are strong advocates for not using the technology as well. Johnson C. proposed that use of technology has led to loss of human element associated with that sport [10]. He suggested that more people seem to think technology will help reduce errors of officiating in games and sports. He added that to certain practical applications it may be true but he presented a strong argument that the excessive use of technology has eliminated the means to understand a sport as it is played and practiced, in which human beings can reconcile themselves with the fallibilities and contingencies of life. He goes on to add that this aspect served as a forum where such losses can safely be experienced. In conclusion he suggested that officiating errors should be seen as a part and parcel of the sport and the demand to eliminate all wrong decision-making in officiating should be discouraged.

H. Collins argued that the introduction of new technology should be done in such a way that justice was maintained as a result of the decisions and that justice was not the same as accuracy [11]. Justice was best served with a restrained use of new technology.

Another study based on impact of goal line technology in Soccer has brought out some interesting conclusions. The study brought to light that both the proponents and opponents of goal line technology have laid over emphasis on the role of referees to adjudicate on goal line situations. Though they felt that the game of Soccer would only stand to gain from error free officiating, they argued that the emphasis on use of technology were based on a number of inconspicuous estimations. The authors suggested that it was a myth to assume that goal-line situations could significantly alter the result of games. They added that a referees' decision alone does not result in winning or losing a match as the game itself depends on more than just scoring goals. They also suggested that the decisions of players, coaches and managers of teams had a greater influence on the results and outcomes of any game. They supported their claim by quoting Cesar Torres's insights in which it was inferred that a referee's involvement in game was limited to regulating situations so as to restore it to actualization and nothing more. Another argument of the proponents of technology was the erroneous view that technology can actually eliminate most 'crucial' human mistakes from sport and, thus, ensure fairness of game outcomes. Such a myth he felt could easily be refuted by reference to numerous cases of inconclusive slow-motion video replays from the game of Soccer. With the above data the paper concluded that referees should not be made a scapegoat by overemphasizing their role in impacting the result of a match and added that there was a compelling need to put forth arguments which goes beyond the misguided idea that a referee should be infallible [12].

A different perspective emerged in the study conducted by I. McLoughlin and P. Dawson [13] which gave weight to the sociomaterial factors to be considered before advocating use of technology. They based their case on the Decision Review System (DRS) prevalent in the game of Cricket. They suggested that while applying DRS, as such, 'what really happened' remained a highly negotiable phenomenon. They also noted that even in cases where the virtual evidence seemed very conclusive, the truth remained that it was still an estimate and not the absolute truth. They opined that the 'material evidence based on virtual technology was not a fixed phenomenon but it was constantly being reinterpreted and renegotiated. They felt that a sporting spectacle due to its greater public visibility should not be overwhelmed by use of digital technology to materially make true something that may not be the truth. However, they wanted the researchers to further work on these aspects and derive more empirical evidences before any concrete conclusions could be drawn as to how reliable technology can be.

One researcher felt that technology itself is to blame as it has given the spectators the best facility to focus on close-up, slow-motion, repeat display and from several angles giving them much deeper insight into the sports itself. The author felt that it had become a mechanism for judging the refereeing decisions to a new level. He studied the role of technology in officiating and concluded that it was creating more problems for human officials [14].

Russell et al. [15] on the other hand drew attention to the issue of consistency based on game context among officials. Professional Soccer officials were analyzed for their decision making consistency using isolated foul-play video assessment. Results advocated the need for more representative game training opportunities for referees to practice making calls in the presence of key information sources.

Findings of D. K. Ntege [16] showed that respect improved between players when video

assisted referee (VAR) was introduced because the players felt that they were continuously being monitored on the pitch. Though it restrained the violent behavior of players, it failed to address the issue of Fair Play as players still faked dive to get fouls from the referee during their Soccer games. Another point that this study focused was on 'transparency' because fans were not aware of what was being communicated between the on field referee and VAR and thus failed to connect with the decision making process. The study also suggested that the referees still needed to be educated on how and when to use the technology to reach more accurate decisions and wanted to keep the spectators informed about the decision making process.

Another aspect that has added to the complexity of umpiring especially in a game like Cricket is that the umpires may have to observe many things that are happening around them very quickly and they may have to take a call on a resultant situation. Take the case of a study conducted by D. C. Southgate et al. [17] on Leg before Wicket (LBW) decisions of umpires in the game of Cricket. The study concluded that the correctness of LBW decisions improved when the umpires did not have to watch the bowler's front foot for 'No Ball' (an illegal ball in the game of Cricket). In Cricket, the ball once released by the bowler reaches the batter in a fraction of a second. An umpire in his or her usual standing position at the bowlers end, needs to look down to check the bowlers front foot landing as the bowler is supposed to deliver the ball with some part of their feet behind the popping crease. At this point the bowler is almost ready to release the ball. Imagine the time left for the umpire after having to look at the bowlers' front foot landing, to quickly look up at the release of the ball then observe, judge the trajectory and line of the ball, assess if it would hit the stumps or not and if there was an appeal for LBW then take a call on appeal almost instantly. Though the umpires have been giving decisions in this fashion for many years now, this study highlighted that there was a significant reduction in the errors of umpires in getting the LBW decision right if they didn't have to watch the bowler's front foot. At present with technology in place, the television umpire or third umpire as he is called in Cricket checks for front foot 'no ball' and informs the on field umpire immediately. This is how technology has decreased the burden and the errors made by umpires or officials in Cricket.

Given all this background for use or disuse of technology to govern and adjudicate sports laws, rules and regulations, impact of technology in altering the tempo of a game should also be considered. Some games like Cricket or Tennis are inherent with small breaks and therefore the impact on the tempo of the proceedings may not be much. But in a continues flowing game like Soccer or Basketball frequent breaks in the flow of the game to adjudicate using technology can be a big put off both for the players as well as the spectators. Hence, the need for technology to evolve in such a way that it gives instant real time reviews so as to have minimal impact on the tempo of the games should also be looked into.

This study was initiated to have a global view on the opinion of stakeholders on how technology impacts the law, rules and regulations in sports and games. The study also focused on the need for such technologies and if it was a foolproof solution for overcoming human errors during officiating in games and sports.

Method. A questionnaire with few simple questions that directly connected with the study topic was designed and mailed to all the contacts of the researcher both inside and out of India (Ukraine, Montenegro, Spain, England, Slovenia, etc.). A request to share the same with their contacts was also made thus activating the snowball sampling method to collect the data. Emails and other social media platforms were utilized to distribute the questionnaire to as many possible participants. The participants were given a choice to proceed only if they were interested in responding. 447 responses were recorded in which the participants gave their opinions about their sports background and their views on technology. The description of the accumulated data is given below.

Results. The results of this study as shown in (Diagram 1) revealed that most of the stakeholders who chose to respond were in favor of incorporating technology in the laws, rules and regulations pertaining to games and sports. Of the total number of 447 respondents, 67% of them were professional and serious sportspersons. 18% of them were casual and recreational sportspersons. 11.6 % of them were just sports lovers. There was no response from anyone who was not interested in sports. Thus we can interpret that almost all the 100% of the participants were having keen interest in sports but in varying degrees.

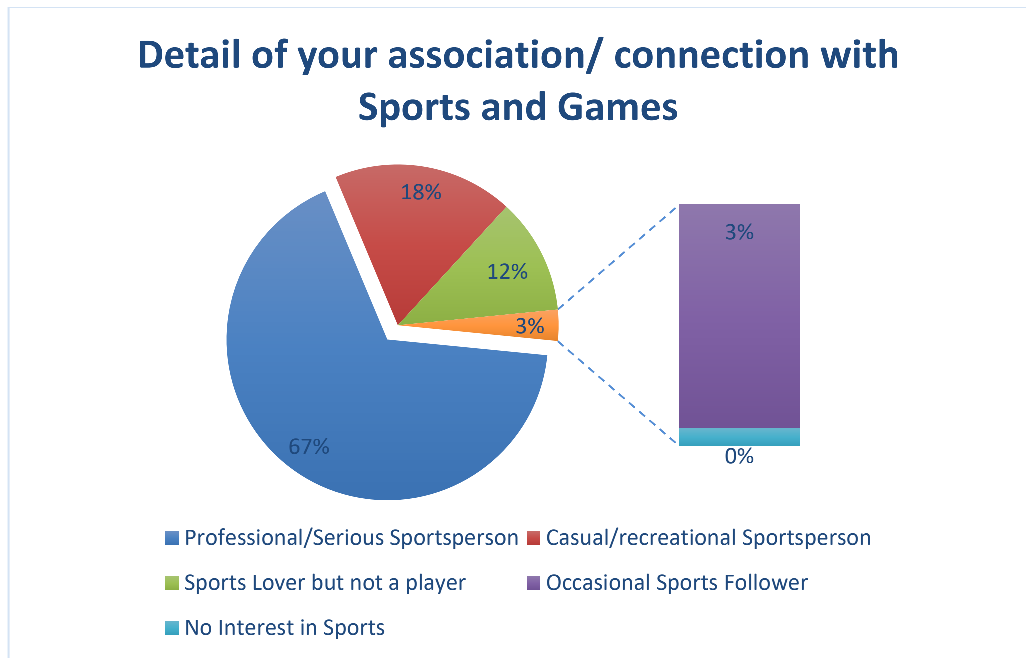

Diagram 1: Responses with regard to the Association/Connection of the respondents with Sports and Games revealed the following

As far as distribution of age (Diagram 2) was concerned it was observed that more than 27 % were in the age group of 41 to 50 years. 25% of them were in the age group of 31 to 40 years followed by 21 to 30 years group who were at 24.9%. Above 50 years participants recorded at 16.7 % and last but not the least below 20 years participants were at 6.9%. The results shows that the bulk of the respondents were from 20 to 50 years age group who were matured and experienced enough to express their opinion on topic in question.

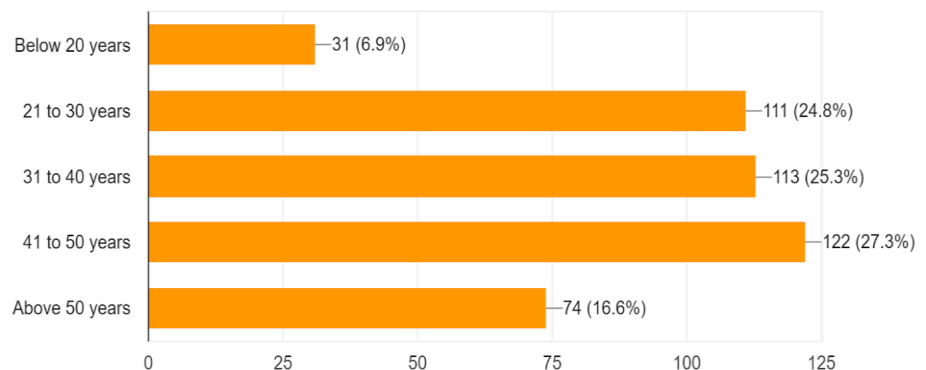

Diagram 2: Responses with regard to the 'Age of the respondents revealed the following

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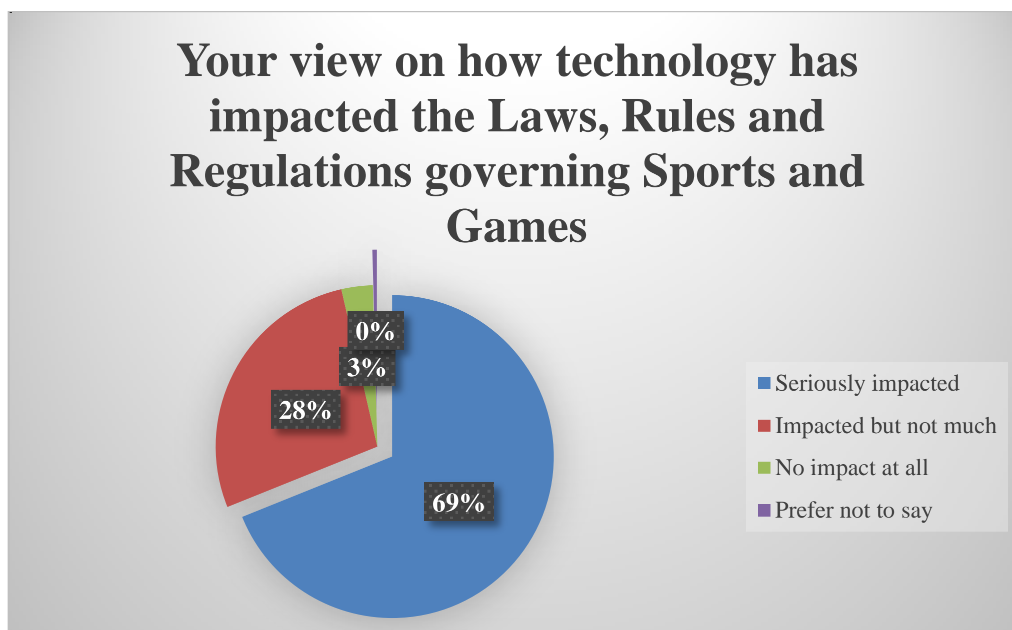

Diagram 3: The respondent's opinion on how Technology has impacted the Laws, Rules and Regulations of games and sports revealed the following

The responses from the participants on the question about how much impact they thought technology (Diagram 3) was having on the laws, rules and regulations of games and sports, the following opinions were compiled. 69% of the participants felt that technology did make serious impact followed by 27% who felt it made some impact. Only insignificant number of them felt it made no impact at all. Therefore, it can be interpreted that technology has already made significant inroads as far as laws, rules and regulation of games and sports are concerned. Perhaps there are few games that are yet to incorporate technology in an appropriate manner.

For the question which elicited the views of the participants on the need for technology (Diagram 4) to be incorporated to implement the laws, rules and regulations in games and sports, 68% of the respondents felt it was absolutely necessary and 31% of them felt that it was somewhat necessary. Only insignificant number of them felt that it was not necessary.

Last but not the least, the respondents were asked if they felt that technology was a foolproof method to eliminate human error during officiating in games and sports (Diagram 5), The responses showed that, 49% of them agreed that it was and 38% of them said that they somewhat agree. 6% of them somewhat disagreed while 4% of them completely disagreed. 3% were undecided. The views of the participants supporting the use of technology softened the bit as the affirmative percentage in favor of technology dropped from high sixties to high forties. Perhaps the participants were not having enough detailed knowledge on technology due to which they could not commit to a strong answer or perhaps technology itself had margin of errors due to which they could not be cent percent sure.

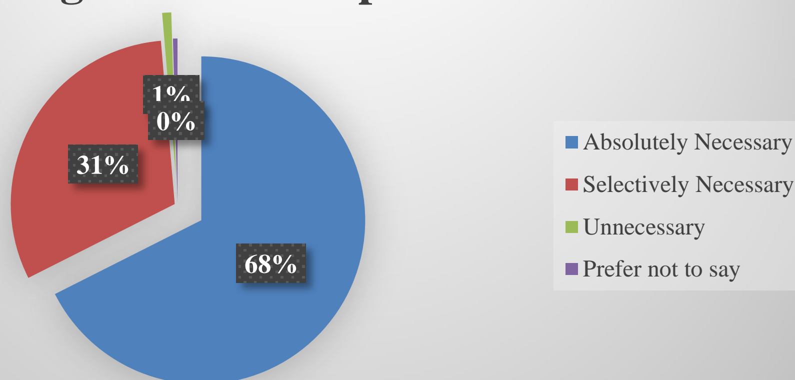

Diagram 4: The respondent's opinion on the need for Technology to enforce the Laws, Rules and Regulations for Sports and Games revealed the following

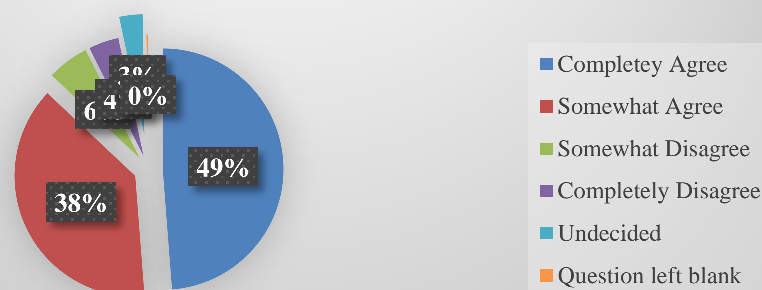

Diagram 5: The respondents' opinion if they agreed that Technology was a FOOLPROOF method to eliminate human error in implementation of Laws, Rules and Regulations revealed the following

Discussion. To summarize, it can be said that significant majority of the respondents agreed that technology is playing a big role already in the implementation of laws, rules and regulations of games and sports and they also support such a need. Since they are actual stake-holders in the sport of their choice, their voice may be reflecting the fact and the need of the hour. But, they stopped short of agreeing that, at present technology is a foolproof method to avoid human errors. This proves that technology still needs to evolve if it has to gain the complete confidence of the stakeholders.

Such an opinion was also be voiced by Spitz J.[19] who concluded that in Soccercorrect decision making odds after using video assist refereewas significantlyhigher when compared to original decision of the referees without assist. The decision making accuracy increased from 92.1% to 98.3% due to the use of video assist.

Referee bias is particularly relevant in sports at present, where partial decision-making can determine competition outcomes, which can have strong repercussions on athletes' careers and supporters' well-being [20].

The proportions of LBW dismissals in test cricket matches from 1978 to 2004 were analyzed in this study. The location, the team, presence or absence of neutral umpires were taken into account. The study put out some clear evidence that some players were out leg before wicket less often at home which could suggest that there was an element of favor by umpires for some players during their home matches [21].

Bo Han in a study concluded that after the introduction of VAR, the number of off sides and fouls in the Chinese Super League dropped significantly, the total playing time increased significantly and the home team advantage decreased slightly [22]. It exposed the profound impact technology had on high profile professional football. Technology also helped referees optimize their refereeing strategy.

However, there is a need for technology to become more transparent as evidenced from Stoney [23] which brought out the inconsistencies in the relay of television match official (TMO) decisions. Though the fans were generally in favor of TMO they wanted more information on TMO referrals and decisions. They suggested relaying of TMO decision delivery in stadia over the PA system and/or captions providing explanations and decisions on TMO referrals. They felt it would mostly improve their event experience. Hence, sports is not just about the players and officials anymore. There are both physical and virtual stakeholders who are connected to the sport through a wide ranging mediums of electronic gadgets. They must be involved as well if the sport has to survive and have a long life. The wide ranging participants of this study also expressed the same need that they wished to stay more connected with the sport by incorporating technology into it.

This article explored how technology could creatively manipulate and play with the spatial and aesthetic realms of Cricket using unconventional methods to recast, re-position, support and enhance the viewing experience. The cameras could switch quickly between a specific point of focus to a broad overview in no time and as often as possible. Technology also allowed interactive options providing a highly versatile and visual kaleidoscope through newer prospective and analytical details using high-end technological gadgets to give a superior experience to all the participants. Cricket today has also been digitalized and extended in mobile and many other virtual formats. Yet technology has continued to re-shape the present and future consumers of Cricket as a sport [24].

Conclusion. Technology has come to stay as it has already made significant inroads in sports officiating. The need for incorporating technology also has overwhelming support from the stakeholders and the participants of this study. Hence, it can be concluded that there is a need to incorporate technology in officiating for all games and sports if it has to appeal to and attract more and more stakeholders towards it. But, for technology to become foolproof, there is perhaps more room for improvement. Therefore, the study concludes that use of technology in implementing the laws, rules and regulations in games and sports needs to be accepted and actively encouraged.

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Abstract

Sports has grown into a big industry these days. The professional approach to sports, its commercial value and spectator interests has brought about substantial changes in how a sport is played and viewed. These changes has brought about eye catching performances from the players and with more and more spectators enjoying sports, the need to judge the application of laws, rules and regulations governing such sports has also changed drastically. The pressure on umpires, referees and judges to be error free is like never before. Given such circumstances how a game is being evolved, how the spectator's interest is being cultivated and how the impact of any decision is felt by a player concerned is becoming more critical than ever before. With this background a survey was initiated to gather the opinion of various stakeholders to arrive at some logical conclusion on how technology in influencing Law, Rules and Regulations of Sports and Games and if it needs to be so. A specific questionnaire was designed and circulated among interested participants not only locally but across the world. The responses supported the use of technology in sports today though some of the participants felt that technology may not be an answer as a foolproof method to overcome human error.

Keywords: *technology, sports, umpires, referees, judges.*

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IMPROVEMENT OF STRONG TRAINING IN THE COURSE OF SPECIAL PHYSICAL TRAINING

Віктор Богуславський, Дмитро Петрушин, Володимир Рогальський, Владислав Шеверун. УДОСКОНАЛЕННЯ СИЛОВОГО ТРЕНУВАННЯ В ПРОЦЕСІ СПЕЦІАЛЬНОЇ ФІЗИЧНОЇ ПІДГОТОВКИ. Визначено, що спеціальна фізична підготовка є невід'ємною складовою навчального плану підготовки спеціалістів, частиною життєдіяльності курсантів, від правильних і систематизованих навантажень на заняттях залежить їх рівень підготовленості. Вона є важливим елементом всебічного розвитку курсантів, збереження та зміцнення здоров'я, його фізичного і духовного вдосконалення і спрямована на якісну професійну підготовку до майбутньої професійної діяльності. Визначено прикладне значення силового тренування, заходи, спрямовані на його формування, вдосконалення здібностей поліцейського з урахуванням особливостей його професійної діяльності.

Теоретично і експериментально обґрунтовано організаційно-педагогічні умови тренування силових якостей майбутніх фахівців кримінальної поліції в процесі спеціальної фізичної підготовки. Досліджено показники спеціальної фізичної підготовки як складової службової підготовки курсантів, а саме оцінювали загальні і спеціальні силові якості: статичну та динамічну силову витривалість, швидкісно-силові якості, максимальну силу. Завдяки застосуванню організаційно-педагогічних умов та диференційованого підходу до тренування силових якостей у курсантів експериментальної групи відбулись значні позитивні зміни за показниками загальної і спеціальної фізичної підготовленості.

Проведені дослідження дали підстави свідчити, що рівень підготовленості курсантів до експерименту були не на достатньому рівні, що не може задовольнити вимоги, поставлені перед майбутніми спеціалістами. Отримані результати підтверджують думку провідних науковців про необхідність врахування заданих модельних характеристик та період збереження і ступінь зни-

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ження досягнутого тренувального ефекту. Доведено, що використання організаційно-педагогічних умов на заняттях зі спеціальної фізичної підготовки для курсантів досліджуваних груп з урахуванням диференційованого підходу достовірно ($p<0,05$) сприяло підвищенню їх ефективності.

Ключові слова*: курсанти, спеціальна фізична підготовка, фізична підготовленість, фізичні якості, засоби, методи.*

Relevance of the study. In modern society, education has become one of the largest areas of human activity. Education, especially higher education, is seen as a major, leading factor in social and economic progress. Rapid changes in scientific and technological progress are radically transforming the working conditions of the modern specialist and making ever higher demands on him. This requires from future specialists of the national police the ability to form in resonance with the intensive development of the professional environment, requires an innovative approach to the development of theoretical and methodological foundations of special physical training of cadets of higher education institutions. There is a transition from a strictly regulated organization of education to variable, block-modular, contextual learning, which provides a high level of development of educational independence, self-education [1].

Significant political and socio-economic changes taking place in society, Ukraine's entry into the world community require structural modernization of the national system of physical education in higher education, aimed at ensuring the task of educating physically healthy, socially active, well-developed student youth.

The trend of modern education, and especially in the field of training specialists for the national police, has led in recent years to the emergence of new forms of education, new methodological approaches to the theoretical, methodological and professional training of cadets.

During the general training such tasks as progress of the basic physical qualities, development of functional possibilities, processing of volume of motor skills, increase of professional working capacity, multifaceted physical development, activization of processes of recovery, strengthening of health as a whole are solved.

Today, the technology of improving the level of physical fitness of cadets is not the property of personal experience of scientific and pedagogical staff of the department, they are developed in accordance with the achievements of modern science. Any technology to improve the physical fitness of future professionals includes setting goals, objectives, implementation in the classroom means of developing the appropriate physical qualities in one form or another.

The effectiveness of the training of future criminal police specialists depends on many components, one of which is a comprehensive general and special physical training.

Special physical training is an integral part of the curriculum for training specialists, part of the life of cadets, from the correct and systematic workload depends on human health, receptivity to new information, willpower, fatigue. It is an important element of compr-?hensive development of cadets, preservation and strengthening of health, its physical and spiritual improvement, but also high-quality professional preparation for future professional activity. However, it cannot be said that the problem of cadets' interest in special physical training, and sports in general, is completely solved. There is still a certain percentage of cadets who have a negative attitude to sports, do not improve physically due to low motivation, lack of willpower, laziness, as well as due to disabilities and for a number of other reasons.

Classes in special physical training should be considered as a pedagogical process aimed at developing professionally important physical and psychophysiological qualities, the formation of applied motor skills and abilities, in the aggregate it will ensure the objective readiness of the specialist for successful professional activity.

Strength is one of the vital qualities that allows a person to be successful in professional activities related to physical labor and provides physical comfort in everyday life [2-3]. In modern labor, strength is still significantly independent and ancillary to the successful performance of professional tasks in many specialties, as muscle strength largely determines the speed of movement and plays an important role in work that requires endurance and coordination [4].

The most favorable age period for the development of strength qualities for young men comes after their musculoskeletal system and neuromuscular system are almost completely formed. According to research by sports physiologists, the maximum value of strength quality reaches the age of 18-20 years [5]. This age period covers the majority of first-year students, ie the period when the module of disciplines «Physical Culture» is implemented.

It is known that the purpose of strength training in universities is to ensure a high level of general strength training of students, necessary for their full performance of professional activities, comprehensive physical development and proportional physique.

Recent publications review. Numerous studies of physical fitness of young people indicate a sharp decline in strength in students of universities of different specialties [6-7]. As a result, some standards of a sufficient level of force development are adjusted to reduce them.

Theoretical analysis of the literature shows that currently there are a large number of publications with recommendations on methods of strength development in people of different ages and physical fitness, especially in young people [8-9].

Analyzing the requirements of educational and professional activities of servicemen of the Ministry of Internal Affairs, it can be noted that for effective performance of tasks the system of special physical training should be aimed at developing general and strength endurance and ability to act in difficult, dangerous and unexpected situations.

Thus, the issue of substantiation of organizational and pedagogical conditions for training strength qualities in cadets of different faculties of higher education institutions of the Ministry of Internal Affairs of Ukraine, who in the future are able to perform tasks at a high level.

The article's objective is a theoretical and experimental justification of organizational and pedagogical conditions for improving strength training of future criminal police specialists in the process of special physical training.

The main research methods are: – theoretical analysis and generalization of literature sources; – study of program and normative documentation on special physical training in higher education institutions; – pedagogical testing; – pedagogical experiment; – methods of mathematical statistics.

The research was conducted with 1st year cadets of Dnipropetrovsk State University of Internal Affairs at the faculties: training of specialists for preventive units (boys – n = 20) and training of specialists for criminal police units (boys – n = 20) in which they determined the level of development of force. Pedagogical control was carried out by scientific and pedagogical workers, who carried it out with the use of test physical exercises to assess professionally important physical qualities. The cadets were evaluated strength qualities – assessment of general and special strength qualities: static and dynamic strength endurance, speed-strength qualities, maximum strength.

The following exercises were used for testing: – running 100 m, s, – running 3000 m, min, – hanging on the crossbar, s (time was fixed); – pull-up on the crossbar, – lifting the torso (number of times); – long jump from a place (cm), – wrist dynamometry; – state of dynamometry (kg.). The survey was conducted at the same stages of training.

Discussion. Pedagogical control – a systematic process of obtaining information about the physical condition of persons engaged in physical culture and sports. Pedagogical control in physical education is considered by scientists from two positions: as a function of the teacher and as a system of measures, namely the control carried out by the teacher-specialist (teacher, trainer, methodologist, etc.) according to his professional functions, using those means and methods which he can and should competently apply on the basis of special education and practical experience in the specialty [3]. Pedagogical control is a system of measures that provide verification of planned indicators of physical education, to assess the tools, methods and loads used.

Analysis of curricula for training specialists in different universities of the country shows a variety of planning options. All options can be combined into three groups: – intensive planning (all workload is planned for the first two courses); – optimal planning (the load is distributed over three years of study); – distributed planning for the entire training cycle (in the first two courses classes are planned twice a week, in the next two – once).

The current stage of development of society is characterized by high dynamics of transformations in the field of training in higher education institutions. Transformations concern legal, program, methodical, organizational, logistical, personnel maintenance of realization of disciplines, sections, modules of training. This also applies to the system of implementation of the requirements of state standards for physical culture for professional activities.

The use of physical culture and sports for training is based on the phenomenon of transfer of training. This uses the effect of training in some activities to improve results in others [10].

Special physical education classes are a pedagogical process aimed at the development of professionally important physical and psychophysiological qualities, the formation of applied motor skills, together provide the objective readiness of a specialist for successful professional activity.

For training of cadets at the department of special physical training by scientific and pedagogical workers the technique of employment within the limits of the educational program on the basis of modeling of extreme conditions of professional activity is proved.

To develop a scientific approach to rational planning, it is necessary to turn to the physiological justification of the distribution of physical activity in the weekly training cycle. It is believed that the following loads for the untrained body should always fall on the phases of either full recovery or super-recovery (supercompensation) [11].

To develop an experimental method of training the strength of future criminal police specialists and selecting the necessary and sufficient number of strength exercises should consider the existing classification of muscle modes and their relationship with the modes of work in professional activities (static, overcoming and yielding modes).

All three modes of muscle work take place in the professional activities of specialists. On the basis of these modes, the following types of strength are distinguished: maximum strength, strength endurance and explosive strength.

The development of strength training techniques has always been based on scientific data on physiological and psychophysiological features of muscle contraction, new scientific data have been used in the development of modern methods of strength training in cadets [12].

On the basis of data of scientific and methodical literature and own experience of practical activity the most effective exercises with free weights for complex development of power qualities for cadets of experimental group were selected. The selection of training aids used and their dosing was carried out on the basis of strict consideration of age and level of physical fitness of cadets.

Most cadets at the initial stage of strength training classes are dominated by the idea of the possibility of achieving a high training effect in a short period of time. It is based, firstly, on the data of mass advertising and publications in popular magazines about bodybuilding, offering the development of «superpowers» in 12-16 weeks and, secondly, on the subjective feelings of rapid growth in the initial stage of training beginners.

In order to select the optimal methods and means for the development of force in future specialists used methods of force development: the method of maximum effort, the method of repeated efforts, the method of ultimate effort (to failure), the method of dynamic effort, «shock» method. When performing the exercises, the application of weights, the number of repetitions, the pace of movements and the duration of rest breaks depending on the physical fitness of the cadets were differentiated.

To test the effectiveness of the content and model of the organization of strength training of future specialists in training sessions in the disciplines of «Special Physical Training» was conducted formative pedagogical experiment. For this purpose experimental (young men – n = 20 faculty of preparation of experts for divisions of preventive activity) and control (young men – n = 20 faculty of preparation of experts for divisions of criminal police) groups were formed.

At the beginning and at the end of the autumn semester of 2019/2020 academic year, the level of general and special physical fitness was monitored in accordance with the recom-?endations of the curriculum of the discipline «Special Physical Training». Mandatory tests to determine general physical fitness include: – tests of speed and strength; – tests for strength training; – tests for general endurance. Analysis of the initial data of physical development and physical fitness of cadets indicates the need to find innovative approaches in the system of special physical training of higher education, which will improve their level of preparedness.

This contributed to the selection of exercises aimed at developing those physical qualities that the cadets at the beginning of the experiment, were underdeveloped.

The generalized results of research of power qualities at the cadets studying on corre-?ponding specialties are resulted in tab. 1. The indicators listed in the table show that the level of development of back muscle strength and endurance is at a relatively sufficient level, but the strength of the hand in various tests is quite low, so when building a technique of strength training of future professionals must provide exercises to develop m ' ulcers of the hand.

Table 1

The results of testing professionally significant strength qualities and general physical fitness of cadets at the beginning of the experiment (x, S ± m)

№	Test	Experimental group (= 20)		Control group (= 20)	
		to the expert.	after the expert.	to the expert.	after the expert.
Загальна фізична підготовленість					
1.	Running 100 m	13,8±1,3	13,3±1,4	14,0±1,6	13.8±1.7
2.	Pull-ups on the crossbar, number	8,1±3,3	12,5±2,9	7,2±4,3	8,1±3.9
3.	Running 3000 m	810,2±24,8	790,3±21,8	830,4±27,6	820,2±23.8
Special physical fitness					
1.	Wrist dynamometry, kg	43,3±6,4	45,7±5,8	42,3±7,2	42,2±6,8
2.	Condition dynamometry, kg	156,1±24,8	174,8±21,2	152,0±29,2	156,1±28,4
3.	Hanging on the crossbar	84,4±13,1	90,6±10,4	68,1±14,2	72,5±13,5
4.	Long jump from a place, centimeters	210,4±25,6	232,7±18.9	212,2±21,8	216,3±19,7
5.	Lifting the torso to the side, the number	40,3±3,8	44,8±3,4	38,4±4,3	39,6±4,1

Based on the results shown in table. 1, which indicate the absence of differences between the indicators of strength in the cadets of the studied specialties, they are due to natural physical development, the subsequent analysis of pedagogical control data was conducted after the pedagogical experiment.

The obtained test results indicate the presence of positive dynamics in the tests of all groups participating in the experiment. The ratio of indicators of general physical fitness in the cadets of the experimental group was significantly higher (p <0,05) in relation to the control. In the indicators of special physical fitness there are significant (p <0.05) improvements in the experimental group on a number of indicators, such as height on the crossbar and the state of the dynamometer, higher than the control group. These data can be explained by the fact that special training sessions were more intense.

The results in the control group at this stage of preparation began to differ significantly from the results of the experimental group, as the increase in many tests in this group was not detected.

The level of general physical fitness in all study groups that participated in the experiment, reached and even exceeded the regulatory requirements of the standard program of the discipline «Special Physical Training». The biggest changes, compared with the test results at the beginning of the pedagogical experiment is observed in the experimental group.

With regard to special strength training, the greatest changes are observed in the experimental group, which performed a larger total amount of training work.

The intensification of the process of applied strength training, which is called for by most researchers, has also led to significant significant (p <0.05) changes in the indicators of general and special strength training. Many indicators exceeded the model characteristics.

Due to the application of organizational and pedagogical conditions and a differentiated approach to strength training, the cadets of the experimental group have undergone significant changes in terms of general and special physical fitness.

Thus, the cadets improved their performance according to the tests: «Running 100 m, s» – by 3.62% (p <0.05), «Pull-ups on the crossbar, number» – by 54.32% (p <0 , 05), «Running at 3000 m, min» – by 2.56% (p <0.05), «Wrist dynamometry, kg» – by 5.54% (p <0.05), «Conductive dynamometer, kg «- by 6.14% (p <0.05),» Height on the crossbar, c «- by 7.35% (p <0.05),» Long jump from a place, cm «- by 10, 60% (p <0.05), «Lifting the torso in a sitting position, the number» – by 11.17% (p <0.05).

Our results confirm the opinion of leading scientists. Thus, in a number of scientific works on professionally applied physical training of most specialties in assessing the effec- ?iveness of new methods of training professionally important qualities indicates the need to take into account two parameters, first, the achievement of experimental participants [13-14].

V. N. Platonov [15] in his scientific work on the training of qualified athletes, showed the following: the frequency of training depends on both the dynamics of growth of maximum strength and the peculiarities of its preservation after the cessation of regular training.

Analysis of the dynamics of changes in the applied power qualities after the experiment allows us to note the following:

– to achieve model characteristics of the formation of strength qualities is possible in a relatively short period of time;

– the period of maintaining a sufficient level of strength training depends on the duration of the stages of strength training, the longer the period of strength training, the longer the period of maintaining a sufficient level of strength training. Therefore, only the cadets of the experimental group after the end of the experiment can be recommended to work to perform work operations using force. The cadets of the control group need additional independent classes for quick recovery of strength.

The results of the obtained data confirmed the effectiveness and practical significance of the organizational and pedagogical conditions introduced by us in classes on special physical training for cadets of the studied groups, taking into account a differentiated approach in dosing physical activity to increase their level of strength development, intensity and volume.

Conclusions

1. The analysis of scientific and methodical literature shows that in the present time there is a tendency to constant deterioration of health and reduced physical fitness of student youth when entering higher education institutions; the preparation of cadets for professional duties is always relevant, and in today's conditions becomes especially important; professional activity is under the influence of significant physical and psychological stress, and one of the effective ways to solve the problem is the adaptation of cadets to the educational process, special physical education classes and independent physical training.

2. The results of the statement experiment show that the peculiarities of the organization of special physical training in higher education affect the attitude of cadets to physical culture, indicators of their physical condition and physical fitness, the level of theoretical and methodological training.

3. The use of organizational and pedagogical conditions for training the strength of future criminal police specialists in the process of special physical training determined the maximum allowable and optimal parameters of physical activity, corresponding to their individual physical, functional and mental characteristics.

4. It was found that after the pedagogical experiment in terms of speed and strength training, as well as overall endurance in the cadets of the experimental group was significantly higher ($p < 0.05$) improvement over the control. It is proved that our use of organizational and pedagogical conditions in classes on special physical training for cadets of the studied groups, taking into account the differentiated approach, helped to increase their efficiency.

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Abstract

It has bee determined that special physical training is an integral part of the curriculum for training specialists, part of the life of cadets, from the correct and systematic workload in the classroom depends on their level of preparedness. It is an important element of the comprehensive development of cadets, maintaining and strengthening health, its physical and spiritual improvement and is aimed at quality training for future professional activities. The applied value of strength training, measures aimed at its formation, improvement of the policeman's abilities taking into account the peculiarities of his professional activity are determined.

The conducted researches gave grounds to show that the level of their preparation of cadets for the experiment was not at a sufficient level, which cannot satisfy the requirements set for future specialists. The obtained results confirm the opinion of leading scientists about the need to take into account the given model characteristics and the period of preservation and the degree of reduction of the achieved training effect.

Keywords: *cadets, special physical training, physical fitness, physical qualities, means, methods.*

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З М І С Т

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