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CURRENT ISSUES OF LAW ENFORCEMENT

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CONTROL SYSTEMS FOR MOBILE PATROL SERVICES GROUPS

Андрій Фоменко, Володимир Вишня. СИСТЕМИ УПРАВЛІННЯ НАРЯДАМИ МОБІЛЬНОЇ ПАТРУЛЬНОЇ СЛУЖБИ. Досліджено особливості діяльності нарядів мобільної патрульної служби та її сформулювало пропозиції щодо її вдосконалення.

Одним із важливих елементів реформування Національної поліції України є створення мобільних патрульних нарядів, які першими реагують на виклик про допомогу, або повідомлення про вчинине правопорушення чи злочин.

В основу вдосконалення системи управління нарядами мобільної патрульної служби, зокрема управління каналами відеопотоків між диспетчером і патрульним поліцейським, пропонується, шляхом уведення нових зв'язків елементів, забезпечити можливість відображення у диспетчера інформації, яка потрапляє в об'єктив відеореєстратора патрульного. В існуючій системі управління відсутня можливість автоматичного включення каналів передачі відеопотоків після прибуття наряду на місце події, що не дозволяє виключити вплив людського фактору при активізації каналів системи.

Інколи виникає ситуація, коли наряд патрульної служби потрапляє до зони нестабільного прийому сигналу та втрачає зв'язок з диспетчером. Як наслідок – наряд не має змоги отримувати нові завдання, надсилати звіти про виконання та передавати відео з місця події. Для вирішення цієї проблеми пропонується встановлювати на автомобілі патрульної служби стільниковий мультиплексор, який надає змогу підключатися до декількох мобільних операторів зв'язку в залежності від якості сигналу. Таким чином буде забезпечено стабільність каналу передачі даних незалежно від якості зони покриття мобільного оператора.

Перевагою запропонованої системи управління нарядами мобільної патрульної служби з відеопотоками є можливість автоматичного включення каналів передачі відеопотоків з місця події або злочину до диспетчера, оскільки інколи, патрульним доводиться негайно втручатися в ліквідацію обставин, що виникли при правопорушеннях.

Ключові слова: *наряд, диспетчер, відеопотоки, відеореєстратор, канали, патрульна служба, планшет.*

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Problem statement and analysis of publications that started solving this problem. One of the important elements of the reform of the National Police of Ukraine is the creation of mobile patrol units, which are the first to respond to a call for help, or to report an offence or a crime. Therefore, it is advisable to consider the effectiveness of responding to the notification of units of the National Police of Ukraine (hereinafter – the police) and working out the tasks received by mobile patrol service [1].

The **article's objective** is elaboration of technical devices and algorithmic methods of increasing the effectiveness of the activities of the mobile patrol service in the execution (completion) of their tasks.

Basic content. Improving the mobile patrol control system, including the management of video feeds between the dispatcher and the patrol officer, is proposed to provide the dispatcher with information that enters the patroller's lens by introducing new element connections. This allows the dispatcher to control in real time the actions of the patrol officer in the process of completing the task and, if necessary, to interfere in his/her work in a timely manner, and thereby increase the efficiency and safety of patrol groups (Fig. 1).

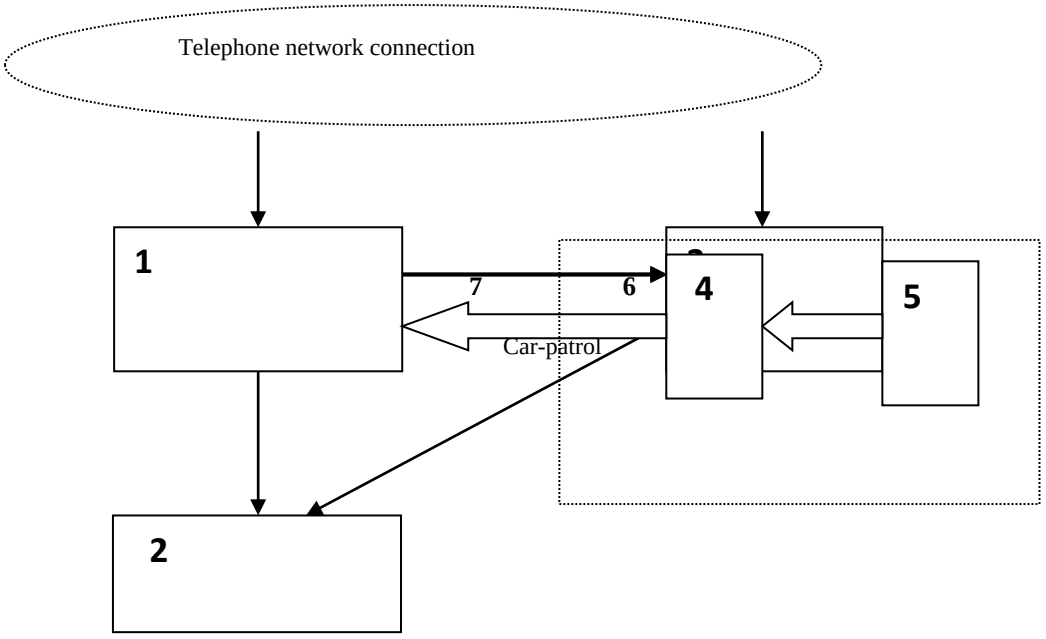

Fig. 1. Video channel patrol control system

It is well known that the short-term training of police officers for the mobile patrol service does not always provide sufficient knowledge for the quality of patrol troop performance. Therefore, in order to improve the interaction of the dispatcher and police mobile patrol uniforms, in the Dnepropetrovsk State University of Internal Affairs was offered a solution when, upon arrival at the scene of an event or crime, the patrol officer switches the video current transmission channel from the video current plan Wi-Fi standard and the transmission channel from the tablet to the 4G or 5G alerts manager unit on the dispatcher monitor the moment of the event from the lens of the personal video recorder of the patrol while completing the task (Fig. 1). This allows the next dispatcher to intervene, if necessary, in the course of the task execution, to quickly correct the actions of the groups, to exclude cases of unqualified actions [2].

Unfortunately, the existing control system does not have the ability to automatically turn on the transmission channels of video currents after the arrival of the groups at the scene, which does not allow to exclude the influence of the human factor when activating the channels of the system.

Therefore, for further improvement of the mobile patrol service management system, we are offered to provide the ability to automatically switch channels of video currents and display on the monitor the information from the lens of the personal video recorder patrol while completing the task, while leaving the possibility of personal control of these channels and patrolmen.

To do this, in the known system of management of mobile patrol service groupss (Fig. 1), including related blocks of operator 102, dispatcher, regular district police department, tablet mobile patrol along with satellite GPS-positioning system and unit personal video recorder patrol, the first and second channels of video current transmission from the patroller's personal video recorder to the tablet and from the tablet to the dispatcher unit, respectively, the coordinate unit (address) of the event (task) whose input is connected is entered The output of the event coordinate receiving unit is connected to the second input of the comparison module, the first input of which is connected to the satellite GPS positioning system output, and the output of the comparison module is connected to the first input of the logic circuit OR, the second input of which is connected to the output of the tablet, and the third – to the second output of the dispatcher, although the output of the logic circuit OR is connected to the input of the block generating a signal to open the first and second channels of transmission of video currents, the output of which is connected to the first go plate, the second input is connected to the output power signal to close the first and second channels of video currents, and its input is connected to the third dispatcher output unit.

Fig. 2 presents a diagram of the proposed system of control of mobile patrol service.

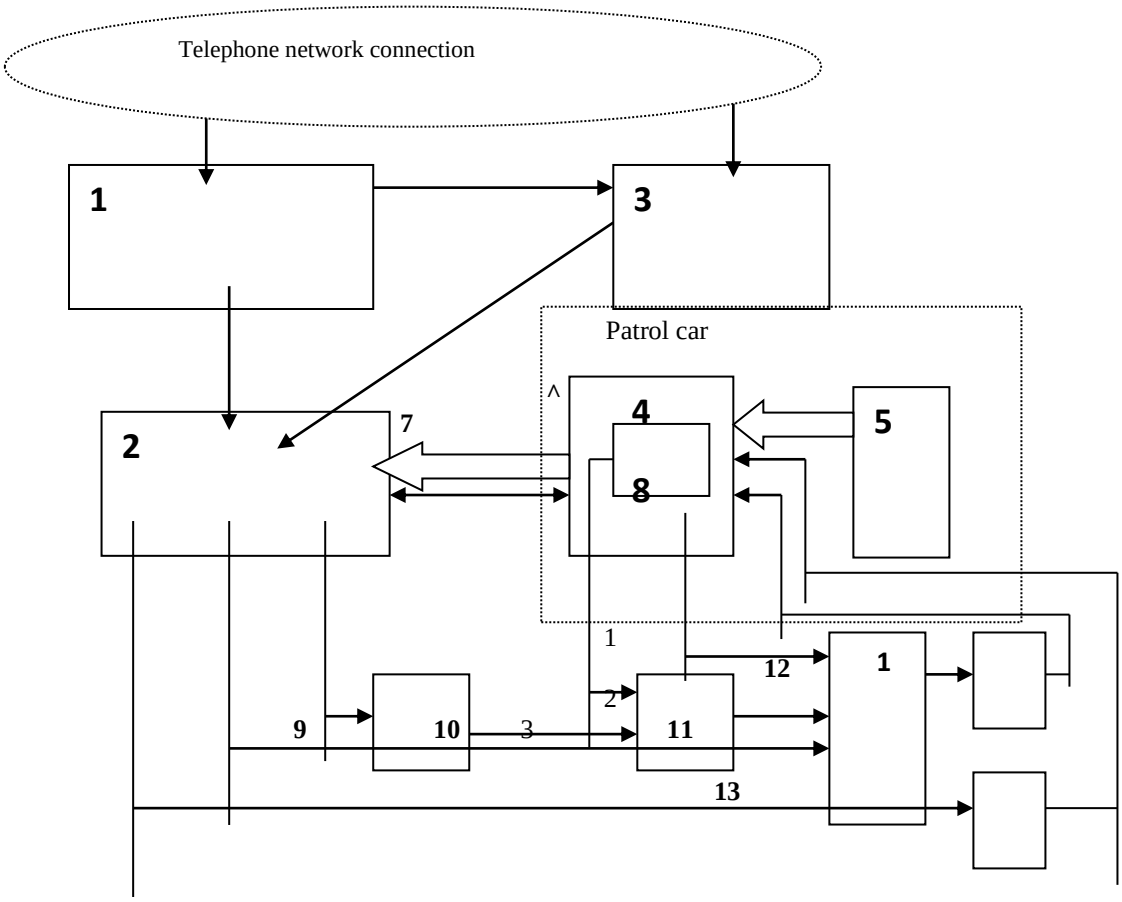

Fig. 2. The system of control of the mobile patrol service groups with different ways of connection of video channels “the dispatcher – the patrolman”.

The scheme of the system includes a block 1 of the operator 102, the input of which is connected to the telephone network, and the first and second outputs are connected according to the first input of the block 2 of the dispatcher and the first input of the block 3 of the next police department, the second input of which is connected to the telephone network . At the same time, the output of block 3 of the next police department is connected to the second input of the block 2 of the dispatcher, the third input of which (compatible with the output) is connected to the tablet 4 of the mobile patrol uniform, which is equipped with a satellite GPS positioning system 8, and on which the first channel is built transmission of video current 6 from the personal video recorder of the patrol 5 to the tablet 4 and the second channel of the video current 7 from the tablet 4 to the dispatcher unit 2.

In addition, the system further includes a block 9 receiving the coordinates (addresses) of the event (task), the input of which is connected to the output of block 2 of the manager, and the output of block 9 receiving associated with the second input of the comparison module 10, the first input of which is connected to the output of the system 8 satellite GPS positioning. The output of the comparison module 10 is connected to the input of the logic circuit OR 11, the second input of which is connected to the output of the tablet 4, and the third to the second output of the block 2 of the dispatcher, although the output of the logic circuit OR 11 is connected to the input of the block 12 of the signal opening channels 6 and 7 transmitting video currents, the output of which arrives at the first input of the tablet 4, the second input of which is connected to the output of block 13. Generation of the closing signal of the channels of video currents the input of which is associated with the third output of block 2 of the dispatcher.

The system is implemented as follows. Police notices of crimes and events, or a call for assistance made by telephone 102, are received and processed by operator 102 (block 1). As a result, an electronic message card is generated, which immediately goes to Unit 2 of the dispatcher, the next patrol police mobile control unit, who assigns a free mobile patrol crew to respond to the message. At the same time, the electronic card of the message is sent to the regular (block 3) regional police department, to whose territory the appeal is registered, which is registered in the magazine "Uniform accounting of crimes and offenses" of the regional department. It should be noted that a message from citizens can be received directly on the phone of the next part of the regional department (block 3). In this case, it is logged in the district department log and forwarded to the Operations Manager (Unit 2) for response.

Dedicated by the dispatcher 2 to the mobile patrol groups (autopatrol) is forwarded to the tablet 4 task and block 9 receiving the coordinates of the event. The groups begins to complete the task. The location of the groups is constantly monitored by the GPS satellite positioning system 8 and the corresponding signal is sent to the first input of the comparison module 10. Upon arrival of the groups to the location specified in the reported citizens in the tablet 4, the arrival time is fixed, and the signals at both inputs of the comparison module 10 coincide with it. the output is formed by a signal that arrives at the first input of the logic circuit OR 11 and then to the input of the block 12 of the forming signal of the opening of the transmission channels of video currents. The output of block 12 generates a signal that arrives at the first input of the tablet 4 and automatically activates the channels of transmission of video currents 6 and 7 respectively between the personal video recorder 5 patrol and the tablet 4 and between the tablet 4 and the unit 2 of the dispatcher. From now on, video information of the scene from the lens of the patroller's personal DVR is transmitted to the monitor. Upon completion of the task in the tablet 4 is made a corresponding mark, which is sent to the block 2 of the controller, from the output of which through the block 13 of the formation of the signal closing channels on the second input of the tablet 4 receives a signal to disconnect the channels 6 and 7 transmission of video current.

It should be noted that in addition to the automatic inclusion of the channels of video currents 6 and 7, the system allows the personal activation of channels 6 and 7 by the command of the dispatcher signal from the second output of the block 2 of the dispatcher to the third input of the logic circuit OR 11 and beyond, from its output, through the block 12 generating a signal of the opening of the channels of transmission of video currents, at the first input of the tablet 4. By command of the patrol – the signal from the output of the tablet 4 the second input of the circuit OR 11 and further, from its output, through the block 12 of the formation of the signal of the opening of the channels of video currents, a first input tablet 4.

In our view, it is interesting to see a solution to the police groups control system that takes into account the quality of service made by the provider. We define A – components of the scheme related to the local network of the Ministry of Internal Affairs (Fig. 1, blocks 1, 2, 3) and B – components of the scheme related to the mobile groups of the patrol service (Fig. 1, blocks 4, 5, 6, 7). Then blocks between A and B are made using a cellular service provided by one of the country's mobile carriers (Kyivstar, Vodafone, PeopleNet). With this data feed, patrol teams receive tasks and send performance reports. It is also known that coverage of mobile operators in cities and beyond is not homogeneous and depends on the terrain, location of the operator's base stations and a number of other factors. Therefore, sometimes there is a situation where the patrol staff gets into the unstable reception area and loses contact with the dispatcher. As a result, the groups cannot receive new tasks, send performance reports, and transmit video from the scene.

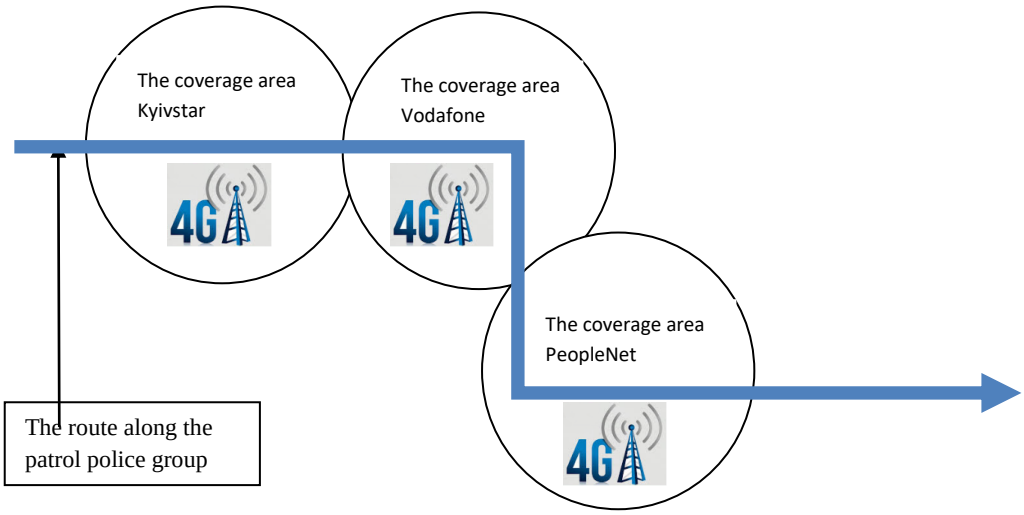

Fig. 3. Possible mobile patrol groups movement to the scene

To solve this problem, we suggest installing a cellular multiplexer on the patrol car that allows you to connect to multiple mobile carriers, depending on the signal quality. This will ensure the stability of the data channel regardless of the quality of the coverage area of the mobile operator. The schematic diagram of a control system with a multiplexer and a block for determining the quality of information transmission is given below:

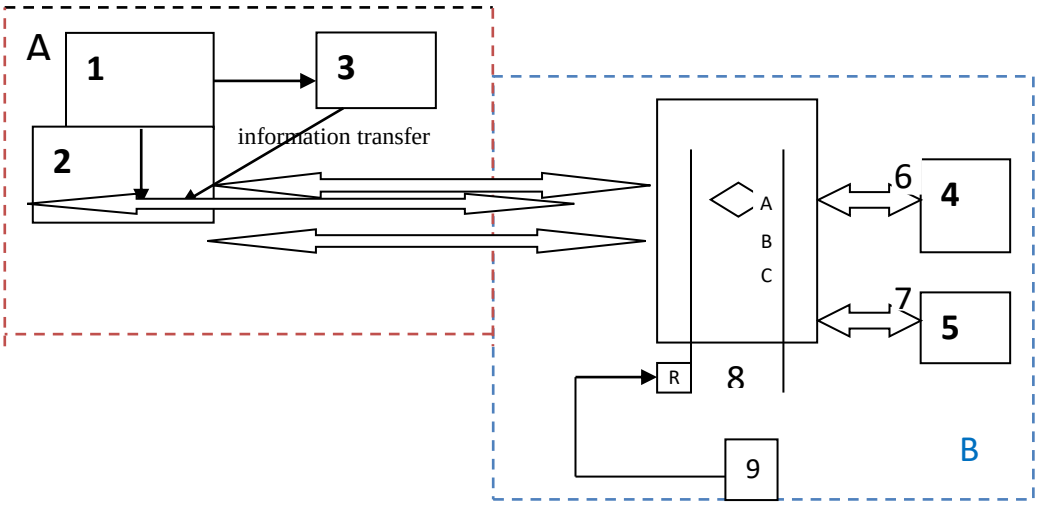

Fig. 4. Mobile patrolling groups control system with switching providers

The control system includes a multiplexer 8, the information outputs of which (A, B, C) are connected to the input of the controller 2, and the inputs 1 and 2 of the multiplexer 8 are connected to the tablet 4 and the personal video recorder 5, respectively, video channels 6 and 7, and the output of the block determine the quality of transmission information 9 is connected to the control input R of the multiplexer 8.

Conclusion. An advantage of the proposed video patrolling system for mobile patrol services is the ability to automatically include video transmission channels from the scene or crime to the dispatcher, since sometimes patrols have to immediately intervene to eliminate the circumstances of the offenses. An important aspect of the system's operation is the ability, at any time, to activate the channels of transmission of video currents directly by the command of the dispatcher or patrol, which increases the reliability of the functioning of a certain operation of the system.

The structural solutions of the patrol police groups control systems described in this article have been elaborated at the University within the framework of the training course "Information technical platform of professional role-playing game "Line 102" by cadets, master students, police officers in the framework of training and internship.

Refereences

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SUMMARY

The peculiarities of the activity of the mobile patrol service's groups have been studied and proposals for its improvement have been formulated.

The advantage of the proposed video patrolling system for mobile patrol services with video streams is the ability to automatically include the channels of transmission of video streams from the scene or crime to the dispatcher, because sometimes patrols have to immediately intervene in the elimination of circumstances that occurred in the offenses.

***Keywords**: mobile group, dispatcher, video streams, video recorder, channels, patrol, tablet.*

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THE ROLE OF CHAPLAINCY IN LAW ENFORCEMENT IN THE UNITED STATES

Ґреґ Янґ. РОЛЬ ІНСТИТУТУ КАПЕЛАНСТВА У ПРАВООХОРОННІЙ ДІЯЛЬНОСТІ США. В оглядовій статті висвітлено роль, відповідальність, необхідну підготовку та переваги від наявності в правоохоронних органах кваліфікованого капелана, який працює, здебільшого на добровільних засадах, у підрозділі поліції США. У вирішенні цього питання автор спирається на свій багатий досвід роботи капелана в правоохоронних органах, а також інструктура з підготовки поліцейських. Незважаючи не складність обгрунтування цінності програм з підготовки капеланів для правоохоронних органів, автор висвітлює переваги, які приносить капелан-правоохоронець конктетному підрозділу міліції та громаді, з якою він співпрацює.

Зокрема, зазначено, оскільки капелани правоохоронних органів у США або служать

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пасторами у своїх громадах, або є членами релігійної організації, вони допомагають створити природний міст між правоохоронними органами та членами громади. Правоохоронна діяльність у Сполучених Штатах допомагає налагодити співпрацю та створити довіру між правоохоронними органами та громадами, яких вони обслуговують. Охорона громадського порядку висуває до працівників правоохоронних органів завдання бути активними в громадах, в яких вони працюють, а саме поліцейським допомагають знайомитить та взаємодіяти з деякими членами громад. Капелани, оскільки їх поважають та довіряють їм члени місцевих громад, допомагають виховувати позитивні стосунки між правоохоронцями та членами громад, яких вони обслуговують. Деякі капелани, які служать у місцевих церквах у Сполучених Штатах, проводять спеціальні богослужіння або молебні, куди запрошують місцевих поліцейських. Під час цих служб пропонуються молитви та слова заохочення для поліцейських, що в подальшому надає правоохоронцям та членам громади можливість познайомитися та спілкуватися разом. Коли правоохоронці отримують підтримку своїх громад, це сприяє зміцненню морального стану працівників поліції. Деякі капелани поліції також пропонують вивчення Біблії для правохоронців за їх бажанням.

Капеланів також викликають на місце події у критичних ситуаціях, серед яких нещасні випадки, несподівана смерть та самогубства, аби забезпечити спокій та турботу членам родини і близьким загиблих. Здебільшого на місці події капелан може надати необхідну пастирську допомогу в умовах скорботи членів сім'ї, дозволяючи поліцейським проводити невідкладні дії. Капелани, завдяки їхній додатковій підготовці, також надають психологічну допомогу поліцейським після реагування ними на трагічні випадки, особливо ті, в яких постраждали або загинули діти тощо.

Ключові слова: *капелан, поліція, громада, США, підготовка, допомога, місце події, потерпілий, засуджений.*

In order for me to better address the role that chaplains play, and the benefits they provide to police departments as well as the communities they serve here in the United States, I must first begin with my own experience of becoming a chaplain, and how that role for me has evolved over the years.

Prior to being asked to become a police chaplain in my own community I was serving a local church.[1]. A police officer serving as a Lieutenant in my local police department that I had met through many civic functions in our community became the chief of police in January of 2004 and he asked me to work with the police department as a volunteer chaplain. Shortly after assuming that role, I went to trainings in "How to Make Compassionate Death Notifications" and following that, "Assisting Individuals in Crisis" a Critical Incident Stress Management course.

After being trained in the Critical Incident Stress Management course, I was invited by a faith based organization's disaster response director to become a trainer in some of the Critical Incident Stress Management courses to help train some of the organization's staff and disaster response chaplains. I also became a member of a disaster response "strike" team to respond to disasters. Shortly after that training was completed I was deployed to help victims in the immediate aftermath of Hurricane Katrina and other regional disasters.

My deployment experiences, training and chaplaincy work in disaster response has only enhanced my effectiveness in my role as a local law enforcement chaplain, and informs much of what I do today.

My education, especially my post-graduate clinical training at the Center for Religion and Psychotherapy of Chicago and training in Critical Incident Stress Management has served me well in my role of police chaplain. In the years since I first became chaplain in the spring of 2004, this ministry has expanded into a very important ministry for me beyond the service of my local community. I was asked to speak at the "Symposium for Hope, Resilience, and Recovery Following the Sandy Hook School Shooting Tragedy" at Western Connecticut State University, and co-led a followup debriefing for the first responders to Sandy Hook Elementary School. I was also deployed to help with the Sikh Temple Mass Shooting in Oak Creek, Wisconsin and following that the Azana Spa Mass shooting in Brookfield, Wisconsin. Over the years as a chaplain and trainer, I have provided psychological debriefings following critical incidents for police line of duty deaths, officer involved shootings and other critical incidents that create a lot of stress for all first responders.

Based on what I have learned working as a chaplain, I present several courses for agencies and colleges I have developed including "How to be Resilient in Challenging Times in Law Enforcement"; "Resilient Leadership"; "How to Talk to People in Crisis/Making Compassionate Death Notifications"; 5 modalities of "Critical Incident Stress Management"; "The

[1] Most law enforcement chaplains in the United States are volunteer positions, requiring that they still work as pastors or professionals in another field of work.

Challenges of Cumulative Stress and Moral Injury in Law Enforcement"; "Concepts and Practices in Peer Support"; "Advanced Debriefing Techniques"; and "Jail Suicide Prevention, Intervention, Postvention and Self-Care". I also present shorter versions of these topics at Law Enforcement Conferences around the United States as well as for the International Police Officers Association, Young Officers World Conference.

Drawing from my diverse experience I suggest the following regarding the needed qualifications and role of Law Enforcement Chaplains here in United States.

Qualifications:

Many but not all of the Law Enforcement Chaplains here in the United States are ordained clergy or have the endorsement of their Faith Based organization. (In my case, I have a 4 year university degree, a three year master's degree in divinity, and post-graduate clinical training, but this is not a requirement for most chaplains). Some law enforcement chaplains also serve as chaplains for their local fire departments.[1] The person who becomes a law enforcement chaplain often then receives additional training, which can be obtained through organizations which train and support law enforcement chaplaincy programs. There are several such agencies but perhaps the best known international organization is the International Conference of Police Chaplains. The International Conference of Police Chaplains offers regional trainings as well as international trainings to help equip law enforcement chaplains to be effective in their roles serving their departments and their communities.

Role:

In most local police departments in the United States, the chaplain is a part of that police department to serve both the police officers as well as the citizens following critical incidents in their communities.

Law enforcement chaplains work with police and make death notifications to the next of kin living in their local police jurisdiction following the death of a loved one. As a longtime police chaplain, I remember nearly all of the many death notifications that I have made or assisted in making because they are stressful for those of us making them and they cause a lot of distress for the next of kin of the loved one who has died unexpectedly. In most of the death notifications that I have made, I have been called into our police department by our 9-1-1 dispatcher to meet the officer I will be making the death notification with. We then ride in the police squad car to the residence or place of work where the next of kin can be found.

Chaplains are also called to scenes following many crises which include accidents, unexpected deaths and suicides to provide comfort and care for the family members and friends of the deceased. At most scenes, a chaplain can provide the needed pastoral care for grieving family members, allowing officers to do what they need to do following the incident. Chaplains are also present to provide care for officers after they respond to a tragic incident, especially ones in which children are hurt or have died. Because of my additional training, I often lead psychological debriefings for the officers who responded to an especially difficult critical incident first hand. Those debriefings are a small group structured process for up to 20 first responders involved with an incident. Most psychological debriefings are held between 24 hours and 72 hours post-incident and are intended to help mitigate the symptoms of officer stress caused by the incident. I have provided these debriefings for many law enforcement agencies following critical incidents around and outside of the Milwaukee, Wisconsin Metropolitan area. The most common incidents for which psychological debriefings are held are: Police officer line-of-duty- deaths, Police officer involved shootings, the tragic deaths of children, and mass casualty incidents.

Chaplains trained in the use of these specialized "psychological first aid tools" can assist with helping to co-lead psychological debriefings for officers who have responded to a critical incident which has created a great deal of stress for them.

Perhaps the most tragic incidents that occur in police department are when "one of their own", a fellow officer is killed in the line of duty. A chaplain with the department can be a real source of strength and solace for officers and administrators in that police department during that tragedy.[2]

[1] Note: In the United States most chaplains serve local police departments in cities, towns and counties. There are also chaplains for state police, and also for federal agencies.

[2] It is also important for that chaplain in that department who is also impacted by the tragic loss of a fellow officer to seek support from a chaplain in another department and to attend any psychological debriefing or support being offered by an outside source, perhaps a trained crisis response team from another police department.

Example of critical incident debriefing

On December 24, 2012 A female police officer on duty that evening with the Wauwatosa, Wisconsin police department, (suburban Milwaukee) was shot and killed by her husband. Because the incident occurred in the midst of the Christmas holiday compounded the tragedy. Her police department, the whole community was devastated by her tragic death. I was asked to come provide a psychological debriefing for the officers in her department several days later. I facilitated the debriefing assisted by two police officers from Milwaukee Police Department also trained in Critical Incident Stress Management. I made myself available to talk to anyone in her department following who wanted to talk about her or the incident.

Most law enforcement chaplains do a "ride-along" with officers on duty to get to know them personally. That time alone also is a time that an officer can talk privately with a chaplain about any personal issues and job related stressful experiences which might be bothering them.[1] Chaplains also will stop in at police roll-calls to provide a visible presence for officers about to start their shifts of work. In my work as a law enforcement chaplain I have visited police officers who are recuperating from illness or injury as well as officiated at an officer's funeral or officer's family member's funeral following their deaths, (when that officer doesn't have a faith community or clergy.) I have also been asked to officiate at a police officer's weddings and baptize their small infant children when needed.

Jail Chaplaincy

In the United States, each state has several counties, and each county has a county wide sheriff's department. Each sheriff's department has a local jail in which people who have violated the law are initially incarcerated. If the criminal offense is a serious charge, i.e., a felony, the offender may then be sentenced to either a state or federal prison. Many of the sheriff's department jails have a volunteer chaplain who is present in the jail when needed to provide a listening presence for jail corrections officers as well as inmates. Some jail chaplains may also offer Bible studies and a worship service for inmates. In our State and Federal prisons, chaplains are actually employees of that correctional institution and work a paid part-time or full-time position. Their role and in the prison system is very similar to the role of a county sheriff's jail chaplain.

As a police chaplain it is not uncommon to be asked to help out providing invocations at regional or citywide law enforcement memorial services offered once a year to honor and remember all the officers who had previously died in the line of duty. As my own Police Chief is retiring at the end of December 2109, I have been asked to also provide an invocation/blessing at his retirement party in January of 2020.

Training requirements:

For the many chaplains I have trained and have known, having specialized training in "How to Make Compassionate Death Notifications" as well as "Talking to People in Crisis" are essential [1-2].

Training in making death notifications can also be obtained through law enforcement chaplain training organizations.

Although not required, many chaplains in the United States pick up additional training in the field of Critical Incident Stress Management. There are many specialized courses in Critical Incident Stress Management which include training in individual and peer support, small group crisis intervention as well as large group crisis intervention techniques. Some law enforcement chaplains also take seminars on Peer Support for law enforcement officers to help them be more effective in their role as chaplains.

Because law enforcement officers possess a unique culture, and to have what some refer to as "mutual fluency", they are often misunderstood and sometimes extend little trust to those outside of their professional circles. Therefore, it is important for a person seeking to be a law enforcement chaplain to earn the trust of the officers that they seek to serve and to understand and appreciate that culture unique to police officers. It is also important that the chaplain understand that their job as chaplain is, above all, to provide a "ministry of presence".to those they serve. (It is often not what a chaplain says that is most helpful to officers and citizens but

[1] All conversations between an officer and a chaplain should be confidential except when that officer might verbally threaten to harm himself/herself or someone else. What is best to do given this situation is to "be the bridge" as a chaplain and actively help them seek the help of a police psychologist. Because the local police chaplain has a history and continuity with his/her department, they can continue to check on the officer in distress and be there for them to support and encourage them when needed.

the kind, compassionate and empathetic presence as a person of faith can bring a great deal of comfort to those in distress).

We live in a multi-cultural world and a law enforcement chaplain needs to be sensitive to the diversity of people they serve. Chaplains in the United States as in other countries, will meet officers and citizens who do not have a religious belief and who may not be interested in having one. Chaplains will also encounter people of faith traditions different than their own, and because of that they need to be respectful of those who have different beliefs than them. Most Chaplains serving law enforcement in the United States are trained not to "proselytize", that is, try and convert vulnerable people following tragic events to that chaplain's particular set of beliefs. Seeking to convert people already victimized by tragic circumstances is arguably predatory behavior and is not a good practice. If officers and citizens desire to talk to a chaplain about faith issues that is appropriate, but it is important that those conversations be initiated by the person seeking information or spiritual guidance.

I ask officers and victims for whom I am providing pastoral care if they would like me to pray with them, and most truly appreciate the prayers, but some do not, and that is ok. Chaplaincy in law enforcement is a ministry of planting the seeds of compassion and good will. Police chaplains working with a local police department can also help to foster trust between citizens and the police who serve and protect them.

Benefits

Because law enforcement chaplains in the United States are either serving as pastors in their communities or are members of a faith based organization, they help to create a natural bridge between law enforcement and citizens in the community. Community policing in the United States helps to create cooperation, and build trust between law enforcement and the communities they serve. Community policing encourages law enforcement officers to be active in the communities they serve in ways that help officers to get to know some of the citizens and citizens to get to know the officers. Chaplains, because they are respected, and trusted members of their local communities, help to foster positive relationships between law enforcement officers and the citizens in the communities that they serve. Some chaplains serving local churches in the United States will have special worship services or prayer services where local police officers are invited to attend. At those services prayers and words of encouragement are offered up for the officers, and it gives officers and congregation members opportunities to get to know each other and fellowship together. When law enforcement officers get support from their communities it helps to bolster the officers' morale. Some police chaplains also offer Bible studies for officers when it is desired.

There are many benefits for having trained law enforcement chaplains working with their police departments in their local communities. I have had many police chiefs of various police departments tell me that they didn't know how they did without police chaplains in the past. In the midst of difficult and sometimes tragic situations chaplains can provide spiritual guidance where it is sought, a positive, hopeful spirit and presence where it is needed, and a non-judgmental listening ear where an officer or citizen needs to talk, and a voice reminding officers that their work as officers has a real purpose and does make a difference in people's lives.

I have experienced my own police chaplaincy is truly ministry in the "trenches", ministry to those needing pastoral care in the most difficult and hopeless times of their lives. It is in the crucible of life's difficulties and dark moments that this ministry becomes meaningful and filled with purpose and that ministry only enriches the church ministry in which I am involved.

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Summary

This article reviews the roles, responsibilities, required training and benefit of having a trained law enforcement chaplain working with a police department in the United States. The author draws from his extensive experience as a law enforcement chaplain as well as a law enforcement trainer in addressing this issue. Although it is hard to quantify the value of chaplaincy programs in law enforcement, the author discusses the benefits a law enforcement chaplain brings to his or her police department and the communities in which they serve.

***Keywords**: chaplain, police, community, USA, training, assistance, scene, victim, convicted.*

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LEGAL SUPPORT BY CRIMINAL POLICE FOR OPERATIONAL-SEARCH COMBATING CRIMES AGAINST PUBLIC SAFETY

Олег Кириченко. ПРАВОВЕ ЗАБЕЗПЕЧЕННЯ КРИМІНАЛЬНОЮ ПОЛІЦІЄЮ ОПЕРАТИВНО-РОЗШУКОВОЇ ПРОТИДІЇ ЗЛОЧИНАМ ПРОТИ ГРОМАДСЬКОЇ БЕЗПЕКИ. Досліджено системе правового забезпечення оперативно-розшукової протидії злочинам проти громадської безпеки кримінальною поліцією та надана класифікація нормативно-правових актів, які регламентують діяльність кримінальної поліції щодо протидії цим злочинам. З метою удосконалення правового забезпечення оперативно-розшукової протидії злочинам проти громадської безпеки кримінальною поліцією запропоновано розробити та прийняти: 1) Закон України «Про засади протидії злочинності»; внести зміни до Закону України «Про оперативно-розшукову діяльність» відповідно до вимог норм КПК України та потреб правоохоронної діяльності; 2) Концепцію реалізації державної політики у сфері профілактики правопорушень на період до 2025 р. і Концепцію протидії злочинам проти громадської безпеки; 3) комплексну програму протидії злочинам терористичної спрямованості; злочинам, що пов'язані зі створенням банд, злочинних організацій та незаконних воєнізованих або збройних формувань; злочинам, що пов'язані з незаконними обігом вогнепальної зброї, бойових припасів і вибухових речовин; 4) нормативно-правовий акт Національної поліції, який би регламентував діяльність кримінальної поліції та окремих оперативних підрозділів кримінальної поліції щодо профілактики злочинів.

Ключові слова: *злочини проти громадської безпеки, кримінальна поліція, оперативно-розшукова протидія, нормативно-правовий акт, стратегія.*

Problem statement. During the reform of the law-enforcement bodies system of Ukraine, they are faced with new tasks to identify strategic directions of their activity, to find new approaches to combat organized crime, which would correspond to the realities of today and take into account the trends of development of society and the country. Particularly relevant is the need to research scientific ideas and approaches to make a qualitatively new mechanism for combatting crimes against public safety, identify and analyze its components, improve relevant current legislation and enforcement practices.

The effective functioning and operation of law enforcement agencies depends first and foremost on their legal regulation. However, the analysis of regulations shows that there is no common view and understanding of the threats posed by crime, and their strategic planning of approaches and assessments of problems, their solutions are fragmentary and inconsistent. At the same time, the demands of developing and implementing a clear, transparent and consistent criminal policy that take into account changes in the transitional penal and law enforcement model to the law enforcement and social service content of their activities are increasingly being raised in society. Some civil society institutes and some scholars have initiated documents that can form the basis of the state's criminal policy. In view of this, the scientific interest in contemporary problems related to criminal police activities in combating crimes against public safety, their relationship with other law enforcement agencies, public authorities and civil society institutions tends to increase.

Analysis of publications that started solving this problem. Significant contribution to the development of theoretical and legal problems of operational-search combating certain types of crimes against public safety was made by complex monograph works by S.V. Didenko, V.M. Yevdokimov, B.V. Zhukov, V.V. Krutov, Y.S. Lenyuk, P.M. Mitrukhov, V.P. Mezhivoy, R.V. Mukoida, D.Yo. Nikiforchuk, S.V. Pecherytsya, O.O. Podobnyy and oth-

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ers. However, despite the wide range of substantive scientific works on the mentioned issues, it should be noted that the problem of legal support of the operational-search combating crimes against public safety by the criminal police has not found its proper treatment.

The **article's objective** is to study the system of legal support for operational-search combating crimes against public safety by criminal police; to classify the regulations concerning the activity of criminal police in combating crimes against public safety, and to determine the directions for improving the legal support of operational-search combating these crimes.

Basic content. It is well known that the legal bases of operational search activity are legal rules that directly regulate its organizational and tactical bases or define certain conditions under which it becomes possible and necessary to use undercover forces, means and methods of this activity. Legal rules also regulate legal relations arising between operational units of various law enforcement agencies of Ukraine, between operational units and citizens, officials, organizations, institutions, enterprises, etc., who are in the field of operational search activities or are involved in the fulfilment of its tasks. The legal foundations of operational-search activity also include the fact that the rules governing legal relations, by their epistemological essence, are established in order to protect the rule of law, human rights and freedoms, are carried out in the interests of criminal justice, and in their totality form the operational-search legislation [1, p. 13-14].

Therefore, the legal basis for regulating operational-search combating crimes against public safety is a set of interrelated legal acts aimed at combating these crimes.

The multiplicity of these acts implies the need for their classification. In the vocabulary literature, the classification of legal scholars traditionally refers to the system of subcontracted concepts (classes, objects) of a particular field of knowledge or human activity, which are used as a means of establishing links between these concepts or classes of objects [2, p. 357]. In our opinion, the classification of legal acts regulating the operational-search combating crimes against public safety is a complex theoretical and methodological process, the content of which is to identify the criteria of this classification and their division into separate groups in order to further systematize them.

Due to the fact that there is no consensus among scientists regarding the choice of criteria for classification of normative legal acts regulating the operati operational-search combating crimes against public safety, which are their basis, we consider that the criterion of such classification is appropriate to determine the internal content of these acts, that is, we propose to divide the said acts by legal force into the following groups: 1) acts regulating in general the activities of the subjects of operational-search combating crimes against public safety (bodies of Nnational police, the Security Service, etc.); 2) acts defining the competence, goals, tasks and directions of activity of criminal police units as the main subject of operational-search combating crimes against public safety; 3) acts of a general nature that ensure the functioning of the social and legal mechanism for combating crime; 4) acts regulating the operational-search activity and regulating organizational and tactical issues of the use of forces, means and methods of this activity; 5) acts aimed at combating certain types of crime, the structure of which includes a certain group of crimes against public safety, and certain types of crimes against public safety [3, p. 66-67].

Given that the purpose of any classification is to ascertain the substantive nature, we propose to consider the normative-legal acts that regulate the operational-search combating crimes against public safety, proceeding from the division of these acts by legal force, which in turn should be conditional classified into general and special.

We refer to the general normative legal acts as those which are aimed generally at combating crime, including the fight against crimes against public security, and to the special ones – the acts directly aimed at combating crimes against public safety.

In our view, such criteria should be categorized into: general and special purpose legislation; by-laws of general and special purpose.

General legislative acts should include: 1) international legal acts, the consent of which has been given by the Verkhovna Rada of Ukraine (Universal Declaration of Human Rights; International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention) on the protection of human rights and fundamental freedoms; Guidelines on crime prevention and criminal justice; Resolution of the 9th United Nations Congress on Crime Prevention and Treatment of Offenders); 2) codified acts that ensure the functioning of the social and legal mechanism for combating crime (Criminal, Criminal Procedural and Criminal Executive Codes of Ukraine); 3) laws of Ukraine that comprehen-

sively regulate the status, tasks, functions, powers, rights and duties of law enforcement agencies, including the National Police bodies, as well as acts aimed at combating crimes in general or certain criminal acts ("On the National police" of 02.07.2015; "On the Security Service of Ukraine"of 25.03.1992; "On the Prosecutor's Office" of 14.10.2014; "On the operational-search activities" of 18.02.1992;" On organizational and legal bases of combating organized crime" of 30.06.1993; "On Prevention of Corruption" of 14.10.2014; "On Measures to Combat Illicit Trafficking in Drugs, Psychotropic Substances and Precursors" of 15.02.1995).

Specific legislative acts should include: 1) international legal acts, the consent of which has been given by the Verkhovna Rada of Ukraine (European Convention for the Suppression of Terrorism, ratified by the Law of Ukraine of 29.01.2002 No. 2990-III; International Convention for the Suppression of Terrorism) with the bombing of terrorism ratified by the Law of Ukraine of 28.11.2001 No. 2855-III; the International Convention for the Suppression of the Financing of Terrorism ratified by the Law of Ukraine of September 12, 2002 No. 149-IV; Protocol against the Illicit Manufacturing and Use of Firearms, components and parts, as well as ammunition thereto, supplementing the United Nations Convention against Transnational Organized Crime, approved by General Assembly Resolution 55/255 of 31.05.2001 and ratified by Law of Ukraine No 159-VII of 02.04.2013 ; 2) the laws of Ukraine ("On Combating Terrorism" of 20.03.2003; "On Preventing and Countering the Legalization (Laundering) of Proceeds of Crime or Terrorist Financing" of 28.11.2002; "On the Physical Protection of Nuclear Installations, Nuclear Materials, radioactive waste, other sources of ionizing radiation "of 19.10.2000).

The general by-laws include: 1) decrees of the President of Ukraine ("On measures to further strengthen law and order, protection of citizens' rights and freedoms" of 18.02.2002 No. 143/2002; "On measures to ensure the personal safety of citizens and combating crime" of 10.07.2005 No. 1119/2005; "On the Concept of State Policy in the Field of Organized Crime" of 21.10.2011 No. 1000/2011; "On the Decision of the National Security and Defense Council of Ukraine of 06.05.2015 "On the National Security Strategy of Ukraine" of May 26, 2015, No. 287/2015; "On the decision of the National Security and Defense Council of Ukraine of 06.16.2015 "On measures to strengthen combating crime in Ukraine" of 16.06.2015 No.341/2015); 2) Order of the Cabinet of Ministers of Ukraine "On Approval of the Plan of Measures for Implementation of the Concept of State Policy in the Field of Organized Crime" of 25.01.2012 No. 53-p; 3) joint orders of law enforcement agencies regulating the organization of undercover investigative (search) actions and the use of their results in criminal proceedings; conducting certain types of operational-search measures and undrcover investigative (search) actions; 4) orders of the Ministry of Internal Affairs of Ukraine, including the National Police, which regulate the activity of the operational units of the National Police, the organization of operational-search activities and the covered work of such units.

The special-purpose by-laws should include: 1) decrees of the President of Ukraine ("On the Concept of Anti-Terrorism" of 05.03.2019 No. 53/2019; "On the decision of the National Security and Defense Council of April 13, 2014 "On urgent measures to overcome the terrorist threat and the preservation of the territorial integrity of Ukraine" of 14.04.2014 No. 405/2014); 2) Resolution of the Cabinet of Ministers of Ukraine ("On Approving the Procedure of Interaction of Executive Bodies and Legal Entities Performing Activities in the Field of Nuclear Energy Use in the Case of Detection of Illegal Ionizing Radiation in Illicit Circulation" of 02.06.2003 No. 813; 3) orders of the MIA of Ukraine, which regulates the circulation of firearms, air and cold weapons, as well as specific directions for the search for such items that are illegally owned.

We believe that the proposed classification of legal acts will provide researchers with the opportunity to further systematize it and identify weaknesses in the legal regulation of operational-search combating crimes against public safety.

Improving the effectiveness of the activities of the National Police bodies and units, the state of protection of citizens' rights and freedoms, public safety are completely dependent on the level of legislative support. But, unfortunately, today there is no normative legal act in Ukraine that would regulate public relations on combating crime. That is why it is necessary to agree with some scholars' opinion, that "one of the reasons for the poor quality of many laws is the lag of the legal science in theoretical elaboration and the solution of the issues requiring legislative regulation. Instead of going ahead of the legislator, legal science either substantiates or criticizes already adopted laws" [4, p. 296].

Despite the fact that a number of laws are in force in the country to prevent the commitment of certain types of crimes, in our opinion, it is also necessary to adopt the Law of

Ukraine "On Principles of Combating Crime", which should provide a definition of the category "combatingo crime", including "operational-search combating crimes" as a kind of counteraction to crimes, its forms, forces and means, etc. [5, p. 146]. Adoption of the mentioned legal act will only contribute to the development of a strategy for combating crime in general and certain types of crime, including crimes against public safety.

It should be emphasized that the strategy for combating crime against public safety should be based on the strategy for combating crime in society. About this V.M. Kudryavtsev noted that the strategy for combating crime in modern society is complicated and uncertain, mainly because two trends are simultaneously operating in this area, which are largely contrary to each other. On the one hand, a society that wants to live by democratic laws must humanize its criminal policy. Safeguarding and protection of human rights affect not only free citizens, but also offenders within the law. On the other hand, crime around the world is taking on such dangerous forms that the law enforcement system does not cope with by traditional means. The population is demoralized by rising crime and dissatisfied with the powerlessness of the authorities. The society demands more punishment and extraordinary measures for combating crime [6, p. 213-214].

The combating crime strategy is based on the principle of a gradual solution to this global problem. Taking into account the criminogenic situation in the country, the priority tasks and directions of combating crime, its specific types, are determined for a certain period of time.

The Strategy for Combating Crimes against Public Safety contributes to solving the problems of operational-search combating these crimes. Some aspects of the strategy are reflected in regulations aimed at ensuring the national security of the state, counteracting terrorist activity and organized crime, as well as crimes that violate the rules of treatment of certain sources of general (increased) danger. For example, according to the NSDC Decision "On Measures to Enhance Crime Fighting in Ukraine" of May 6, 2015, enacted by Presidential Decree No. 341/2015 of June 16, 2015, and to prevent exacerbation of the crime situation in certain regions of Ukraine, minimizing the impact of relevant threatening factors on national security, enhancing the effectiveness of the protection of citizens' rights and freedoms was identified as a priority area in combating crimes against public safety, in particular: 1) reducing the crime rate in the country illicit trafficking of firearms and other weapons, ammunition, explosives; 2) detection and elimination of smuggling channels, illegal movement of firearms, other means of destruction, explosives through the territory of Ukraine; 3) strengthening of control on objects where firearms are concentrated, other means of destruction, ammunition, explosives; 4) suppression of acts of banditry, ensuring of high-quality pre-trial investigation and bringing to court the existing criminal proceedings in cases of banditry, crimes committed by organized groups or criminal organizations; 5) detection and termination of financing channels for gangs and smuggling of firearms and other means of destruction, ammunition, explosives [7].

The strategy of combating crime is defined by the concept, which is a system of officially adopted views and ideas, principles and provisions on ways, means and mechanisms of protection of vital interests of citizens, society and the state from internal and external threats arising from crime [10, p. 414].

Until recently, the main normative legal act aimed at combating crime was the Concept of implementation of state policy in the field of crime prevention for the period up to 2015, approved by the decree of the Cabinet of Ministers of Ukraine of November 30, 2011 No. 1209, which expired on December 31, 2015. But based on the analysis of statistics and taking into account the criminogenic situation in the country and current trends in the existence and spread of crime, we believe that in Ukraine it is necessary to adopt a similar Concept for the period up to 2025, which should address the issue of combating certain types of crime, including crimes against public safety.

It should be noted that the concept of combating crimes against public safety is a set of basic theoretical propositions that reveal the content of the factors, the state and prediction of the spread of terrorist offenses, crimes related to the creation of gangs, criminal organizations and illegal militarized or armed groups, crimes that violate the rules for the management of individual sources of general (increased) danger in the country (or in a particular region), basic concepts, objectives, principles and main directions to respond these crimes. This concept should, in our opinion, cover the following areas: 1) description of crimes against public safety and the main trends of their spread; 2) determinants of crimes against public safety; 3) strategy for combating public safety crimes; 4) forces and means of combating public safety crimes;

5) system of nationwide measures to combat public safety crimes; 6) the main directions of combating crimes against public safety by law enforcement agencies; 7) coordination and interaction in the field of combating crimes against public safety; 8) organization of international cooperation in the field of combating crimes against public safety.

The main purpose of combating crimes against public safety is to comprehensively ensure public safety and reliable protection of human rights and freedoms, property from criminal offenses, which are attributed by the current Criminal Code of Ukraine to crimes against public safety. That is why the main efforts of state bodies and society should be directed to the real restriction and cessation of all forms and types of criminal activity that violate public safety as a value. At the same time, it will be strategically important to take a number of legal measures to provide real actors with crime-fighting tools that will allow them to continue to effectively combat public safety crimes.

In view of the above, we consider it necessary to develop comprehensive programs at national or regional level to combat terrorist offenses; crimes related to the creation of gangs, criminal organizations and illegal militarized or armed groups; crimes related to the trafficking of firearms, ammunition and explosives. For example, R.V. Mukoida proposes to create a centralized national program for combating terrorist offenses, which should include the implementation of a variety of measures available: intelligence, deterrence, prevention, investigation, preventive action [8, p. 17].

The Criminal Procedural Code of Ukraine is of particular importance in combating crime in general, including organized crime, and crimes against public safety. Although this legislative act identified the preventive focus of search and operational activity as the main one, it did not give the operational units the necessary powers to effectively prevent crime.

Regarding the adoption of the Criminal Procedural Code of Ukraine, amendments were made to the current version of the Law of Ukraine "On Operational-Search Activities" [9], which, in our view, only exacerbated the contradictions between the provisions of these legislative acts, in particular, in the rules, which reads on the place and role of law enforcement units in combating criminal offenses, the uncertainty of the range of operational search measures, etc. Therefore, in order to improve the current law-enforcement legislation, we also propose to make the following proposals: to implement the common terminology in the Criminal Procedural Code of Ukraine and in the Law of Ukraine "On Operational-Search Activity"; to consolidate in the Law of Ukraine “On Operational-Search Activities” the definition of the term “Operational-Search Measure”, as well as to provide an exhaustive list of operational search measures in accordance with the Criminal Procedural Code of Ukraine and to disclose their essence. Thus types of operational-search measures should be identical to types of undercover investigative (search) actions.

The analysis of the normative legal acts of Ukraine gives us grounds to assert that the legal regulation of the operational-search combating crimes against public safety by the criminal police is imperfect. Therefore, legal acts need improvement in the light of current changes in theoretical approaches to determining the combating crime, reforming the criminal procedural and operational-search legislation of Ukraine, modernization of the law enforcement system of the country. In our view, in addition to the current provisions on criminal police units, a common regulatory act is the Criminal Police Regulations, which will help to coordinate the performance and functions of criminal police units, ensure effective interaction of these units, needs to be developed and adopted. It should be noted that during the development of these acts it is necessary to: eliminate the contradictions between the formulation of the provisions of these acts – that is, the prescriptions relating to certain aspects of activity should not be reflected in other regulations of this area; they should contain the principles, tasks, functions and forms of specialization of criminal police units, the main provisions of the organization of their activities.

Taking into account the preventive function of criminal police units, it should be noted that today there is a problem of imperfect legal regulation of crime prevention by operational units of the National Police, as well as the lack of a separate departmental regulatory legal act, which in turn makes artificial obstacles in the implementation of this activity. In our view, there is an urgent need to issue a departmental regulatory act that would regulate the activities of National Police bodies and units in crime prevention by operational units.

Conclusions. On the basis of the analysis of the current normative-legal acts regulating the operational-search activity and criminal police activity, in particular with regard to combating crimes against public safety, we propose to expand the content and scope of improvement of the

legal basis of this type of activity by criminal police. To this end, it is necessary to develop and adopt: 1) the Law of Ukraine "On Principles of Combating Crime"; to amend the Law of Ukraine "On Operational-Search Activities" in accordance with the requirements of the Criminal Procedural Code of Ukraine and the needs of law enforcement activities; 2) Concept of implementation of state policy in the field of prevention offenses for the period up to 2025 and Concept of combating crimes against public safety; 3) a comprehensive program for combating terrorist offenses; crimes related to the creation of gangs, criminal organizations and illegal militarized or armed groups; crimes related to illicit trafficking in firearms, ammunition and explosives; 4) a normative-legal act of the National Police, which would regulate the activities of the criminal police and individual operational units of the criminal police in crime prevention.

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Summary

The article deals with the system of legal support for operational and investigative counteraction to crimes against public safety by criminal police. The author has classifyied the normative-legal acts regulating the activity of criminal police in combating crimes against public security, and has determined the directions for improving the legal support of operative-investigative counteraction to these crimes. He has proposed to expand the content and scope of improvement of the legal basis of this type of activity by criminal police.

***Ключові слова**: злочини проти громадської безпеки, кримінальна поліція, оперативно-розшукова протидія, законодавчо-правовий акт, стратегія*

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CONTENTS AND NATURE OF OPERATIONAL ACTIVITIES OF THE STATE BODY OF SPECIAL PURPOSE WITH LAW ENFORCEMENT FUNCTIONS

Юліана Найдьон, Олександр Шамара. **ЗМІСТ ТА СУТНІСТЬ ОПЕРАТИВНОЇ ДІЯЛЬНОСТІ ДЕРЖАВНОГО ОРГАНУ СПЕЦІАЛЬНОГО ПРИЗНАЧЕННЯ З ПРАВОХОРОННИМИ ФУНКЦІЯМИ.** Однією із нагальних проблем наукового забезпечення оперативної діяльності державного органу спеціального призначення з правоохоронними функціями є створення її єдиної теорії, основоположними засадами якої є теоретико-правове розуміння останньої, визначення її сутності та змісту, формування методологічних підходів до її побудови.

Стаття присвячена розгляду поняття оперативної діяльності державного органу спеціального призначення з правоохоронними функціями як основоположної категорії відповідної теорії та практики. Вивчення та узагальнення практики існування досліджуваного явища стало методологічною основою виведення поняття оперативної діяльності. Виведено істотні ознаки, притаманні оперативній діяльності державного органу спеціального призначення з правоохоронними функціями, що лягло в основу вироблення відповідного поняття.

Зроблено висновок, що науковці різних історичних періодів серед інших видів діяльності, що мають здійснювати органи державної безпеки для виконання покладених на них завдань, виокремлюють певний вид негласної діяльності – оперативної, що здійснюється із застосуванням

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спеціальних сил, засобів, методів для протидії розвідувально-підривній, терористичній та іншій протиправній діяльності.

Оперативна діяльність є невід'ємною складовою забезпечення уповноваженими оперативними підрозділами державного органу спеціального призначення з правоохоронними функціями державної безпеки.

Під оперативною діяльністю Служби безпеки України запропоновано розуміти негласну діяльність у сфері забезпечення державної безпеки, що здійснюється уповноваженими оперативними підрозділами державного органу спеціального призначення з правоохоронними функціями шляхом реалізації наданих їм положеннями чинного законодавства прав у сфері контррозвідувальної та оперативно-розшукової діяльності, спрямовану на виявлення, попередження та припинення розвідувально-підривної та іншої протиправної діяльності іноземних спеціальних служб, окремих організацій, груп та осіб, а також усунення причин та умов, що сприяють виникненню загроз державній безпеці України.

***Ключові слова**: оперативна діяльність, контррозвідувальна діяльність, оперативно-розшукова діяльність, конспірація, розвідувально-підривна діяльність, парадигма.*

Problem statement. The current stage of building the national statehood of Ukraine is characterized by a complex socio-political and economic state of development of our country. After all, fundamentally new threats caused by the transformation of technology, the specific social, economic and political conditions of development of the modern world community, affect the nature and features of the development of a secure environment, in which Ukraine needs to build a new system of relations between citizen, society and state. Combined, integrated military-political and economic confrontations in the form of a relentless, often hidden conflict, should be considered particularly dangerous in the context of the above. Such was the present-day external threat, manifested in: military aggression; conducting subversive, subversive, sabotage activities aimed at inciting ethnic, inter-confessional, social hatred and hatred, separatism and terrorism; creation and full support of military quasi-entities in the temporarily occupied territory of the Donetsk and Luhansk regions; occupation of the territory of the Autonomous Republic of Crimea and the city of Sevastopol; destabilization of the situation in the Baltic-Black Sea-Caspian region; conducting trade, economic and information-psychological war.

This has caused not only a significant downturn in Ukraine's economy, unstable socio-political situation in the country, but also numerous casualties, among which, according to a United Nations report of 13 June 2017, recorded 1,090 killed and 23,966 injured in the fighting [13]. The Office of the United Nations High Commissioner for Human Rights estimates the total number of victims of the conflict in Ukraine at 40-43 thousand from 14 April 2014 to 31 January 2019, including 12,800-13,000 dead [14].

External aggression against Ukraine has become a widespread test of strength for our security and defense sector, the results of which, unfortunately, do not fully meet the current needs of counteracting the conglomerate of the armed conflict and its continuing concomitant phenomenon – the activation of illegal encroachments on the national security of the country. The low efficiency of efforts of the national security and defense sector to overcome this phenomenon is caused by imperfection of the current legislation and institutional system, inefficiency of the applied theory and practice approaches to the organization of the process of detection and response to the real and potential threats to the state security of Ukraine, which is achieved, special purpose body with law enforcement functions of operational activity as a component of national security. Despite the fact that operational activity as a theoretical, legal and practical category is used in normative-legal acts, scientific achievements and practical materials of counterintelligence and operational-search activity, its theoretical and legal definition has not found adequate fixing. This gives rise to ambiguity in the understanding of the essence, content, purpose, objectives and fundamental principles of the theory and practice of operational activity of a state special purpose body with law enforcement functions, which can significantly affect the implementation of the Security Service of Ukraine against the illegal assault by foreign special services and organizations on the state security of Ukraine.

Given the foregoing, theoretical and legal and practical awareness of the phenomenon of operational activity of the state special purpose body with law enforcement functions requires a thorough scientific support, based on a system of clear, deeply reasoned concepts and categories, which should be applied in the relevant scientific and legal laws, acts, etc. Therefore, one of the urgent problems of scientific support of the operative activity of a state special purpose body with law enforcement functions is the creation of its unified theory, the fundamental basis of which is a theoretical and legal understanding of the latter, the definition of its essence and content, the formation of methodological approaches to its construction. Develop-

ing the concept of operational activity of a state special purpose body with law enforcement functions has not only scientific relevance that will contribute to the development of relevant theory, but also practical, which consists in the need to develop a unified approach to understanding the practice of this activity, which will promote awareness of its functional purpose logic. of constituent elements.

Analysis of publications that started solving this problem. The problems of legal and organizational support for the detection, prevention and cessation of reconnaissance and other illegal activities are the subject of research by many scholars of different historical periods, including: O.M. Bandurka, O.F. Bantyshev, V.O. Biletsky, O.M. Dzhuzha, P.S. Dmitriyev, O.F. Dolzhenkov, A.P. Zakalyuk, O.G. Kalman, O.O. Kvasha, M.I. Kamlyk, I.P. Kozachenko, V.O. Kozeniuk, O.V. Kyrychenko, S.V. Kornyakov, O.M. Kostenko, V.A. Lipkan, O.S. Lipkan, V.K. Lysichenko, M.M. Lytvyn, O.M. Lytvynov, V.P. Mezhivoy, V.G. Pylypchuk, I.V. Servetskiy, M.O. Shylin, O.M. Yurchenko and others. At the same time, the systematic analysis of scientific achievements, dissertation researches, educational-methodical literature, devoted to legal and organizational bases of counteraction to illegal encroachment of foreign special services, individual organizations, groups and persons on the state security of Ukraine, testifies to fragmentary research of problems of definition of concept, essence and change operational activities of a state special purpose body with law enforcement functions, which necessitates the need for a separate study in a certain direction.

The **article's objective** is to study the nature and content of the operational activities of the Security Service of Ukraine as a component of counteraction to terrorist, intelligence, subversive and other illegal activities and the formation of the corresponding concept.

Basic content. Scientific awareness of the phenomenon of operational activity, as an effective tool for identifying potential threats to state security and preventing their transformation into real, necessary for the development and implementation of a new paradigm of the activity of the state special purpose body with law enforcement functions in the field of state security as a modern special service, definition of its modern special service goals and objectives. Equally important is the issue of improving the practical foundations of the activity of the state special purpose body with law enforcement functions, which, given the current threats to state security, requires the development of fundamentally different approaches to the tactics of tacit detection and prevention of intelligence, subversion, terrorist activity and other activities. of the state special purpose body with law enforcement functions not for the future criminal procedural perspective, but for exposing potential thunderstorms security.

Taking into account the stated and urgent need to overcome the terrorist threat, growing organized crime and preserve the territorial integrity of Ukraine, the problems of improving the legal and organizational support to counteracting terrorist, intelligence, subversive and other illegal activities of foreign individuals, special groups and special forces are of particular importance. Of course, the above mentioned concerns the Security Service of Ukraine as a special service capable of effectively protecting state sovereignty, constitutional order and territorial integrity of Ukraine. Given the need for a conceptual revision of the essence and content of the activities of the state special purpose body with law enforcement functions, as a modern special service, it is advisable to start a new paradigm, the basic basis of which will be put forward a scientific idea, as a form of reflection in thinking a new understanding of the objective activities of special services in the field of state security [1, p. 112]. Thus, the scientific idea in the context of the above should be to understand the need to define in theory and practice a conceptually new approach to the functional designation of national special services in counteracting threats to state security, as well as to distinguish, at the legislative and organizational levels, the activities of special services, the essential features of which are fundamentally different. law enforcement agencies. The hypothesis, as a materialized expression of a scientific idea put forward to explain the conceptually new approaches to the activity of a state special purpose body with law enforcement functions in the field of state security, is the existence of a special type of activity of special services of Ukraine, which is governed by the current legislation, the essence of which lies in the potential threats to state security through the use of a system of special means and methods in a secret manner.

The analysis of dissertation research, monographs, separate scientific achievements, devoted to the problems of legal and organizational support of operative activity of different historical periods, shows that the latter, as a theoretical and applied category, appeared during the activity of the USSR state security bodies, as a fundamental component of the activity of state security bodies. The essence of operative activity was the undercover (conspiratorial) detection, preven-

tion and cessation of intelligence and subversive attacks on state security through the use of special forces and means, forms, methods. Scientific studies of counter-intelligence, terrorist, and other illegal activities in the post-Soviet period testify to the recognition of the existence of a certain type of activity, operative, inherently operative units, which has a non-covered character, carried out using special forces, means, methods and only its inherent features, that differentiate it from other activities such as administrative, management, business, etc.

Regarding this, it can be concluded that scientists of different historical periods, among other activities that must be performed by the state security authorities to perform their assigned tasks, identify a certain type of dirty activity – operational, carried out with the use of special forces, means, methods to counteract intelligence, subversive, terrorist and other illegal activities.

In order to ensure a comprehensive study of the concept of operational activity, it is advisable to find out the meaning of the words that form it, that is, to interpret it as a way of interpreting the rules of law. Its essence is to clarify the meaning of a rule of law through a grammatical analysis of its verbal formulation, first of all, to determine the meaning of each word and expression used in the normative order [2, p. 205]. Against this background, it is necessary to analyze such categories as "operational" and "activity". Thus, the term "operative" is quite common in the specialized scientific literature of different historical periods, practice materials for the detection, prevention and cessation of reconnaissance and other illegal activities. In general, the term "operational", according to the analysis of scientific achievements, scientific and educational literature, is used in many areas of the state. This has been reflected in different approaches to interpreting its meaning, including: 1) associated with surgery; surgical 2) related to military operation; 3) the one who directly accomplishes something, performs a certain task [3, p. 845]; 4) is able to correctly and quickly perform certain practical tasks; effective [4, p. 704]. The very word operability comes from the Latin "operatio" – an action aimed at accomplishing any task [5]. In view of the foregoing, we can conclude that, in the conventional sense, "operational" is effective in relation to certain tasks. In such a case, the use in the provisions of applicable law that constitutes the legal basis for the activity of a state special purpose body with law enforcement functions of the phrase "operational units", "operational means", "operational accounting", etc. is justified and should be interpreted as units, means, accounting, etc., related to the performance of the tasks assigned to the Security Service of Ukraine.

An etymological analysis of the word "activity" shows that the category is fundamental to a wide range of humanities, such as philosophy, history, psychology, etc., because it allows us to understand the phenomena of social life in their functional role and genesis. This creates a diversity of approaches to the content that fits into the concept of activity. In a general sense, activity is defined as the application of one's work to something; work, actions of people in any field. [6]. In general, it should be noted that the category of "activity" is generated by classical German philosophy, in which the latter reflected spiritual, ideal processes. In essence, the basis of this use was the understanding of the activity of G.W.F. Hegel, where the term is used in the triad "goal – activity – material". Activity is what translates the goal (objective but perfect) into the material (also objective but real). Thus, G.W.F. Hegel considered activity as a process of realization of the goal, transformation of the ideal into material [7, p. 312-327]. In dialectical materialism, activity was understood as an expedient action or system of human action. Subsequently, the requirement of consciousness was added to this classic [8]. In terms of sociology, the concept of "activity" has traditionally been synonymous with the term "action", psychology, in the general sense, defines activity as a conscious and purposeful process, the basis of which are the forces and factors that induce a person to a certain activity. At the same time, the most philosophical basis for understanding the concept of activity, consisting of: purpose, need, result and direct process of transition from ideal to material will become the basis for developing an understanding of the concept of operational activity of a state special purpose body with the law enforcement functions of Ukraine.

In order to determine the understanding of the operational activity of the Security Service of Ukraine, it is advisable to consider the content of the activity of a state special purpose body with law enforcement functions, based on which the understanding of the activity is taken as a set of interrelated actions, the elements of which are: purpose, needs, actions. Thus, the state law enforcement agency of special purpose, the current legislation mandates the provision of state security. From the above we can conclude that the purpose of this state body is to prevent threats to the national security of Ukraine. The analysis of the legal support of the activity of the state special purpose body with law enforcement functions shows that in order to achieve

this goal, the Security Service of Ukraine, within the competence defined by the legislation, provides protection of state sovereignty, constitutional order, territorial integrity, economic, scientific, technical and defense potential of Ukraine. the interests of the state and the rights of citizens from the intelligence and subversive activity of foreign special services, attacks by certain organizations , groups and individuals, as well as securing state secrets [9]. Ensuring national security also consists in preventing, detecting, suspending and committing crimes against the peace and security of mankind, terrorism, corruption and organized criminal activity in the fields of governance and economy and other unlawful acts that directly threaten Ukraine's vital interests.

The above is carried out by the operational units of the state special purpose body with law enforcement functions in the course of counter-intelligence and operational-search activities, which are regulated by the relevant legislative acts, namely: Laws of Ukraine "On operational-search activity" and "On counter-intelligence activity". An analysis of the content of these laws, as well as the Law of Ukraine “On the Security Service of Ukraine” shows that the activity of the Security Service of Ukraine is aimed at ensuring state security and consists in detecting, preventing the cessation of unlawful encroachments on special services of foreign states, organizations, individual groups and persons on the state security of Ukraine, eliminating the conditions that contribute to them and their causes. The main functional tasks, the solution of which is the key to the effective neutralization by the Security Service of Ukraine of threats to the national security of Ukraine, and, consequently, the achievement of the purpose of the Service are specified.

The need for national security is due, first of all, to the establishment of favorable conditions for the sustainable, progressive development of the state in all spheres of life. This is achieved by averting external and internal threats, intelligence, terrorist and other unlawful encroachments on foreign intelligence services, individual organizations, groups and persons on the system-forming entity of the state: state sovereignty, territorial integrity, constitutional or other legislation, determined by law state security. This is particularly relevant given the need to stabilize the complex military, political, economic situation in eastern Ukraine, neutralize external and internal threats to the security of the state, especially terrorist ones, actively used by foreign special services, criminal organizations, etc. for intelligence and subversive and other unlawful activity. Given the above, it is absolutely reasonable to recognize the state's need for national security, which is vested in a state special purpose body with law enforcement functions and is reflected in the provisions of current legislation.

Given the objective need to counteract the unlawful encroachment of foreign intelligence services, individual organizations, groups and persons on the national security of Ukraine, it is advisable to note that under the provisions of the current legislation the detection, prevention and termination of intelligence, subversive and other illegal activities are authorized the security of Ukraine have the right to exercise both openly and secretly. This is evidenced by the content of the Laws of Ukraine "On operational-search activity", "On counter-intelligence activity", "On the Security Service of Ukraine", the provisions of Chapter 21 of the Criminal Procedure Code of Ukraine and other legislative and subordinate legal acts, which together constitute legal support activities of a state special purpose body with law enforcement functions. The inattention of the tasks assigned to the Security Service of Ukraine is also caused by the increase in the level of latent crime, the use of foreign special services, individual organizations, groups and persons of conspiratorial methods of realization of their criminal encroachments on the national security of Ukraine, counteraction of which becomes especially relevant in the conditions of overcoming the territorial crisis and to preserve the integrity of our state.

Given the above, it is possible to distinguish the essential features of operational activities that collectively make up its content, namely:

1) presence of a special subject – authorized operational units of the state law enforcement agency of special purpose, which ensures the state security of Ukraine;

2) the existence of a special purpose – to protect the security of the state, its legitimate interests and the rights of citizens from real and potential threats that are realized through the conduct of intelligence, subversive and other illegal activities;

3) specificity of tasks – undercover counteraction (detection, prevention, termination) of real and potential, external and internal threats to the state security of Ukraine, first of all, intelligence-subversive and terrorist character;

4) specific requirements for the organization of the process – the ability to effectively,

timely neutralize threats to the national security of Ukraine, prevent the occurrence of harmful consequences to the legitimate interests of the state and citizens, eliminate the causes and conditions that contribute to such threats. The peculiarity of the implementation of the above is to prevent the disclosure of special means, forms, methods that were used to achieve the goal;

5) targeting a specific object – external and internal threats to the national security of Ukraine, first of all, potential or real carriers of which are foreign special services, criminal organizations, individual groups and persons; 6) the presence of a specific enforcement tool to achieve the goal – undercover forces, means, forms and methods, the fact of which use should not be disclosed.

Considering the conducted research, the essence of operational activity is protection of state sovereignty, constitutional order, territorial integrity, economic, scientific and technical and defense potential of Ukraine, legitimate interests of the state and rights of citizens against real and potential, external and internal threats, especially intelligence and terrorist character, undercover use of special forms, methods, forces and means.

The content of the operational activities of the Security Service of Ukraine consists in the covered detection and prevention of intelligence, subversive, terrorist and other unlawful activities in order to protect the legitimate interests of the state, as well as to eliminate the causes and conditions conducive to the implementation of criminal encroachments on the state security of Ukraine.

Conclusions. Considering the results of the analysis of scientific investigations concerning problems of understanding of operational activity, the provisions of the current legislative and by-laws can conclude that operative activity is an integral part of providing authorized operational units of a state special purpose body with law enforcement functions. In order to formulate a unified approach to understanding the essence and content of the operational activities of the Security Service of Ukraine, its corresponding concept has been developed. Thus, the operational activities of the Security Service of Ukraine are understood to be tacit activities in the field of state security, which is carried out by authorized operational units of a state special purpose body with law enforcement functions by exercising the rights granted to them by the provisions of the current legislation in the field of counterintelligence, operational-search prevention and termination of intelligence, subversive and other illegal activities of foreign special services, separately their organizations, groups and individuals, and the elimination of causes and conditions that contribute to the emergence of threats to the national security of Ukraine.

Given the above, the operational activities of the state special purpose body with law enforcement functions should take an important place in the system of operational and service activities of the Security Service of Ukraine and require thorough scientific reflection, multidisciplinary analysis in the context of ensuring national security, as well as the development of theoretical to reflect in the scientific categories ideas about contemporary social, political and economic processes related to activities of special services and law enforcement agencies in combating intelligence and subversive and other illegal activities.

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Summary

The article deals with consideration of the notion of operational activity of the Security Srvice of Ukraine as a fundamental category of the relevant theory and practice. The study and generalization of the practice of existence of the investigated phenomenon has become the methodological basis for the derivation of the concept of operational activity. Significant signs inherent in the operational activities of the Security Service of Ukraine, which formed the basis for the development of the concept.

***Keywords**: operational activity, counter-intelligence activity, operative-search activity, conspiracy, intelligence-subversive activity, paradigm.*

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ARRANGING RESOURCES FOR THE NATIONAL POLICE OF UKRAINE: THE LEGAL ASPECT

Віталій Бакал. ОРГАНІЗАЦІЯ РЕСУРСНОГО ЗАБЕЗПЕЧЕННЯ НАЦІОНАЛЬНОЇ ПОЛІЦІЇ УКРАЇНИ: ПРАВОВИЙ АСПЕКТ. У статті досліджено організаційно-правовий аспект ресурсного забезпечення Національної поліції України. Досліджено нормативно-правові акти що регулюють сферу ресурсного забезпечення поліції та встановлено, що вони достатньо чисельні та різнопланові. На підставі аналізу понять «ресурси», «фінансові ресурси», «матеріально-технічні ресурси» визначено поняття «фінансове забезпечення поліції» та «матеріально-технічне забезпечення поліції».

Фінансове забезпечення поліції – діяльність, що здійснюється в рамках фінансової системи держави у всіх її проявах і є формою участі у розподілі коштів шляхом отримання фінансових ресурсів для своєчасного та достатнього забезпечення мобільної готовності поліції до виконання завдань з охорони громадського порядку, захисту конституційних прав та свобод громадян України, передбачених ст. 2 Закону України "Про Національну поліцію".

Матеріально-технічне забезпечення поліції слід розуміти як систему товарно-грошових та економічних відносин між органами державної влади, органами МВС, підприємствами, організаціями, особами, з одного боку, та підрозділами поліції, з іншого боку, у процесі постачання матеріальних, технічних та військових ресурсів для задоволення потреб, необхідних для виконання основних обов'язків та завдань, передбачених ст. 2 Закону України "Про Національну поліцію".

У складі матеріально-технічного забезпечення досліджено окрему категорію – військове постачання. Окреслено організаційну структуру ресурсного забезпечення МВС та Національної поліції, розглянуто функції основних підрозділів ресурсного забезпечення органів системи МВС. Запропоновано основні напрями вдосконалення організації ресурсного забезпечення поліції.

Ключові слова: *ресурсне забезпечення, Національна поліція України, матеріально-технічне забезпечення, фінансове забезпечення*

Problem statement. One of the decisive factors in strengthening the law enforcement system, ensuring the readiness of the bodies and subdivisions of the Ministry of Internal Affairs of Ukraine in carrying out the tasks assigned to the Ministry to protect public order and the constitutional rights and freedoms of citizens of Ukraine is the timely and sufficient provision of the National Police with material and technical resources and special equipment. Therefore, clear organizational and legal regulation of the police force is of utmost importance for its resource provision. Effective action and further development in line with the national security objectives of the police depends on it. A significant drawback in the way of implementing the tasks of providing resources to the National Police is the presence in the system of legal regulation of this sphere of an extremely large number of legal acts, as well as legislative and bylaws, so the need for a thorough scientific rethinking of this problem is essential.

Analysis of publications that started solving this problem. The issue of resources for the law enforcement agencies of Ukraine was considered in their works by: O. M. Bandurka, Zh. F. Vikulova, V. V. Vorobiova, S. M. Yermakova, M. S. Ilnytskyi, O. V. Kovaliova, Yu. V. Korechkova, O. O. Krylova, N. Zh. Kuntsa, S. L. Kurylo, P. V. Nielesina, A. Yu. Pantelieieva, N. A. Pelykh, V. M. Plishkina, O. I. Pozharova, A. S. Pronevych, V. M. Raieva, B. B. Ryvkina, R. M. Sapronova, A. Yu. Syniavska, M. D. Smirnova, V. V. Tivanova, I. V. Shamrai, S. O. Shatrava.

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However, these studies mainly concern the resource provision of the internal affairs bodies. The reform of the Ministry of Internal Affairs system has also contributed to the application of new approaches to the provision of resources to both the Ministry of Internal Affairs and the National Police as a whole. There is a need to introduce new approaches to resource support and to organize the work of resource support units.

The **article's objective** is to study the organizational and legal aspect of the resource provision of the National Police of Ukraine.

Basic content. Regulatory legal acts regulating the sphere of police resources differ in their legal force and sufficiently numerous and diverse.

The main regulatory and legal acts, which directly regulate the resource provision of the Police, are the following: the Constitution of Ukraine, the Civil Code of Ukraine, the Economic Code of Ukraine, the Housing Code of Ukraine, the Law of Ukraine dated July 3, 2015 "On the National Police", the Law of Ukraine dated December 20, 1991 "On Social and Legal Protection of Servicemen and Members of Their Families", Law of Ukraine of February 28, 1991 "On the status and social protection of citizens affected by the Chernobyl disaster", Law of Ukraine of September 18, 1991 "On investment activity", the Law of Ukraine of April 10, 1992 "On leasing of state and municipal property", the Law of Ukraine of October 2, 1992 "On Information", the Law of Ukraine of October 14, 1992 "On labor protection", the Law of Ukraine of October 22, 1993 "On the status of war veterans, guarantees of their social protection", Law of Ukraine "On State Secrets" dated January 21, 1994, Law of Ukraine "On Energy Saving" dated July 1, 1994 (as amended), Law of Ukraine "On Metrology and Metrological Activity" dated February 11, 1998 (as amended), Law of Ukraine from March 3, 1998 "On the transfer of state and communal property", Law of Ukraine from March 24, 1998 "On the status of veterans of military service, veterans of internal affairs bodies and some other persons and their social protection", the Law of Ukraine of March 3, 1999 "On the State Defense Order", the Law of Ukraine of April 20, 2000 "On the planning and development of territories", the Law of Ukraine of January 18, 2001 "On the objects of increased danger", the Law of Ukraine of February 22, 2006 "On the Disciplinary Regulations of the Internal Affairs Bodies of Ukraine", the Law of Ukraine of February 20, 2003 "On Alternative Energy Sources", the Law of Ukraine "On Telecommunications" of November 18, 2003, the Law of Ukraine "On Communications" of January 20, 2005 "On Citizens' Applications", the Law of Ukraine "On Construction Norms" of November 14, 2009, the Law of Ukraine "On Protection of Personal Data" of June 1, 2010 "On Access to Public Information", the Code of Civil Protection of Ukraine of September 10, 2013, the Law of Ukraine of April 10, 2014 "On Public Procurement".

Orders of the Ministry of Internal Affairs of Ukraine: Order of the Ministry of Internal Affairs of Ukraine dated 17.10.2014 No. 1096 "On Approval of the Regulation on the Department of Material Support of the Ministry of Internal Affairs of Ukraine", Order of the Ministry of Internal Affairs of Ukraine dated 25.11.1996 No. 818 "On Approval of the Manual on Automobile Service in the Internal Affairs Bodies of Ukraine" (as amended and supplemented), Order of the Ministry of Internal Affairs No. 535 of 24.05.2002 "On approving the Rules for the Wearing of Uniforms and Signs of Distinction by Persons in Charge of the Interior Ministry Bodies and serviceman by Special Motorized Military Units of the Interior Ministry Troops of the Ministry of Internal Affairs of Ukraine", Order of the Ministry of Internal Affairs of Ukraine No. 1039 dated 10.09.2004 "On the provision of office accommodation and the use thereof by persons in the rank and file of the Ministry of Internal Affairs of Ukraine", registered with the Ministry of Justice of Ukraine on 05.10.2004 under No. 1255/9854 (as amended by Order of the Ministry of Internal Affairs of Ukraine No. 216 dated 12.05.2008, registered with the Ministry of Justice of Ukraine on 31.05.2008 No. 488/15179), Order of the Ministry of Internal Affairs of Ukraine No. 444 of 15.10.2009 "On the approval of documents on the introduction of new means of communication in the telecommunications networks of the Ministry of Internal Affairs of Ukraine", Order of the Ministry of Internal Affairs of Ukraine No. 536 of 07.12.2009 "On the approval of the Program to reduce the consumption of energy carriers by the bodies and subdivisions of the Ministry of Internal Affairs of Ukraine for the years 2010-2014", Order of the Ministry of Internal Affairs of Ukraine No. 259 of 31.05.2011 "On the approval of the Regulation on the Committee on Competitive Bidding of the Ministry of Internal Affairs of Ukraine", Order of the Ministry of Internal Affairs of Ukraine dated 24.12.2012 No. 1190 "On Approval of the Instruction on the Use of Communication Technology in the Internal Affairs Bodies" (registered with the Ministry of Justice of Ukraine on 06.03.2013 under No. 375 / 22907), Order of the Ministry of Health and the Ministry of Internal Affairs of Ukraine dated 31.01.2013 No. 65/80 "On Approval of the Regulations on the medical examination of candidates for drivers

and drivers of vehicles". (registered with the Ministry of Justice of Ukraine on 22.02.2013 No. 308/22840), Order of the Ministry of Internal Affairs of Ukraine dated 04.12.2013 No. 446 "On Approval of the Instruction on the Procedure for Amendments to the Limits of Energy and Water Consumption for Bodies and Subdivisions of the Ministry of Internal Affairs of Ukraine and the State Migration Service of Ukraine", Order of the Ministry of Internal Affairs of Ukraine dated 07.03.2014 No. 251 "On Approval of the Composition of the Competitive Bidding Committee" (as amended), Order of the Ministry of Internal Affairs of Ukraine dd. 12.05.2014 No. 462 "On Approval of the Comprehensive Plan of Main Activities of Ukraine" (registered with the Ministry of Justice of Ukraine dd. 11.09.2014).

In accordance with Article 105 of the Law of Ukraine No. 580-XIII "On the National Police" dated July 2, 2015, financing and material and technical support of the police is carried out at the expense of the State Budget of Ukraine, as well as other sources not prohibited by law.

In considering the concept of "resource support" it is necessary to define its content, which in accordance with legal norms, including such components as "financial support" and "material and technical support".

The term "resources" (from French “resource” – ancillary means) is interpreted as means, stocks, opportunities, sources of income. Means are the techniques, means of action to achieve something, and the objects, facilities (or their totality) needed to carry out an activity.

Analyzing the "financial support" and "material and technical support" of the law enforcement agencies, V. M. Teslenko [7, p.10] defined the "resource support of the Ministry of Internal Affairs" as "the process of circulation of material goods (means of production and consumption items) organized by the state and its agencies and the most rational delivery of them from producers to consumers of the Ministry of Internal Affairs". In general, agreeing with the point of view of V. M. Teslenko, more successful, in our opinion, is the definition of A. N. Bandurka, who by material, technical and financial support offered to understand the system of commodity-money and economic relations that arise between the services of the Ministry of Internal Affairs, authorities, enterprises, organizations, individuals, on the one hand, and the bodies of the Ministry of Internal Affairs, on the other hand, in the process of centralized supply of material, technical and military resources (raw materials, fuel, equipment, tangible property, weapons, ammunition); performing purchase and sale agreements (wholesale trade), fund sales, commission and retail sale of products and means of production; providing material and technical assistance and financing their activities. [8, c.17].

As it is known, material and technical maintenance is a difficult social and economic process: at the market forms of management of the enterprise-manufacturers becomes free in realization of economic activity, functioning on principles of self-supporting, self-financing, free business and competition. This process consists of several stages: preparation, conclusion of contracts, receipt of resources, their transfer to consumers.

With these matters cleared away, many scientists and practitioners consider the material and technical support as a resource.

The content of the concept of "resource provision" of the National Police "derives from its purpose: the provision of the police with appropriate financial sources, stocks of material and technical means necessary to perform the main duties and tasks provided for in Article 2 of the Law of Ukraine "On the National Police".

Depending on the role, material presentation and specificities of the impact on the functioning of the National Police, these resources can be classified by type and divided into financial, material and technical resources.

Financial resources are the totality of all trust funds of the police funds necessary for its functioning; revenues streams and payments carried out. Financial resources, in turn, are divided into centralized and decentralized ones.

Material resources – buildings (roofs, facades, service and auxiliary premises, dormitories and service apartments) territory (roads, parking lots, park zone, fencing, polygons) servicing economic structure (workshop, household equipment, transport, telephone stations, heat supply units, heating, electric and municipal networks, water supply, boilers, substations and distribution electric devices); social structures (canteens, cafeterias, assembly halls, departmental health care institutions and sanatoriums, children's health camps, recreation centers, libraries, museums, cultural centers); sports facilities (clubs, stadiums, bases), furniture, equipment, building materials, stationery, fuel, spare parts; uniforms.

Technical resources include security (control and alarm systems, technical devices); computers and other office equipment, special equipment, means of communication and the like.

Taking the above-mentioned, we shall determine that the financial provision of the police is an activity that is carried out within the framework of the financial system of the state in all its manifestations and is a form of participation in the distribution of funds by obtaining financial resources for timely and sufficient to ensure the mobile readiness of the police to perform tasks to protect public order, the protection of constitutional rights and freedoms of citizens of Ukraine, as provided for in Article 2 of the Law of Ukraine "On the National Police".

The material and technical support of the police should be understood as a system of commodity-money and economic relations between public authorities, bodies of the Ministry of Internal Affairs, enterprises, organizations, individuals, on the one hand, and police units, on the other hand, in the process of supply of material, technical and military resources to meet the needs necessary for the performance of basic duties and tasks provided for in Article 2 of the Law of Ukraine "On the National Police".

A separate category of material and technical support should also be distinguished – military supply, the main purpose of which is to ensure that the police are provided with special-purpose equipment in accordance with established standards, time sheets and states, namely: weapons, ammunition, ammunition, ammunition, equipment, military and special equipment, food and reserve stocks.

The process of providing logistical support to the police is divided into several interrelated stages: studying the needs for a certain type of material assets and appropriate financial capabilities; conducting tenders for the supply of products and / or services; preparing and concluding contracts; obtaining resources, transferring them to consumers (the police).

Financial, material and technical support and military supplies within the Ministry of Internal Affairs (of which the National Police is a part) are dealt with the limits of their competence:

The Internal Audit Department of the Ministry of Internal Affairs, the functions of which include: 1) assessment of: efficiency of the functioning of the internal control system of the Ministry of Internal Affairs; the degree of implementation and achievement of the objectives defined in the strategic and annual plans; efficiency of planning and implementation of budget programs and the results of their implementation; management of budget funds; quality of administrative services and performance of control and supervision functions, tasks defined by legislative acts; preservation of assets and information; use and safety of assets; correctness of accounting and reliability of financial and budgetary reporting; risks that negatively affect the performance of functions and tasks of the Ministry and other internal audit objects; reliability, efficiency and effectiveness of information systems and technologies; 2) monitoring and analysis of individual business operations in order to identify and assess risks, including in the organization of public procurement; compliance with financial and economic and budgetary discipline.

Department of State Property and Resources of the MIA, which: 1) carries out: management of state property objects within the powers of the Ministry of Internal Affairs, defined by law; state supervision over labor protection; 2) Organizes: the development, coordination and functioning of the Ministry of Internal Affairs' communications and telecommunications system; the management and monitoring of the unified digital departmental telecommunications network of the Ministry of Internal Affairs and the fixed radio frequency resource of Ukraine; in accordance with the established procedure, the material, technical and resource support for the activities of the Ministry of Internal Affairs apparatus and of territorial bodies, institutions and enterprises under the management of the Ministry of Internal Affairs and the National Guard; 3) Controls and takes measures to ensure fire safety.

The Department of Financial and Accounting Policy of the Ministry of Internal Affairs prepares budget figures; organizes: financial support for the activities of the Ministry's staff and of budget-funded institutions and organizations in the area of administration of the Ministry of Internal Affairs and central executive authorities, the activities of which are channelled and coordinated by the Cabinet of Ministers through the Minister of Internal Affairs; remuneration, social and other payments; and measures to maintain accounting records of financial and economic activities and to prepare reports in the institutions of the Ministry of Internal Affairs.

The main units of the National Police, which provide resources, are the following:

The Department of Financial Support and Accounting has relevant functions similar to those of the Department of Financial and Accounting Policy of the Ministry of Internal Affairs. Relevant departments (divisions) of financial support and accounting are introduced in the territorial subdivisions of the police;

The Internal Audit Department, which in accordance with the Procedure of internal audit and formation of internal audit units, approved by the Cabinet of Ministers of Ukraine on

September 28, 2011 № 1001, is organizationally and functionally independent, is directly subordinate and accountable to the Chairman of the National Police of Ukraine. The relevant internal audit department also has territorial subdivisions of the police;

The Property Management Department, which plans and organizes the procurement and further management of material resources necessary for the performance of the tasks assigned to the police authorities, submits proposals on the efficient use of public property in the field of police management, and participates in the implementation of the state policy in the field of property relations regulation and organizes the attraction of investments and capital construction management; organizes and provides material, technical and resource support to the police, including vehicles, weapons, special equipment, fuel and lubricants, uniforms, police officers, and other types of property required to perform their tasks.

The entire structure of police management has appropriate financial and accounting departments (divisions), internal audit departments ("sectors"), logistics and material and technical management departments ("divisions"), stresses the importance of resources for the National Police of Ukraine. As A. I. Subbot notes, the process of logistical support of the internal affairs bodies is mainly related to specific political and historical processes and directly affects the stability and effectiveness of law enforcement agencies. This is a rather complicated socio-economic process. In the conditions of the market form of management, the studying of the market, searching of the most profitable suppliers, defining of requirements in resources, and also the control over performance of delivery conditions acquires importance [10, p. 17]. In support of the above mentioned A. H. Honchar notes that almost 30% of all supply volumes are carried out centrally and planned through the state order by means of distribution. All additional deliveries are organized directly through the conclusion of contracts between the subjects of delivery and the bodies of the National Police of Ukraine. Despite the exceptional need to improve the efficiency of the National Police of Ukraine, the state of its material and technical support is not sufficient, which results in a threat to the national security of the state. [Honchar]

Conclusion. Summarizing it should be pointed out that the reasons for the decrease in the level of resources of the National Police of Ukraine are the chaotic development of the economic and political situation in the country. When organizing the resource provision of the police, it is necessary to take into account the current state of the Ukrainian economy first of all. There is a need to study and widely introduce the leading experience of other countries' police agencies into the organization of resource provision to the police.

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Summary

The article deals with organizational and legal aspect of the resource provision of the National Police of Ukraine. Regulatory and legal acts regulating the sphere of resource provision of the police are studied and established that they are rather numerous and diverse. Based on the analysis of the concepts of "resources", "financial resources", "material and technical resources", the concept of "financial provision of the police" and "material and technical provision of the police" was defined. As part of the material and technical support, a separate category – military procurement – was studied. The organizational structure of the resource support of the Ministry of Internal Affairs and the National Police is determined, and the functions of the main resource support units of the bodies of the Ministry of Internal Affairs are considered. The main directions for improving the organization of resource provision to the police are proposed.

Keywords: *resources, National Police of Ukraine, material and technical support, financial support.*

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PECULIARITIES OF HUMAN RIGHTS AND FREEDOM WHILE APPLYING INTELLIGENCE-LED POLICING (ILP)

Карен Ісмайлов. ОСОБЛИВОСТІ ЗАБЕЗПЕЧЕННЯ ПРАВ І СВОБОД ЛЮДИНИ ПРИ МОДЕЛІ ПОЛІЦЕЙСЬКОЇ ДІЯЛЬНОСТІ, КЕРОВАНОЇ АНАЛІТИЧНОЮ РОЗВІДКОЮ (ILP). Розглядаються основні національні та міжнародні норми та принципи, якими керуються співробітники поліції при здійсненні поліцейської діяльності, керованої аналітичною розвідкою для забезпечення стандартів прав і свобод людини і громадянина. За результатами аналізу Стратегії розвитку системи Міністерства внутрішніх справ України до 2020 року визначено, що на сьогодні рівень використання інформаційно-аналітичних інструментів поліцейськими знаходиться на низькому рівні та потребує вдосконалення шляхом реалізації концепції діяльності органів системи МВС, заснованої на використанні різних джерел інформації (Intelligence Led Policing), а також комплексного впровадження сучасних систем кримінального аналізу. Стверджується, що натепер правоохоронна діяльність змінюється як в оперативній тактиці, та і організаційних структурах, шляхом упровадження нової філософії боротьби зі злочинністю та правоохоронної практики, якою є правоохоронна діяльність, керована аналітичною розвідкою, яка є моделлю, яка передбачає інкорпорування розвідувальної аналітичної функції в загальну місію правоохоронної системи. Зазначено, що кримінальний аналіз будучи специфічним видом інформаційно-аналітичної діяльності поліції формує нову сферу взаємодії співробітників поліції з суспільством на основі аналітичної розвідки, яка має ряд особливостей, в тому числі в питаннях дотримання основоположних прав і свобод людини і громадянина. Зроблено висновок, що порушення прав та свобод людина при моделі поліцейської діяльності, керованої аналітичною розвідкою є контпродуктивним та неефективним в довгостроковій перспективі, оскільки це підриває довіру громадян до поліції, тому важливо, щоб різні оперативні методи збору інформації, які втручаються в права людей повинні мати ефективний контроль з боку судових або інших незалежних органів, до яких звертаються за попереднім дозволом поліцейські для проведення цих заходів.

Ключові слова: *права та свободи людини і громадянина, кримінальний аналіз, аналітична розвідка.*

Problem statement. In Ukraine, the protection of human and citizen rights and freedoms is one of the main tasks of the process of reforming Ukrainian society, which is of particular importance in the context of European integration in general and the reform of the National Police of Ukraine in particular.

The Strategy for the Development of the Ministry of Internal Affairs of Ukraine until 2020, within the framework of crime counteraction, draws attention to the low level of use of analytical tools of police in the fight against crime and the forecasting of relevant threats. based on the use of different sources of information (intelligence led-policing), comprehensive implementation of modern criminal analysis systems, including the Europol methodology [1].

Today we are already observing the creation of new analytical units of the National Police of Ukraine (Criminal Analysis Department of NPU) and the gradual transition of other police units to the use of modern information-analytical software and investigative methods (SOCTA), which certainly improves the effectiveness of the activities of police bodies and units during the execution tasks for the protection of human rights and freedoms and combating crime. Thus, implementing a model of proactive activity that replaces the dominant paradigm of reactive policing. Thus, with the introduction of new modern information technologies and highly intelligent software into police activity, a new field is emerging, where the issue of ensuring human rights and freedoms in the model of intelligence-led policing (ILP) is not yet

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discussed enough at the scientific level and at the legislative level, that is why this issue becomes relevant today.

Analysis of publications that started solving this problem. Some aspects of the use of the model of police activity, guided by analytical intelligence in the activity of law enforcement agencies, were considered in their scientific works Albul S.V., Varenko V.M., Yesimov S.S., Zaiets O.M., Ismailov K.Iu., Kytsiuk V.P., Korystin O.Ie., Movchan A.V., Nekrasov V.A., Ryzhkov E.V. and other scientists.

According to Udo Moller, Head of the Operations Department of the European Union Advisory Mission: «Some units of the National Police of Ukraine operate in accordance with some principles of intelligence-led policing, but at present this phenomenon is not yet part of the institutional culture of the Ukrainian police [2].

Professor Movchan A.V. in his writings analyzes the current problems of implementation in the bodies of the National Police of Ukraine model of intelligence-led policing [3, p. 17-22].

In the monograph «Organizational and legal support of analytical work in the system of the Ministry of Internal Affairs of Ukraine (law enforcement and security aspects)» Professor Korystin O.Ie. examines the fundamental rights, principles and content of basic elements in the system of analytical intelligence [4, p. 254-266].

Yes, there is still some imperfection in the methods and tactics of law enforcement, which is the result of the use of an outdated crime investigation system and not implementing of intelligence-led policing [5]. Today, however, the issue of human rights observance of police intelligence is hardly raised, and it is essential to ensure the effective short-term and long-term enforcement of law enforcement agencies, including intelligence-led policing. Law enforcement measures that do not respect and protect human rights are counterproductive and ineffective in the long run, as they undermine public confidence in the police as a whole.

The **article's objective**: based on the precautionary principle, the intelligence-led policing must be firmly based on human rights standards and promote the protection of human rights and freedoms, and be carried out in such a way as to ensure full respect for human rights, which is in line with the key principles of democratic policing.

Basic content. As for the national legislation of Ukraine governing public relations in the sphere of protection of human rights and freedoms, it is first of all the Constitution of Ukraine, laws and regulations, international treaties of Ukraine, the consent of which is provided by the Verkhovna Rada of Ukraine. Regarding specialized legal acts, it is necessary to highlight the Law of Ukraine «On National Police», which in Art. 2 stated that one of the main tasks of the police was to provide police services in the field of protection of human rights and freedoms, as well as the interests of society and the state. Section II «Principles of police activity» of the said law lists the basic principles that govern the police in its activities, namely:

- *Rule of Law.* Man, his rights and freedoms are recognized as the highest values and determine the content and orientation of the state.
- *respect for human rights and freedoms.* The police ensure the observance of human rights and freedoms, which are regulated by the legislation of Ukraine, and restricts human rights and freedoms when urgently needed and to the extent necessary for police tasks.
- *legality.* The police shall act solely on the basis, within the limits of their authority and in the manner specified by the legislation of Ukraine.
- *Openness and transparency.* The police ensure that public authorities and the public are kept informed of their activities in the field of protection and protection of human rights and freedoms, combating crime, ensuring public safety and order.
- *Political neutrality.* The police protect human rights and freedoms regardless of political beliefs and party affiliation.
- *Interaction with the community on the basis of partnership.* The activities of the police are carried out in close cooperation and interaction with the public on the basis of partnerships and aimed at meeting their needs.
- *Continuity.* The police ensure the continuous and round-the-clock fulfillment of their tasks [6, Art. 2, Art. 6-12].

We agree with the opinion of Kolodii A.M. and Oliinyk A.Iu., that police activity has an external and internal side. External aspect – ensuring the realization of a person's rights is characterized by the fact that the police: a) perform their tasks impartially, in exact accordance with the law; b) respects the dignity of the person and shows a humane attitude towards him; c)

protect human and citizen's rights regardless of origin, property and other status, race and nationality, citizenship, age, language and education, attitude to religion, gender, political and other beliefs; d) do not disclose information concerning a person's personal life, degrades his / her honor and dignity, unless his / her duties require otherwise; e) temporarily, within the limits of the current legislation, restrict the rights and freedoms of a person, if it is not possible to perform the duties assigned to him / her without this; e) ensure the right to protection and other legal rights of arrested and detained; g) create conditions for the exercise of rights, protects and defends the person from the offense, take all measures envisaged by law to restore the violated right. The internal side of the activity is characterized by the fact that the police: a) within the limits of their tasks and functions, their competence performs their duties; b) apply lawful measures of physical influence, special means and firearms; c) use legal and organizational forms and methods while ensuring human and citizen's rights; d) its employees should not violate the laws, rights and freedoms of the person [7, p. 293].

For police officers who carry out analytical work, it is extremely important to comply with the Law of Ukraine «On Personal Data Protection», which regulates legal relations related to the protection and processing of personal data, and is aimed at protecting fundamental rights and freedoms of individuals and citizens, in particular the right to privacy interference with the processing of personal data and extends to the processing of personal data, which is carried out wholly or in part by the use of automated means, as well as to the processing of personal data personal data contained in the file or intended to be included in the file, using non-automated means.

In Art. 7 of the mentioned law there are specific requirements for the processing of personal data, which are required by paragraph 1, which prohibits the processing of personal data on racial or ethnic origin, political, religious or ideological beliefs, membership in political parties and trade unions, sentencing to criminal penalties, as well as health, sexual, biometric or genetic data. However, personal data may be processed in accordance with paragraph 2 of the mentioned article, concerning the court's judgments, execution of tasks of operative-investigative or counter-intelligence activity, counter-terrorism and carried out by a state body within the limits of its powers defined by law [12].

Basic human rights norms are set out in international legal documents and standards such as the International Covenant on Civil and Political Rights [8] and the Council of Europe Convention on the Protection of Human Rights and Fundamental Freedoms [9]. Within which, one of the main responsibilities of the police is to protect citizens from actions that threaten their rights as a human being and the enforcement of these rights by law enforcement agencies.

In Ukraine, the implementation of a model of intelligence-led policing is actively addressed by international institutions as:

- European Union Advisory Mission (EUAM), which sent a letter No. 2017-EUAM-0062 to the Ministry of Internal Affairs of Ukraine on January 20, 2017, which contained: 1. Report on needs for the implementation of intelligence-led policing; 2. Schedule of support for implementation of the model of intelligence-led policing; 3. The EUAM vision of the requirements and expectations for candidates for training and study trips. In addition, international scientific events are conducted under the aegis of the EUAM, and a number of educational, practical, methodological and scientific materials have been released, which are devoted to the implementation of criminal analysis in the law enforcement activities of Ukraine.

- the Strategic Affairs Unit of the Organization for Security and Cooperation in Europe (OSCE) Transnational Threats Transnational Threats Unit, which in June 2017 issued an OSCE Handbook on Police Based on Operational Data and Information, as well as other regional training materials trainings on the subject.

In their teaching materials and during trainings, the EUAM and the OSCE constantly focus on respect for human rights and freedoms in intelligence-led policing, and cite specific international best practices. For example, at the OSCE event on December 12-13, 2019 in Kyiv, «Implementing proactive, operational-based and information-based approaches to the prosecution of transnational organized crime groups» gave an example of ethnic profiling (police activity against persons based on them) on stereotypical, broad, and unqualified assumptions regarding nationality, ethnicity, or religion) is discriminatory, and has proven to be an ineffective measure since it can be easily circumvented and, that criminal groups may avoid detection, picking up people who do not meet the predefined «profiles» signs. Alternative legal profiling methods based on specific evidence of criminal behavior rather than discriminatory assumptions can be used as a more effective tool in policing [10, p. 24].

According to Art. 17 of the International Covenant on Civil and Political Rights, no

person shall be subjected to arbitrary or unlawful interference with his or her personal and family life, arbitrary or unlawful encroachments on the integrity of his home or the secrecy of his correspondence or unlawful encroachments on his honor and reputation, and everyone has the right to protect the law against such interference or encroachment [8].

In order to ensure that intelligence-led policing are in line with international human rights standards and to avoid adversely affecting human rights, a number of fundamental principles must be observed when designing and implementing such activities at the national level [11, p. 57-59]:

- *The legal, administrative and institutional framework for the implementation of intelligence-led policing.* ILP must be based on clear and precise legal provisions that will set out the conditions in which they are to be implemented and ensure that they do not jeopardize human rights. In addition, police officers involved in intelligence-led policing should be properly trained in applying these laws, methods and rules in accordance with national and international human rights standards.

- *Legality, necessity and proportionality of limitations of human rights.* Such as the prohibition of torture and certain elements of the right to a fair trial, are absolute and cannot be restricted in all circumstances, international human rights treaties allow restrictions to be placed on certain rights, but only within clearly defined parameters (such as freedom of movement, right to privacy, freedom of expression, assembly, freedom to profess one's religion). Accordingly, interventions related to the conduct of police activities aimed at obtaining intelligence are only permissible when they are required by law and necessary in a democratic society for the legitimate purpose specifically mentioned in relevant international human rights standards and proportionate to this goal: that is, the law is the rule, restraint should remain the exception, and interference should always be the least intrusive means of achieving the goal.

- *Equality, non-discrimination and tolerance.* Ensuring everyone's human rights without discrimination on any grounds, such as race, color, gender, language, religion, political or other beliefs, national or social origin, property status, birth or other status. The protection of equality before the law and the prohibition of discrimination are the main responsibilities of the police in a democratic society. Therefore, when collecting, processing and analyzing information and intelligence, law enforcement agencies should, for example, refrain from discriminating. Similarly, when it comes to decision-making on the basis of operational data and information, police officers should exercise due care to avoid unduly harsh action on specific communities that could lead to discrimination. Particular attention should also be paid to the different impact of strategic decisions in the field of analytics-driven policing on women and men. Therefore, diversity and gender should be mainstreamed into police activities aimed at obtaining intelligence, which should be regularly reviewed for any discriminatory influence they may have on women and men or on specific communities.

- *Effective remedies, oversight and accountability.* International human rights standards provide for the right of every person whose rights or freedoms are violated to effective remedies by a competent judicial, administrative or legislative body. Because intelligence-led police activities can lead to potentially excessive human rights interventions, effective and affordable remedies for human rights violations that may result from these activities are important. In addition, to ensure that proper internal and external oversight mechanisms are in place to ensure the accountability of agencies and individual law enforcement agencies involved in intelligence-led policing. Such mechanisms may include control and oversight of executive bodies, legislative oversight committees, and independent external oversight and complaint mechanisms that enable individuals to obtain protection to ensure appropriate safeguards against abuse in the use of intelligence-led policing [10, p. 25].

Conclusions. Thus, the National Police of Ukraine has today adopted a modern management model for decisions on reasonable allocation of resources, taking into account the directions and spheres of activity of serial crimes and organized criminal groups, which involves the incorporation of intelligence analytical function in the overall Ukrainian law enforcement system. In this process, a new sphere of interaction between police officers and the public is formed on the basis of intelligence-led policing, which has a number of features, including in matters of respect for fundamental rights and freedoms of man and citizen, as the collection of data and information, as well as their processing, analysis and joint use, are integral elements of intelligence-led policing. Clear observance of human rights and freedoms is essential to ensure the short and long term effectiveness of the National Police. Law

enforcement activities that are abused and / or neglected are human rights that are counterproductive and ineffective in the long run, as they significantly undermine public confidence in the police. Therefore it is important that the various operational methods of gathering information, which represent different degrees of interference with human rights, have effective control by the judicial or other independent bodies, which are requested by police to seek appropriate action.

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Summary

In the article the basic national and international norms and principles are examined, which are used by police officers in conducting intelligence-led policing to ensure the standards of human and citizen rights and freedoms. It is noted that criminal analysis, being a specific type of information and analytical activity of the police, forms a new sphere of interaction of police officers with the society on the basis of analytical intelligence, which has a number of features, including in matters of respect for fundamental rights and freedoms of man and citizen. It is concluded that the violation of human rights and freedoms in the model of police intelligence-led intelligence is counterproductive and ineffective in the long run, since it undermines citizens' trust in the police, so it is important that different operational methods of collecting information that interfere with human rights should have effective scrutiny by the judicial or other independent bodies to which police officers seek prior permission to carry out these activities.

Keywords: *human and citizen's rights and freedoms, criminal analysis, analytical intelligence.*

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LEGAL REQUIREMENTS FOR THE PURCHASE, STORAGE AND WEARING OF WEAPONS IN UKRAINE

Дмитро Казначеєв, Дмитро Мусаелян. ПРАВОВІ ВИМОГИ ЩОДО ПРИДБАННЯ, ЗБЕРІГАННЯ ТА НОСІННЯ ЗБРОЇ В УКРАЇНІ. Здійснено аналіз відомчих нормативно-правових актів, що регламентують порядок придбання, зберігання та продажу вогнепальної зброї громадянам України, які ліцензійні вимоги існують в Україні щодо покупки, зберігання та продажу вогнепальної зброї фізичним особам і організаціям, відповідність їх сучасним реаліям. Проводиться ретроспективний аналіз щодо навчання вогневої підготовки кандидатів на придбання вогнепальної зброї за часів Радянського Союзу та в сучасній Україні. Розглядаються правові вимоги, в тому числі вікові терміни і параметри навчання, володіння та користування зброєю, ситуації, права, умови та підстави за яких громадяни України можуть придбати у власне користування нарізну вогнепальну зброю. Особлива увага приділена проведенню спеціального навчання навичкам

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поводження з вогнепальною зброєю осіб які бажають придбати її у власне користування, його тематична наповненість та передбачене навантаження. Також в статті розглядається порядок проведення попередньої перевірки дозвільними центрами МВС України, щодо дотримання громадянами України вимог передбачених законодавством. Надається стисла характеристика кваліфікаційних вимог до самої зброї, яка може бути придбана громадянами України у власне користування. Аналізується сам порядок і процедура купівлі, продажу та обліку нарізної вогнепальної зброї громадянами України та вносяться пропозиції щодо їх покращення та приведення у відповідність сучасним реаліям.

Ключові слова: *зброя, обіг зброї, права громадян на носіння зброї, зберігання та перевезення зброї самозахисту, правове регулювання, ліцензійні вимоги обігу зброї.*

Problem statement. Currently in Ukraine the legal requirements for the purchase, storage and sale of weapons are regulated by the order of the Ministry of Internal Affairs of Ukraine № 622 of 21.08.1998 "On approval of the Instruction on the procedure for the manufacture, purchase, storage, accounting, transportation and use of fire, pneumatic, cold and blade weapons, devices of domestic production for shooting cartridges equipped with non-lethal rubber or similar metallic projectiles and cartridges, as well as ammunition for weapons , major parts to weapons and explosive materials »[1]. Over the past 20 years, there were done more than ten changes and additions in this Order, the most recent changes were made in 2018, but all of them have only increased the control of the Ministry of Internal Affairs and changed the name of the relevant controlling bodies. To date, this instruction does not meet the modern requirements and wishes of the citizens of Ukraine, because all requirements for the purchase and trade of weapons have remained virtually unchanged since of the Soviet Union.

Analysis of publications that started solving this problem. The proposed topic is in the constant circle of scientific search, as it gives an opportunity to analyze the previous experience of the legal requirements for the acquisition, storage and carrying of weapons in Ukraine, identify any shortcomings and create the most effective legislation to further regulate the circulation of weapons in Ukraine.

The **article's objective** is to determine the legal requirements for the acquisition, storage and carrying of weapons in Ukraine.

Basic content. In modern Ukraine, are needed other requirements, and first of all not only for the purchase of weapons, but also for training citizens to use them. In the former Soviet Union, training in shooting and usage of weapons was conducted from the 4th year of secondary school. But was very difficult to buy weapons in Soviet state, because there was not need most citizens owners of firearms. Any citizen of the former Soviet Union could give life for the state with a weapon in his hands, since the age of 18, being a soldier of the Soviet Army. But they could acquire weapons for their own use only as a member of a hunting collective with a bunch of other requirements for acquisition, especially rifled weapons was only purchased at the age of 25. But, imagine, such requirements have remained in modern Ukraine!

At present, an absurd situation has arisen in our country, at a time when there is a war in the country, when many young men give their lives for the state, they have no right to buy their own rifles unless they are 25 years old. A citizen may be the hero of his country, may have the skills to use any weapon, be an officer and a respectable commander, but to purchase a weapon, if he is not 25 years old, he can not – prohibited by the requirements of the Order of the Ministry of Internal Affairs of Ukraine № 622 of 21.08.1998 (!). He must also provide a certificate of training in shooting, which is nonsense in itself. And the certificate is only a formality, and such formal training does not give lasting skills to use weapons to ordinary citizens. This "training" is conducted at couple lessons and gives only introductory theory of using weapons, and in most cases it remains only on paper. Some more requirements for the acquisition of weapons in modern Ukraine are unclear, such as certificates of mental status and drug dependence from any category of citizens, it is understandable if the person is not related to the armed forces, the Ministry of Internal Affairs, or other paramilitary structure, but why who already serves the state?! Changes in the rules of purchase of weapons and, first of all, in training to use weapons, why you need to study not one or two times, but for several months, like driving a car, are required to teach people the skills of handling weapons, legal rules, especially what is strictly prohibited when handling weapons, only then get the right to buy weapons. If a citizen violates the rules for the use and storage of weapons, he must pass an exam or be deprived of this right and certificate. But if a citizen has never violated legal requirements and wants to buy more weapons, then each time he must collect a bunch of information, which in itself is a prerequisite for creating bureaucracy and bribery. Why is it necessary to obtain a certificate from the Ministry of Internal Affairs Information Center for the absence of a criminal conviction from a person wishing to purchase a

weapon, if this information is not a secret for any employee of the Ministry of Internal Affairs? Of course, you need to know about the medical condition of a citizen who wants to buy a weapon. But why not open the accessibility of employees of permitting service of the Ministry of Internal Affairs to the account of people who are drug addicted or mentally disabled persons, and in case of registration to withdraw the weapon from such owner with forced sale? To oblige the relevant authorities to promptly notify the permitting servise of changes in a person's life, under which he or she may be deprived of the right to use a weapon. But if the person who has been trained has experience in using a weapon, you should be able to buy it freely, without collecting a bunch of information every time in a large bureaucratic system. The purchase must be made only after presentation of the certificate of the right to use the weapon, but the training should be not one day but few months, with the exam being passed before the commission of experienced employees of the permitting service (by analogy with the driving license exam). The exam should include questions not only about knowledge and ability to use a weapon, but also knowledge of regulations and emergency medical care. Another interesting question is the reconsideration of weapons every three years or less, it is a meaningless bureaucracy and the development of bribery! If there is a suspicion of misuse or possession of a weapon, the permitting services employee has the right to check compliance with the legal requirements. But constant recalculation gives nothing interesting except for the large amount ofunnecessary work and time spent because the experienced user knows what to do with the weapon before being check by the law enforcement agencies. It would be better to check the conditions of storage of the weapon more often, as the presence of safes at gun owners remains in most cases on paper.

Requirements for the acquisition of weapons need to be changed not only in the field of age restrictions, training periods and document collection, but also in the qualification requirements for the weapon itself, for example: to which class should small arms be assigned?

Requirements for the acquisition of small-caliber (rimfire) weapons the same as for the purchase of weapons of the fiftieth caliber, from the age of 25, but its impressive strength is the smallest, with it begin to learn to shoot students. In my opinion, rimfire rifles can be allowed to buy as well as shotgun. This is an example, but it is possible to develop a classification of weapons according to striking features, including range and deadly force. Currently, many new modern calibers that remain small in diameter can shoot very far. Even air rifles by their characteristics are not inferior to rifles of calibers 22lr or 17HMR.

Returning to age-old restrictions on the purchase of weapons, there is no difference in what class of weapons a citizen wants to buy if the lethal force of smooth-bore weapons can be much greater than that of rifled arms. Why does a citizen have the right to purchase a shotgun from 21 years old, a rifle from 25 years old, if the age of majority is from 18 years old and at the same time, from the age of 18, a citizen can serve to a power with arms in his hands. This age difference in the acquisition of weapons was in the USSR for another reason, namely: there was general military service, and by the year 21, the vast majority of men had served in the army and, accordingly, gained experience working with weapons, and by 25 years to prove themselves as a reliable supporter of the "party and government", which will not use arms against the communist state. Now there are no such problems. Therefore, I see no reason to do a difference in age when buying weapons; all we need to do is teach citizens how to use it legally.

A separate issue is the authorization to purchase "traumatic weapons," (pistols and revolvers for shooting rubber bullets of traumatic action) – another very bureaucratic procedure that only contributes to the development of bribery. The circulation and procedure of issuing permits for traumatic weapons is governed by the following normative legal acts: Order of the Ministry of Internal Affairs of Ukraine of August 21, 1998No. 622 “On Approval of the Instruction on the Order of…” , registered with the Ministry of Justice of Ukraine on October 11, 2000 under No. 696/4917 "On approval of the Provisional Instruction on the procedure for the purchase, storage, accounting, use and use of domestic production devices for shooting cartridges equipped with rubber or similar non-lethal projectile shells, and the said cartridges, by court employees, law enforcement agencies and their close relatives, as well as by persons involved in criminal proceedings ”[2]. Why this order is still considered "for official use", if this secret is freely available on the Internet. But the main thing is that Order # 379 identified a separate category of citizens, called the "special category", who is allowed to purchase traumatic weapons, what is a direct violation of the Constitution of Ukraine, which made all citizens equal, in any case, "special category of citizens" should not be. In my article “The Legal Basics of the Self-Defense Weapons Circulation in Modern Ukraine” I wrote that the requirements for “traumatic” weapons should be changed. Also, the absence of any restrictions on the barrel of a traumatic weapon makes it virtually a smooth-bore weapon with the impossibility of

controlling the charges used. In fact, the so-called "traumatic" weapons are smooth-bore, short-barreled and firearms, because the rigidity of the rubber bullets and the power of such bullets are difficult to control, and with such weapons it is possible to shoot lead bullets or balls. The point of having a traumatic weapon is to do less harm to the victim than when firing a military weapon. But in our case, when most people reinforce bullets in any way, traumatic weapons are just an opportunity to manipulate citizens' desire to buy short-barreled firearms. In continuation of the conversation about short-barreled weapons, we have a separate category of citizens who own combat pistols – these are the people who received award weapons. Among them are real heroes who have been awarded for their feats of war, but there are also many who have found the opportunity to win such rewards through personal connections, often repeatedly. Why this question? Weapons, received as a reward, can be carried with you for self-defense without constant re-registration; the permit issuing service is not allowed to seize it until the owner dies. Let's also change this issue, because again it is a "special category of citizens". Either this award stay at home with the right to wear only in military or police uniforms, or it is necessary to provide citizens with equal rights guaranteed by Article 41 of the Constitution of Ukraine. [4]

There is another interesting question about buying a weapon – it is a permit to buy weapons for businesses. Nowadays only a limited numbers sport-education enterprises can purchase firearms, but not security companies. This leads to the fact that the heads of security companies draw up documents on weapons for their employees as private individuals and re-register them in case of dismissal. As a result, control over the availability of weapons by employees of such an enterprise is significantly complicated. This preserves the monopoly of the Ministry of Internal Affairs on security companies with the ability to work with military weapons. It would be better to develop conditions for the acquisition of weapons by enterprises with a mandatory weapons warehouse, which is constantly monitored by the relevant department of the Ministry of Internal Affairs. Also determine the following conditions: the minimum required number of employees of the enterprise, the minimum required number of years of work of the company in this profile, requirements for the manager (work experience), requirements for employees who will be entitled to work with weapons. All these issues must be under the strict control of the Interior Ministry. Expand the number of working shooting galleries and training ranges that have the right to teach people the skills and culture of using weapons. If the citizens of Ukraine get more opportunities to learn how to shoot and understand how the legal requirements work, they will be more responsible for the acquisition and storage of weapons. It is difficult to control the carrying and storage of weapons by citizens, but only because the personnel issuing the permits work more to collect a pile of papers than to check these issues and prevent offenses in the circulation of non-military weapons. It is much easier to inspect trading companies with a permit to sell weapons that are interested in compliance rules, so as not to lose that right. There is another small issue in the arms trade, it is the trade in blade weapons. Each trading company must sell a knife with a certificate from an expert center that the knife is not a cold weapon, but most of these products are sold in disassembled condition, because after the sale only the buyer is responsible for it. The knife is defined as a cold weapon should be with a number that the seller must record in any weapons permit, but there is no clear description of knives, as there is no understanding of how to control, if possible, to have several knives with the same number on the blade. It is necessary to change the signs of cold steel or to exclude this concept from the permitting service, since an ax is not considered a weapon, but can be more dangerous than any knife. In my opinion, the concept of "cold weapons" can remain only as a legal term in the qualification of criminal offenses and crimes. There are many more issues related to the storage of weapons, depending on the number of units available to the owner, especially when it is a collection of historical weapons, but collectors and gun lovers are law abiding citizens and respect the existing requirements of the law.

Conclusions. Most people are interested in the requirements for carrying and transporting weapons, which also need updating. For example, are people most often asked whether it is legal or not to carry a cartridge in a chamber? What is the responsibility for the offense and how is it checked? The fact is that there is no criminal liability for such an offense, and it is not required. so there’s no point in checking, this is only a prerequisite for abuse of power by the police. World experience shows that carrying a cartridge in the chamber is a desirable and even a necessary condition for the use of self-defense weapons, so in the world, and develop many new models of weapons with reliable automatic fuses. But the culture of handling weapons is that the experienced user will not leave the cartridge in the chamber unnecessarily, and don't leave the weapon unattended. I would like to ask the person who wrote this provision and how to distinguish a revolver type weapon? The revolvers do not have a separate chamber and sometimes a fuse. Whether or not to leave a

cartridge in the chamber when carrying a weapon is another problem that needs to be eliminated when developing new requirements for carrying and storing weapons. It is much more important to pay attention to the transportation of weapons in cars, especially when the owners are leaving them there. Responsibility for this should be increased, since weapons left unattended in a car can be easy prey for car thieves. The owner must not leave the weapon in the car unattended. All these issues must be taken into account when writing the law on weapons.

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Summary

The article clarifies what licensing requirements exist in Ukraine for the purchase, storage and sale of firearms to citizens and organizations, examines the legal requirements, including the age and parameters of training, possession and use of weapons, rights and conditions for the acquisition of weapons.

At the same time, the law regulates the concept of civilian weapons that is available for purchase and which can be used as a weapon of self-defense within the framework of the necessary defense in accordance with Art. 36 of the Criminal Code of Ukraine. It is concluded that today in Ukraine, in order to legalize the free circulation of weapons for the purpose of self-defense, it is necessary to fulfill a number of requirements: definition and observance of the boundaries of necessary defense; training, obtaining permission to purchase weapons only after passing the exam; definition of the category of citizens who can not have such a right; to provide high-quality and timely state control over the circulation of weapons

Keywords: *weapons, arms trade, ownership rights of citizens, storage and transportation of self-defenses firearm, legal regulation, licensing requirements arms traffic.*

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CURRENT METHODS OF PUBLIC SECURITY DURING THE PROTECTION OF PUBLIC ORDER: BASIC ASPECTS

Василь Поливанюк, Валерій Біліченко. СУЧАСНІ МЕТОДИ ЗАБЕЗПЕЧЕННЯ ПУБЛІЧНОЇ БЕЗПЕКИ ПІД ЧАС ОХОРОНИ ГРОМАДСЬКОГО ПОРЯДКУ: ОСНОВНІ АСПЕКТИ. Досліджено механізм забезпечення публічного порядку і безпеки у сучасних умовах, зокрема створення інноваційних інструментів і прийомів протидії порушення порядку, встановленого законом. Здійснено характеристику основного методу профайлінг та встановлено основні положення щодо застосування такого. Досліджено питання застосування спеціальних засобів: електрошокерів та вогнепальної зброї. Наголошено на необхідності впровадження профійлінга у практичну дільність МВС України.

Досліджено питання використання прийомів та інструментів, які активно використовуються для забезпечення громадського порядку. Комплекс заходів щодо особистої безпеки характеризується необхідністю володіти поліцейськими навичками, спеціальними знаннями та навичками поводження з великою кількістю людей та за наявності численних провокацій, а також можливих терористичних проявів при забезпеченні громадської безпеки. Профайлінг – це прогресивний метод забезпечення громадської безпеки та порядку, який використовується в контексті боротьби з терористичними актами, це сукупність психологічних методів і методик оцінки та прогнозування поведінки людини на основі аналізу найбільш інформативних приватних ознак, характеристик зовнішності, невербального і вербального поведінки.

Поєднання теоретичного навчання профілювання та практичного досвіду співробітників МВС України та інших правоохоронних органів може стати серйозною зброєю у боротьбі з тероризмом. Ефективність застосування технології профілювання багато в чому залежатиме від рівня підготовки та професійного досвіду працівника. Крім того, досить актуальним є питання застосування нового в сучасній системі боротьби зі злочинністю спеціального інструменту – пристрою оглушення. Однак багато питань виникають у зв'язку з використанням поліцією вогнепальної зброї на підставі закону. На жаль, механізм гарантування прав та свобод правоохоронця на сьогодні остаточно не є врегульованим.

Ключові слова: *особиста безпека, публічний порядок, публічна безпека, терористичні прояви, тероризм, профайлінг, електрошокер, спеціальні засоби, заходи примусу.*

Problem statement. Today, the issue of ensuring personal security while protecting public order is irrelevant in the activities of the National Police of Ukraine, regardless of the official situation of the police officer. It is important to have basic professional skills in order to ensure personal safety and to prevent the possible negative consequences that may result from negligent compliance with the elementary rules of professional discipline. In addition, it is impossible to overlook the use of techniques and tools that are actively used today to ensure public order.

Analysis of publications that started solving this issue. The topic of ensuring public order and security in modern conditions is covered by national scientists in the context of the

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information component, as well as methods of security (V. Konakh, Y. Maksimenko), the development of international cooperation in this field (Y. Romanchuk), the role in the context of European integration (Dubov) and the fight against terrorism (I. Alekseenko, D. Kislov), mechanisms of implementation in a particular region (V. Kozubsky) or in the media space (G. Sashchuk).

Basic content. In the field of regulatory support of the National Police of Ukraine, a number of legal acts have been created in order to coordinate the actions of police officers in the performance of their duties. In addition, the regulatory framework provides for the legitimate use of physical force, special weapons and firearms, which can also be considered as a form of providing police with their own security against further harmful consequences that may arise from the unlawful use of coercive measures provided for by current legislation, which may exceed the full .

Personal security is a system of organizational, legal, physical and tactical-psychological measures that allow to preserve the life and health of an employee of the National Police of Ukraine and maintain a high level of effectiveness of his professional actions [1].

Rather, personal safety can be considered as a result of compliance and enforcement, as well as a set of measures aimed at reducing the level of occupational risk to the minimum possible, which allows:

– to guarantee the preservation of life and health, that is, the creation of a subjective opportunity for the police to be able to navigate a difficult professional situation and, as a consequence, not be adversely affected;

– to guarantee the normal mental state of the employee, because the ability to act correctly and consistently in a critical situation allows you to maintain mental balance and confidence in their actions;

– to guarantee the police officer's ability to deal with professional issues with high efficiency, which allows him to solve complex professional issues in a mobile way.

In addition, it should be noted that personal security as a tactical category is characterized by a certain specificity, ie conditions, content and forms of professional activity, as well as the presence of special measures of organizational, legal, managerial and logistical nature, which are combined with professional and psychological training. Undoubtedly, the police officer, while maintaining public security and order, must have the skills, special knowledge and skills to deal with a large number of people and subject to numerous provocations as well as possible terrorist manifestations, which is a pressing problem in today's globalized society. This problem exists in Ukraine as well.

In today's globalized society, the issue of public security, which is provided by relevant public authorities, mainly executive bodies, with special powers, is particularly acute. In particular, in Ukraine, such a body is the National Police of Ukraine, whose main tasks include ensuring public security and order. To accomplish this task, innovative tools and techniques are created to counteract the violation of the procedure established by law. That is why law enforcement officers, according to the requirements of the time, develop a method of counteracting the attempts of public disorder.

Profiling is a progressive method of ensuring public safety and order that is used in the context of combating terrorist acts. This technique is actively distributed not only in the bodies of the National Police of Ukraine, but also in those services or units that provide public order, external and internal security. The use of profiling technology allows to identify potentially dangerous citizens in the early stages [2, p. 134].

Profiling is a set of psychological methods for assessing and predicting human behavior based on appearance characteristics, analysis of the most informative individual personality traits. [3, p. 21]. The main purpose of profiling is to identify potentially dangerous persons, and its basis is the visual diagnosis of a person's psycho-emotional state (observation and special questioning; fixation of psychological behavioral responses to responses – non-verbal and verbal). Profiling uses two main diagnostic methods: the method of psychological observation (to look and find the mismatch) and the method of questioning (to ask and observe the reaction) [4, p. 20].

The concept of profiling is based on the fact that unlawful action and its preparation can be detected by analyzing a certain set of physical, psychological, behavioral traits that characterize suspects from the standpoint of their potential danger. There are indicators that are critical for a person to be at risk, particularly terrorists: demonstrative aggression; covert aggression; excitement; alienation. The emotional state of a person, which is judged by signs of anxiety, fear, excitement and others, is considered in profiling as an additional factor in the analysis of the iden-

tified dominant signs. There are key signs in non-verbal and verbal human behavior that allow profilers to identify a terrorist in a human stream and to classify it as potentially dangerous.

Today, profiling has been successfully used in a number of airlines for security at airports in European countries as well as in Ukraine. This technology has been used for many years by the Israeli airline El Al, one of the safest in the world. In 1968, it was her staff who developed this method of counter-terrorism. In the US, profiling programs are also in place to search for and accumulate statistics from suspicious behaviors [5]. At the heart of the Israeli concept of profiling is the notion that every passenger can be a terrorist and every item an explosive device. Therefore, all activities undertaken within the framework of this technology are intended to confirm or refute this claim.

Profiles take into account many psychological features of terrorists, adapting them to the specifics of their activities. Further work in this direction should, in our opinion, be directed towards the fusion of theoretical knowledge and practical skills, since profiling is the area of anti-terrorist activity that allows to realize this principle most clearly.

Generally speaking, one of the most important tasks of effective use of profile programs in the system of national and human security is the training of specialists intended for the implementation of these programs. A significant advantage of the profiling technique in its flexibility and versatility, which makes it possible to apply it to both special services and police and military at any mass gathering of people, as well as in the field of public order policing, operational search, counteracting drug trafficking and the like.

Profiling is not the only effective, innovative method used by police officers to ensure public safety. Although not widely used in modern service, it offers excellent prospects for detecting and preventing crimes against public security.

In addition, as noted above, the use of special facilities is an integral part of ensuring police safety. In particular, the use of stun devices to stop a public-order offense.

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Employees of the National Police of Ukraine have the right, in accordance with the law of Ukraine "On the National Police of Ukraine" to use stun devices as a measure of coercion. That is why such application will be quite legal and will not require additional legislative support. In addition, active procurement and implementation of such funds is underway, albeit for a minimal reason. According to Avakov on the active introduction of stun guns in law enforcement activities of the National Police of Ukraine, said in 2016, it should be concluded that stun devices have long had to be widely used by police, that is, from cadets, which is to study their rules, to study their rules safety measures and principles of operation of the device [8].

The most severe and problematic measure of coercion is the use of firearms, so the tactical skills and knowledge of a police officer, as well as his ability to find a solution to a difficult situation, must be perfect. In domestic practice, recently the situation is such that the police, understand-

ing the consequences, albeit the normatively justified use of firearms, avoid the enforcement and application of this measure of coercion, which sometimes leads to their failure to exercise their powers, the inactivity of their special means, and also causing harm to the lives and health of other citizens, which causes no less condemnation than the use of firearms. Based on this situation, one can ask the question: how to act in such situations to the employee of the National Police of Ukraine and how the mechanism of supervision of cases of use of firearms in the system of the Ministry of Internal Affairs of Ukraine should be improved.

At the legislative level it is stated that the use of firearms is the most severe measure of coercion [6]. This provision is stated in Article 46 of the Law of Ukraine "On the National Police". The use of firearms by police officers always entails certain consequences, the assessment of which depends on the reaction of the public and the authorities. That is why the problem of the implementation of the current legislation at all levels of society, the citizens' awareness of the real ability of police to use firearms to prevent or terminate unlawful acts under the provisions of Article 46 of the above law is quite relevant [6]. Modern domestic society should take into account the principle of lawfulness of police actions and give priority to the realization that the law enforcement officer acts solely within the law.

Conclusion. Ensuring the personal security of a police officer is an important part of his or her professional activity. Today, one of the most important tasks for the education system of employees of the Ministry of Internal Affairs of Ukraine is the organization of training of profiling technology. The effectiveness of the application of profiling technology will largely depend on the level of training and professional experience of the employee. The combination of theoretical profiling training with the practical experience of Ukrainian MIA staff and other law enforcement agencies can become a serious weapon in the fight against terrorism. In addition, the question of the application of a new in the modern system of crime control of a special tool – the stun device – is quite relevant. Many questions arise in connection with the use of firearms by police on the basis of the law, however. Unfortunately, the mechanism of guaranteeing the rights and freedoms of the law enforcement officer is hardly regulated today.

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Summary

The article deals with the use of techniques and tools that are actively used today to ensure public order. The set of measures for personal security is characterized, characterized by the need to possess police skills, special knowledge and skills in dealing with a large number of people and in the presence of numerous provocations, as well as possible terrorist manifestations while ensuring public security. To accomplish this task, innovative tools and techniques are created to counteract the violation of the procedure established by law. That is why law enforcement officers, according to the requirements of the time, develop a method of counteracting the attempts of public disorder. Profiling is a progressive method of ensuring public safety and order that is used in the context of combating terrorist acts. The main purpose of profiling is to identify potentially dangerous persons, and its basis is the visual diagnosis of the psycho-emotional state of the person (observation and special survey; fixation). The most severe and problematic measure of coercion is the use of firearms, so tactical skills and knowledge of the field The use of firearms by police officers always entails certain consequences, the assessment of which depends on the reaction of the public and the authorities.

The combination of theoretical profiling training with the practical experience of Ukrainian MIA staff and other law enforcement agencies can become a serious weapon in the fight against terrorism.

Keywords: *personal security, public order, public security, terrorist acts, terrorism, profiling, stun gun, special means, coercive measures.*

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SECURITY ISSUES OF THE KYRGYZ REPUBLIC: POLITICAL AND LEGAL ASPECTS

Назгуль Шаршенова. ПРОБЛЕМЫ ОБЕСПЕЧЕНИЯ БЕЗОПАСНОСТИ КЫРГЫЗСКОЙ РЕСПУБЛИКИ: ПОЛИТИКО-ПРАВОВЫЕ АСПЕКТЫ. Рассмотрены теоретические аспекты обеспечения национальной безопасности, на основе анализа которых уточняется определение данного понятия. К проблемам, требующим повышенного внимания, в последнее десятилетие прошлого и настоящего века отнесены неравномерное экономическое развитие регионов, истощение природных ресурсов и разрушение окружающей среды, нелегальная миграция, этнические и религиозные конфликты, транснациональная организованная преступность и международный терроризм. Иначе говоря, произошел переход от «жестких», милитаристских вызовов безопасности к «мягким», носящим преимущественно гуманитарный характер, «выплескивающимся» за пределы государства. Для полноты картины необходимо указать на эволюцию «мягких» угроз безопасности. В начале 1990-х годов на первом месте по значимости находились экологические и природоохранные проблемы, наряду с нелегальной миграцией. К началу 2000-х годов акцент все более смещается на такие вызовы мировой безопасности, как транснациональная организованная преступность и международный терроризм. Прямым подтверждением тому служит повсеместный рост проявлений насилия в виде терроризма, имеющего одним из источников усиливающееся экономическое и социальное неравенство. Не менее актуальным остается и вопрос о будущем международных отношений как исходной точки в формировании системы международной безопасности. Дискуссии характеризовались разноречивым видением ее будущего, положив начало продолжительному обсуждению данной проблематики.

***Ключевые слова*:** *национальная безопасность; угроза информационной безопасности; обеспечение информационной безопасности; цель; задачи и субъекты обеспечения политических механизмов в обеспечении безопасности; выявление и противодействие угрозе национальной безопасности.*

Problem statement. Recent achievements of science and technology have led to rapid changes in social, economic and political processes due to information and technologies spheres development. At the same time, information technology is becoming one of the main factors affecting the lives of people, societies and even whole countries. Information society was formed

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gradually, sequentially, with the development of information technology. Technologies development, as well as their use by government institutions assumes that they will help realize constitutional rights of citizens, contribute to improving human wellbeing by increasing business competiveness in the country, which will have a positive impact on statehood strengthening.

The increasing role of the media and communications including electronic ones in manipulating public opinion contributes to the intervention of some states in the internal social and political spheres of Kyrgyzstan turning it into a battlefield of information and psychological information war [1, p. 1].

The **article's objective**. In this regard there is a need to develop an effective state policy in the information sphere in order to maintain sovereignty and strengthen the political, economic and military stability of the country. The national security of the Kyrgyz Republic in modern world is heavily determined by the degree of information and psychological field security and the effectiveness of society information sphere.

Basic content. The state information protection system in the Kyrgyz Republic was established in 1973 on the basis of the Soviet Union political situation which mainly operated in the interests of the Ministry of Defense and the Military and Industrial complex. Information protection was realized on the «secrecy» principle. Much has changed in the field of information security protection after the USSR collapse and the Kyrgyz Republic sovereignty, meanwhile information field has remained unprotected.

The following measures to secure information security have been taken in the country in recent years, in particular: the formation of National Agency for Information Resources, Technologies and Communications (2006); the Interagency Commission on Information Security (2007); Advisory Board of the State Communications Agency under the Government of the Kyrgyz Republic (2010); Information Policy Council under the Ministry of Culture, Information and Tourism and the State Committee of Information Technologies and Communications (2016).

The state policy in the field of ensuring information security is based on compliance with the Constitution and legislation of the Kyrgyz Republic, in particular, on the laws «On Information», «On Guarantees and Freedom of Access to Information», «On Communications», «On Copyright and Related Rights», «On obligatory copy of documents», «On the protection of State Secrets of the Kyrgyz Republic», «On the Media» as well as the Criminal Code, the Civil Code of the Kyrgyz Republic, etc. A draft version of the Concept of Information Security of the Kyrgyz Republic is being developed currently. In addition, the Kyrgyz government is taking steps to realize extensive measures to improve information security. In particular, the legal framework for information security and the mechanisms for its realization are being formed, work on preparation of draft laws regulating public relations in the information sphere with reference to the requirements of modern realities is in progress.

At the same time, an analysis of the state of information security shows that legislative base in force if insufficient, since many issues do not have appropriate legislative regulation and the issue of national information space forming is not touched upon, when covert attacks are carried out by «external players» using the latest technologies.

As of today, the current information infrastructure in the republic is at the formation stage and information systems included into it do not often have access to open communication networks. Specific state policy in the field of national information space creation, the media system development, international information exchange organization is absent. In this context we can note the deterioration of the situation in safety ensuring of information consisting state secrets.

In addition, there has been a significant expansion of space and methods of information safety ensuring in the past 15 years. This process is well represented in special studies on global security, taking into account the transition to orientation to the so-called «soft power 2.0» and those challenges that form global information society and emergence of new sources of threats and crimes [2, p. 98-103].

At the same time, the use of information and communicative technologies (ICT) by state bodies makes it possible to effectively transform the procedures of providing services to citizens, increase efficiency and transparency of its apparatus work and, respectively, the level of citizens' trust towards the state. The development of ICT has also led to media new format formation – all Internet users act as media audience now. Many information agencies have not only their broadcasting web portals but also pages on social networks. According to research, almost 80% of all Internet users in Kyrgyzstan are signed up on one or another social network, automatically increases the visibility of all articles in this kind of media. So-called Internet blogs can be considered separately.

With the current development of technology goals are achieved much faster and more efficiently as a result of new types of struggle, namely, struggle for information space. As a result of this struggle, a new spectrum of so-called information threats appears. Threats of this type are mainly carried out with the help of a special selection of information aimed at society splitting. Such information can be notionally named «an information tool» and with its help it becomes possible to damage the vital interests of the state and this this damage can be significant in its destructiveness.

Thus, the destructive effect of an information tool can affect all areas of society functioning. As of today, the information sphere of the Kyrgyz Republic, like any other modern state, has an active impact on all components of national security of the state, namely the political, economic, military, social, environmental and other spheres. And as information and communicative technology formation is developing rapidly, there is a direct correlation between national security ensuring and state information sphere, that is, state information security ensuring becomes one of the most prioritized areas of ensuring and with the development of ICT this dependence will be traced even more. And that is why the information security theory studying and ensuring its application in practice becomes an urgent task not only for state bodies but also for academic community in the Republic.

One of the most important factors in public administration optimizing is the target management of the information sphere in the state domain. It includes the formation and expansion of various kinds of information impacts and the management of information resources and information flows. Along with this, management includes the development of both the state information and communicative infrastructure and information products, services and technologies market.

The idea of open information society forming in the form of a sovereign state space, which could integrate into global information space and at the same time serve national interests and features ensuring state information security, is the goal of information security policy of Kyrgyzstan. The creation of a developed information space implies the active use of information sharing networks and telecommunication systems, mass computerization of collecting and processing information processes in all spheres of activity. This process has covered practically all countries of the world and is currently one of the main factors of their social, scientific, technical and, as a consequence, economic development.

A necessary condition for the effective implementation of policy of ensuring and maintaining the state of information security is the development of technological and organizational measures to protect public administration structures from unauthorized influence on state communication systems carried out with the aim of causing damage to the especially important interests of both the state as a whole and society and each citizen.

With the information and communication technologies development, especially if to consider what impact so-called social networks have on information space of any state, it has become especially relevant during the recent events in Syria when terrorist organization actively used social networks such as Facebook, Instagram and others for recruitment. In social networks of this kind, developers put privacy (secrecy, that is, protection against unauthorized access) of the users' correspondence and messages in closed groups to the foreground, it is almost impossible to track illegal activities of such organizations. Moreover, not only the Kyrgyz Republic but also countries with more developed information and communication infrastructure were not ready for threats of this kind of information and, as a result, national security.

The Internet has become not just a system but a social and technical system of systems. All spheres of human life as well as information flow in government bodies and agencies to a greater or lesser extend depend on software and information and communication technologies. With the growing role of this system, the number of crimes committed with the help of computer technologies is growing and, thus, when it comes to the exchange of information of national importance, the risks for state information security are growing. Although many models for analyzing cybercrime have been proposed, in the human mind a crime committed in cyberspace is not a crime to be punished.

The experience of recent history shows that information can serve as a source of political and social threats. It is for this that political and legal mechanisms for regulating information and information flows are necessary.

Conclusion. To sum it up, we find it efficient to determine the following areas:

- to create a single body coordinating safe collection, storage, processing, transmission and data dissemination. To do this, it is necessary, first of all, to develop a regulatory framework which would define information security levels, what kind of information is related to a

particular level, it is also necessary to consider and standardize cryptographic means of information confidentiality and integrity protection. On the basis of this system it is necessary to develop political and legal mechanisms regulating the activity of these structures;

-to sign agreements with other states in the field of cooperation to prevent cybercrime, as well as the impact of religious extremist and terrorist groups through ICT; with the increasing role of the Internet in the information space, the need to protect human rights and freedoms and society from information that promotes violence and cruelty, imposing false and inaccurate information, from the purposeful formation of a negative worldview of the young generation arises. Moreover, sources of external threats may be outside the jurisdiction of the legislation of the Kyrgyz Republic, which significantly complicates the application of the system of legal measures;

- as it was noted many times, it is necessary to train personnel to counter technical intelligence, protect from information weapons and improve legislative framework in this area;

-it is necessary to support and encourage the capabilities of state and public mass media in order to provide reliable and balanced information in timely manner to all citizens of Kyrgyzstan and foreign audience and also provide government support for the activities of domestic news agencies in promoting their products on the foreign market. But, in our opinion, it is necessary to recognize the objective necessity of legislative restriction (regulation) of media freedom, which is the only way to ensure legal equality in information relations;

- the media, acting as an instrument of interaction, should not strike into the state and society on the path of their confrontation, especially for the purpose of demonstrating their own independence, which sometimes happens in our reality. Independence of the media is not a guarantee of its objectivity. It is well known that the press supporting only the ideas of its own freedom and independence in the future stops reflecting the interests of the individual, society, and the state, that such press creates situations of information danger;

-to improve the legislative framework on the media, to develop the branch of information law and personnel policy on this problem in Kyrgyzstan. It is imperative to organize such a system for training personnel working in the field of information and information technologies (government order) so that they are not subject to unfriendly influence from the outside and theoretically skilled in the field of information security.

We consider it necessary to carry out international cooperation in the field of ensuring information security of the state and to represent the interests of the Kyrgyz Republic in appropriate international organizations.

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Summary

The theoretical aspects of ensuring national security are considered, based on the analysis of which the definition of this concept is clarified. In the last decade of the last and present centuries, the uneven economic development of the regions, the depletion of natural resources and the destruction of the environment, illegal migration, ethnic and religious conflicts, transnational organized crime and international terrorism have been identified as issues requiring increased attention. In other words, there was a transition from «hard», militaristic security challenges to «soft» ones, which are mainly humanitarian in nature, «spilling out» of the state. To complete the picture, it is necessary to point out the evolution of «soft» security threats. In the early 1990s, environmental and environmental issues, along with illegal migration, were in first place in importance. By the early 2000s, the emphasis was increasingly shifting to such global security challenges as transnational organized crime and international terrorism. A direct confirmation of this is the widespread increase in the manifestations of violence in the form of terrorism, which has one of the sources of increasing economic and social inequality. No less relevant is the question of the future of international relations as a starting point in the formation of an international security system. The discussions were characterized by a contradictory vision of its future, laying the foundation for a long discussion of this issue.

Keywords*: national security; threat to information security; ensuring information security; target; tasks and subjects of ensuring political mechanisms in ensuring security; identification and counteraction to a threat to national security.*

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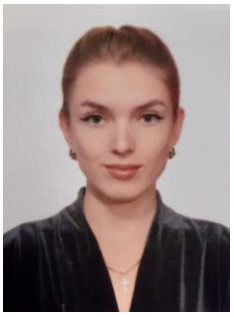

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LEGAL STATUS OF MILITARY JUSTICE UNDER THE SPECIAL PERIOD AND UNDER CONDITIONS OF CRISIS SITUATIONS THAT THRATEN STATE SECURITY

Анна Бизова. ПРАВОВИЙ СТАТУС ВІЙСЬКОВОЇ ЮСТИЦІЇ В ОСОБЛИВИЙ ПЕРІОД ТА В УМОВАХ КРИЗОВИХ СИТУАЦІЙ, ЩО СТАНОВЛЯТЬ ЗАГРОЗУ НАЦІОНАЛЬНІЙ БЕЗПЕЦІ. У статті проаналізовано законодавство у сфері регулювання правового статусу військової юстиції в Україні. Досліджено поняття «правовий статус», «особливий період», «кризові ситуації, що загрожують національній безпеці». Здійснено розмежування понять «особливий період» та «кризові ситуацій, що загрожують національній безпеці» щодо діяльності органів військової юстиції.

Оголошення рішення про мобілізацію (крім цільової) або доведення його до виконавців стосовно прихованої мобілізації; введення воєнного стану в Україні або в окремих її місцевостях, що охоплює час мобілізації, воєнний час і частково відбудовний період після закінчення воєнних дій; крайнє загострення протиріч, гостра дестабілізація становища в регіоні, країні, що загрожує державному суверенітету, територіальній цілісності, демократичному конституційному ладу та іншим національним інтересам України визнано як умовами введення режиму особливого періоду, так і ознаками кризової ситуації, що загрожує національній безпеці. Наголошено на консолідації всіх державних органів під час особливого періоду та в умовах виникнення кризових ситуацій, що загрожують національній безпеці.

Констатовано відсутність теоретичних основ та напрацьованих моделей функціонування органів військової юстиції під час особливого періоду та в умовах виникнення кризових ситуацій, що загрожують національній безпеці. Зроблено висновок про необхідність внесення змін у законодавство України з метою закріплення повноважень органів військової юстиції під час особливого періоду та в умовах виникнення кризових ситуацій. Підтримано тезу, що розгляд військової юстиції як лише діяльності військових суддів не дасть об'єктивної можливості всебічно забезпечити розв'язання спорів, захист прав і свобод людини, інтересів підприємств, установ, організацій та держави під час воєнного часу.

Запропоновано розглядати правовий статус органів військової юстиції крізь призму визначення їх завдань, функцій, компетенції і повноважень, форм, методів та цілей діяльності, але з урахуванням специфіки, яка притаманна особливому періоду та/або умов кризових ситуацій, що загрожують національній безпеці, що виникла та впливає на відповідну діяльність органів військової юстиції.

Ключові слова: *правовий статус; військова юстиція; особливий період; кризові ситуації, що загрожують національній безпеці.*

Problem statement. State policy in the fields of state security and defense is aimed at the protection of: human and citizen – their lives and dignity, constitutional rights and freedoms, safe living conditions; society – its democratic values, prosperity and conditions for sustainable development; the state – its constitutional order, sovereignty, territorial integrity and inviolability; territory, the environment – from emergencies [1]. Achieving this goal is possible if all public authorities are consolidated, especially during a special period and in the event of crisis situations that threaten national security. Therefore, it is necessary to provide in the legislation for specific powers of state bodies that will act during a special period and in the event of crisis situations that threaten national security, including the prospect of creating a system of military justice.

Due to the armed conflict in the East of Ukraine, military-political instability in the Middle East, the struggle for influence on global financial and energy flows, the increasing military-political instability is increasing. Leading states are increasing the size of military spending, intensifying the development of new weapons, increasing the intensity of military exercises [2].

Therefore, in accordance with the Military Doctrine of Ukraine, the actual military threats to Ukraine are armed aggression and violation of the territorial integrity of Ukraine (temporary occu-

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pation by the Russian Federation of the Autonomous Republic of Crimea, the city of Sevastopol and military aggression of the Russian Federation in certain regions of Donetsk and Luhansk regions). Federation in close proximity to the state border of Ukraine, including the potential deployment of tactical nuclear weapons on the territory of the Autonomic Republic of Crimea [2].

In such circumstances, there are events that do not fall under the existing classification of emergencies where there is a threat to national security and no actual hostilities. This situation should be attributed to crisis situations that threaten national security or a "special" period that precedes an emergency. In such circumstances, it is necessary to intensify preventive measures aimed at improving the system of interaction of public authorities during a special period and crisis that threatens national security. Particularly urgent is the issue of the creation of military justice as a system of bodies with powers sufficient to respond effectively and adequately to external threats. Thus, in the face of further aggression by the Russian Federation, the study of the legal status of military justice bodies becomes especially relevant.

Analysis of publications that started solving this problem. It is important to note that, despite the exceptional importance and relevance of the issue of the legal status of military justice bodies during the special period and in the event of crisis situations that threaten national security, domestic and foreign science did not pay sufficient attention to the development of its theoretical foundations. The absence of definitions, adequate conceptual apparatus indicates significant gaps in the current legislation of Ukraine.

At the same time, despite the considerable theoretical basis of the military justice research, the legal status of the military justice bodies during the special period and in the event of crisis situations that threaten national security is not determined at the legislative or scientific level.

The article's objective. Given the relevance and significance of the problem, the purpose of the article is to determine the legal status of military justice authorities during a special period and in the event of a crisis that threatens national security.

To achieve this goal were set the following tasks:

- to determine the essence and normative content of the concept of legal status of military justice;

- to consider and analyze the concepts of special period and crisis situations that threaten national security;

- to determine the powers of the military justice authorities during the special period and in the event of crisis situations that threaten national security.

Basic content. The issue of defining the term "legal status of a state body" in the scientific literature is ambiguous.

Mr. Kulish A.M. notes that the issue of the legal status of a state body in the legal literature has until recently been reduced mainly to the definition of its competence, established by the legislation of a circle of rights and duties, which does not fully reveal the meaning of the concept of "legal status". The legal status of a state body, as a rule, means a certain set of powers of a juridical authority, the implementation of which ensures the fulfillment of the tasks assigned to it. But O.M. Mr.Bandurka O.M. warns that such a definition is rather narrow, it does not cover much of the issues of organization and activity of state bodies that determine their legal status or status (these two concepts are often identified, regarded as synonymous) [3]. Therefore, NV. The swan defines legal status as a set of four basic elements: the target (includes rules on the purpose, objectives, functions, principles of activity); organizational (contains legal regulations governing the order of creation, reorganization and liquidation of the body; organizational structure; the procedure for appointment to the position of head, etc.); competences; responsibility [4, p. 38].

Thus, the legal status of military justice bodies must determine their tasks, functions, competences and powers, forms, methods and objectives of activity, but taking into account the specificities inherent in the specific period and / or conditions of crisis that threaten national security and influences the activities of military justice bodies.

Justice can be seen narrowly as a system of judicial institutions, or broadly as a collection of judicial and executive authorities whose activities are aimed at resolving disputes, securing human rights and freedoms, protecting its interests, the interests of enterprises, institutions, organizations and the state.

In our view, consideration of military justice as a mere activity of military judges will not give an objective opportunity to comprehensively ensure the resolution of disputes, the protection of human rights and freedoms, the interests of enterprises, institutions, organizations and the state during wartime.

Considering all of the above in the system of military justice, in the broadest sense, may

include military courts, the State Bureau of Investigation (military prosecutor's office or state bureau of military justice), military police, military advocacy, legal service of military units. It is the activity of these bodies that should be regulated by law, including the legal status of military justice during a special period and crisis situations that threaten national security. But now, military justice is in the making, so determining the legal status of military justice during a special period and crisis situations that threaten national security requires legislation before it is adopted.

It is also important to distinguish between "special period" and "crisis situations that threaten national security". Thus, the Law of Ukraine "On Mobilization Training and Mobilization" defines a special period as the period of functioning of the national economy, state authorities, other state bodies, local self-government bodies, the Armed Forces of Ukraine, other military formations, civil defense forces, enterprises, institutions and organizations, as well as the fulfillment by the citizens of Ukraine of their constitutional obligation to protect the Motherland, independence and territorial integrity of Ukraine, which comes from the moment of the announcement of the mobilization decision (to target them) or bring it to the performers regarding mobilization or hidden since the introduction of martial law in Ukraine or in its particular areas and covers the period of mobilization, and wartime partial recovery period after the end of hostilities. [5] Law about the Defense of Ukraine – asperiod, which comes from the moment of announcement of the decision to mobilize (other than the targeted one) or to bring it to the executors for concealed mobilization or from the moment of entering martial law in Ukraine or in some of its localities and covers the time of mobilization, wartime and partially rebuilding period after the end of hostilities [6].

The concept of crisis is defined in the legislative acts, depending on the area in which it is applied. Thus, in international relations, the crisis situation is a set of military-political and social conflicts that destabilize the situation on the external border and require collective measures to stabilize it [7]; in the field of nuclear security, crisis situation – a situation which may or may arise as a result of the perpetration or threat of committing a sabotage, theft or any other unlawful removal of nuclear materials [8]; in the field of civil aviation security, a crisis situation is a situation committing unlawful and deliberate acts related to the encroachment on normal, regular and safe civil aviation activities, causing accidents with people, property damage, acts of unlawful interference or creating a real LU these effects [9], in the social sphere, the crisis – a situation in which there is a set of traumatic events and circumstances from which people cannot go out without changing them. The number of options to change these circumstances is insignificant, any attempt to change the circumstances in the traditional or usual ways can lead to a worsening of the situation, a reduction of opportunities and an even greater limitation of actions [10]; in national security – crisis situation is considered the extreme aggravation of contradictions, acute destabilization of the situation in any sphere of activity, region, country [11].

The crisis situation should threaten the national security of Ukraine, under which the Law of Ukraine "On National Security of Ukraine" means the protection of state sovereignty, territorial integrity, democratic constitutional order and other national interests of Ukraine against real and potential threats [1].

Thus, the crisis situation that threatens national security is the extreme aggravation of contradictions, acute destabilization of the situation in the region, a country that threatens state sovereignty, territorial integrity, democratic constitutional order and other national interests of Ukraine.

Summarizing the above, the introduction of a special period or the emergence of a crisis situation that threatens national security provides:

- announcement of the decision on mobilization (other than the targeted one) or bringing it to the executors regarding hidden mobilization;
- the introduction of martial law in Ukraine or in some of its localities, covering the time of mobilization, wartime and the partially rebuilding period after the end of hostilities;
- extreme aggravation of contradictions, acute destabilization of the situation in the region, the country, which threatens state sovereignty, territorial integrity, democratic constitutional order and other national interests of Ukraine.

If the legislation of Ukraine provides for the concept of a special period, crisis situations, then it is necessary to make amendments to the normative-legal acts that regulate the activity of state bodies, taking into account the specific nature of such situations. This is especially true of military justice authorities, which should have additional powers during such periods. For example, the draft law "On the State Bureau of Military Justice" provides that, in the event of the introduction of a martial law or a state of emergency in Ukraine or in certain localities and the occurrence of a special period, the State Police Military Police:

1) take part in the fight against sabotage groups and illegal armed groups;

2) organize the activities of military commanders;

3) participate in the organization of gathering and support of prisoners of war;

4) take part in ensuring that the curfew is observed in garrisons;

5) control the movement of vehicles and the transportation of their goods [12].

Such articles should be provided in normative legal acts that will regulate the legal status of military police, military courts, military advocacy, legal service of military units. First and foremost, this concerns a key element of the legal status – power, that is, additional powers that arise during a special period and in situations of crisis that threaten national security. Also, a special period and crisis that threatens the national security of Ukraine may provide for a separate procedure for the functioning, establishment and subordination of military justice bodies.

Currently, in a state of martial law or emergency, in a special period, as well as in case of crisis situations that threaten the national security of Ukraine, the National Security and Defense Council of Ukraine coordinates the activities of executive authorities, considers proposals for the application of special economic and other restrictive measures [1].

The National Security and Defense Council of Ukraine, in accordance with the Constitution of Ukraine, is the coordinating body for national security and defense under the President of Ukraine [11].

According to the Law of Ukraine "On National Security of Ukraine", the security and defense sector of Ukraine consists of four interrelated components: security forces; defense forces; defense-industrial complex; citizens and civic associations voluntarily involved in national security. The functions and powers of the components of the security and defense sector are determined by the legislation of Ukraine [1].

The security and defense sectors include: Ministry of Defense of Ukraine, Armed Forces of Ukraine, State Special Transport Service, Ministry of Internal Affairs of Ukraine, National Guard of Ukraine, National Police of Ukraine, State Border Service of Ukraine, State Migration Service of Ukraine, State Emergency Service of Ukraine , Security Service of Ukraine, State Security Service of Ukraine, State Service for Special Communications and Information Protection of Ukraine, Apparatus of the National Security and Defense Council of Ukraine, the intelligence agencies of Ukraine, the central executive authority that provides for the formation and implementation of state military-industrial policy [1].

Other state and local self-government bodies perform their national security functions in cooperation with the bodies belonging to the security and defense sector [1].

Therefore, the Law "On National Security of Ukraine" defines only the legal status of the National Police of Ukraine as a central body of executive power, providing public security and order, protection of human rights and freedoms, interests of society and the state, combating crime, as well as providing legal assistance services persons who, for personal, economic, social or emergency reasons, need such assistance. The activities of the National Police of Ukraine are directed and coordinated by the Cabinet of Ministers of Ukraine through the MIA of Ukraine [1].

Conclusions and prospects for further scientific research. According to the realities in Ukraine, there are more and more threats to the state security. Therefore, a system of state facilities that would satisfy society in peacetime is not sufficiently effective during a special period and in case of crisis situations that threaten state security. Such a mechanism of the state needs modernization, adjustment to new circumstances by amending the existing legislation or creating radically new norms that will start strengthening the rule of law and democratic state of Ukraine.

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Summary

The article analyzes the legislation in the field of regulation of the legal status of military justice in Ukraine. The concepts of "legal status", "special period", "crisis situations that threaten national security" are investigated. The conclusion was made about the necessity of amending the legislation of Ukraine in order to consolidate the powers of the military justice authorities during a special period and in crisis situations.

***Keywords**: legal status, military justice, special period, crisis situations that threaten state security.*

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

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FEATURES AND PROSPECTS OF DEVELOPMENT OF POLITICAL SYSTEM OF SOCIETY IN UKRAINE

Лариса Наливайко, Ольга Чепік-Трегубенко. ОСОБЛИВОСТІ ТА ПЕРСПЕКТИВИ РОЗВИТКУ ПОЛІТИЧНОЇ СИСТЕМИ СУСПІЛЬСТВА В УКРАЇНІ. У статті досліджено проблематику функціонування політичної системи суспільства в Україні з позицій теоретико-правової науки. На сучасному етапі українське суспільство перебуває в активній фазі трансформації своєї політичної складової. Це зумовлено низкою чинників, серед яких провідними, з одного боку, є намір сформувати демократичну, правову державу, з іншого, – створити реальне громадянське суспільство, що свідчитиме про фактичне досягнення задекларованих у чинній Конституції України положень. Визначено, що політична система суспільства є цілісною та складноорганізованою сукупністю елементів, завдання яких спрямовано на досягнення та забезпечення стабільного функціонування суспільства шляхом їх ефективної взаємодії та реалізації політичних функцій відповідно до основоположних принципів права. Визначено ознаки політичної системи. Акцентовано, що в Україні інститути громадянського суспільства не є повноцінними (реальними) суб'єктами політичної та публічної діяльності. Наголошено, що сучасна політична система українського суспільства є відкритою та потребує налагодження комунікації її суб'єктів з міжнародними партнерами. Підкреслено, що важливим є розвиток міжпартійного співробітництва на: внутрішньому (між вітчизняними партіями) рівні та зовнішньому (передбачає два стратегічних напрями: європейські партії та партії інших демократичних держав світу) рівні. Комунікація між учасниками політичної системи з іншими урядовими та неурядовими суб'єктами як на національному, так і на міжнародному рівнях вимагає системного вдосконалення інформаційно-комунікаційних технологій. Сучасна політична система українського суспільства є відкритою та потребує налагодження комунікації її суб'єктів з міжнародними партнерами. Розкрито роль територіальної громади у розвитку політичної системи України.

Ключові слова: *політична система суспільства, демократична держава, громадянське суспільство, національна безпека, політична культура, територіальна громада.*

Problem statement. At the present stage, Ukrainian society is in the active phase of transformation of its political component. This is due to a number of factors, among the leading ones, on the one hand, is the intention to form a democratic, rule of law state. This will allow

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Ukraine to become an equal player in the international arena and gain membership in the desirable associations and international unions. On the other hand, the primary goal is to create a real civil society which will testify to the actual achievement of the provisions declared in the current Constitution of Ukraine, some of which are still characterized as a "goal".

At the present stage, when Ukraine is getting rid of the remnants of the past and direct total interference in all spheres of society, it is important to analyze the nature and content of modernization of the political system of society, the features of its formation process and the prospects for its further development. For more than twenty years, Ukrainian society has been in a state of systemic transit – the transition to a new quality level of all spheres of its activity.

Studying the problems of the current state and directions of development of the political system of Ukraine is not only theoretical in nature, but also first and foremost, an applied aspect for the development of the Ukrainian state.

Analysis of publications that started solving this issue. Article's objective. Despite the significant contribution of such domestic and foreign scientists as O. Babkina, M. Baimuratov, O. Batanov, Y. Bytiak, V. Bogatyriov, A. Vengerov, D. Vydrin, B. Gaievskyi, V. Helman, V. Horbatenko, V. Hrygoriev, O. Dzioban, O. Demianchuk, V. Kampo, G. Klimova, M. Kononchuk, S. Korzh, V. Kostytskyi, S. Maksymov, M. Orzikh, M. Panov, V. Pohorilko, O. Proskurina, P. Rabinovych, O. Rudakevych, Y. Riaboi, P. Sas, S. Seriohina, O. Skakun, V. Tatsii, Yu. Todyka, V. Trushyna, V. Khropaniuk, Y. Shemshuchenko, I. Shtuka, V. Yakoviuk, I. Yarulin and others, who have researched individual issues of the political system of society, there is a lack of a modern and effective scientific theoretical approach to understanding this category and features of the current state and further development, which negatively affects the formation of civil society and the rule of law in Ukraine.

Basic content. Today, the inability of political party leaders to consolidate and make important compromise decisions should be acknowledged as a negative phenomenon in the political system of society. The main transformational measures in the political system of society should be development of the Ukrainian political elite; harmonization of relations between all subjects of the political system of society; reform and adjustment of national legislation with international standards. The effectiveness of the political system ensures the proper functioning of the social, economic, spiritual and cultural spheres.

Each system of society is a single, orderly system of components, the interaction of which causes the emergence of a different quality. The political system is no exception. The term "political system of society" provides an opportunity to identify and characterize the political interests of different actors.

The lack of clarity and unity of scientific views in defining the concept of "political system of society" makes it necessary to consider this phenomenon in terms of sociological, political, legal and other sciences.

The category "political system of society" has been introduced into the scientific field relatively recently, at the stage of development of society, when political parties, public associations, movements began to operate alongside state institutions.

The emergence of the term "political system" was conditioned by the isolation of a set of different political phenomena into a certain integrity against the background of the rest of society [1, p. 75]. In legal science, domestic studies of the political system of Ukrainian society began in the 60s of the 20th century [2]. In general, the term "political system" was hardly used in the scientific works of domestic scientists until the 70s of the 20th century. Instead, the term "political organization of society" was applied [3]. In Soviet times, the political system was regarded, as a rule, formally, symbolically, as a collection of political organizations [4, p. 38-40; 5].

The political system does not exist separately from the external environment with which it interacts with aid, carrying out "transformation" within itself. This makes it possible to speak of the implementation of the political system and, accordingly, of its internal processes in some general plane [1, p. 76].

Today in the scientific literature, in particular the legal, political systems of society are offered to understand as follows: component, organic part of the social system, which includes the totality of different social subjects and institutions, united by participation in the political life of society, the various forms of political relations and relationships in which it is realized and the core of which are relations about state power and the results of political activity [6, p. 19-20]; holistic, orderly set of political institutions, political roles, relations, processes, principles of political organization of society, subordinate to the code of political, social, legal, ideological, cultural norms, historical traditions and principles of political regime of a particular

society [7, p. 6]; holistic, orderly set of political institutions, political relations, processes, principles of political organization of a society, subject to certain political, social, legal, ideological, cultural norms, historical traditions and principles of political regime of a particular society [8, p. 113]; a comprehensively organized and orderly set of political institutions, which are intended to carry out their activities on the normative and legal basis and to promote the legitimacy of political power in the state, as well as to provide social and spiritual guarantees for the development of society [9, p. 87]. The concept of a political system is multidimensional in nature, the content of which are organizational and political institutions.

The political system of society focuses on the organization of political power, relations between society and public authorities and local self-government bodies. In the rule of law, the primary tasks of the political system of society are to ensure public order, to create conditions for political stability, and to harmonize important interests for society.

Based on this analysis, it is appropriate to define the term "political system of society" as a coherent and complex set of elements, the tasks of which are aimed at achieving and ensuring the stable functioning of society through their effective interaction and implementation of political functions in accordance with the fundamental principles of law. Among the features of the political system of society are the following: the integrity and complexity of the elements; conditional independence; internal and external relationships; static and dynamic character; normative regulation.

In modern democratic states, the political systems of society seek to balance in every possible way, taking into account the interests and needs of all subjects.

Political parties that really represent society are an indispensable element of representative democracy [10, p. 150]. One of the basic principles of such parties is openness to dialogue with the public and with other political parties in the country.

As of January 1, 2019, 352 political parties have been registered in Ukraine in accordance with the procedure established by law [11]. At the same time, the overwhelming majority of parties do not engage in active political activity; new parties are mostly registered for further "commercial use" [12].

An integral part of the political system of any democratic society is the functioning of the opposition and the basis for the development of civil society. In the system of political relations, the opposition performs significant positive functions: it promotes the separation, reflection and generalization of the interests of population groups that are not satisfied with the activities of different branches of government in the centre and regions [13]. However, it is not necessary to exaggerate the positive role of the opposition, since individual opposition groups used democratic norms and procedures as a means of protecting the narrow-minded interests and ambitious claims of their leaders for national representation [14, p. 26]. The effectiveness of political opposition is determined by a number of factors, in particular: normative and legal regulation, public support for the opposition, and constructiveness of opposition forces.

Thus, the transformations taking place in the political system have a fundamental impact on the development results of all other spheres of society. Quality of work, coherence of its directions among all subjects of the political system becomes crucial in the further development of Ukraine and ensuring national security.

Special communication tools are required to maintain a constant connection between policy makers. This is conditioned by the very nature of politics as a collective, complexly organized purposeful activity, a specialized form of communication of people for the realization of group goals and interests that interest the whole society. The collective nature of the goals that are pursued in politics implies a compulsory awareness of the divisions within the collective (states, nations, parties, etc.) and the coordination of activities of people and organizations. All this, of course, is impossible with the direct, contact interaction of citizens and requires the use of special means of information transmission, which ensure the unity of will and focus of actions of a large number of distant people [1, p. 78]. Communication between members of the political system with other governmental and non-governmental entities, both nationally and internationally, requires a systematic improvement of information and communication technologies. Unfortunately, information and technology support in Ukraine today needs significant improvement to meet global trends.

Among the novelties of domestic legislation in the political sphere of society, the rule on state financing of the statutory activities of political parties deserves special attention. According to the approved changes, the statutory activities of political parties, not related to their participation in the elections of the People's Deputies of Ukraine, elections of the President of

Ukraine and local elections, are financed at the expense of the State Budget of Ukraine, as well as the expenses of political parties related to the financing of their election campaigning during the next and early elections of the People's Deputies of Ukraine are reimbursed. The annual amount of state funding for the statutory activities of political parties is set: two hundredths of the minimum wage set for January 1. It is determined that the right to receive state funding for statutory activity is held by a party whose election list received at least 2% of the valid votes of voters who took part in the last regular or early elections of the People's Deputies of Ukraine in the national constituency [15, p. 70-71]. However, on October 2, 2019, the Verkhovna Rada of Ukraine cancelled funding for parties that did not overcome the 5% barrier in elections.

The main task of the law is to reduce the risks of political corruption by introducing comprehensive amendments to the legislation of Ukraine in the field of financing political parties and election campaigning, in particular: reducing the dependence of parties on financing by private donors (oligarchs, industrial-financial groups, and so on); creating conditions for free and fair inter-party competition and the development of new parties through the introduction of state funding for parties; enhancing the transparency of funding for political parties and their local organizations, as well as enhancing the transparency of election campaign funding; imposition of effective, proportionate and efficient sanctions for violations in party financing and election campaigning [16].

Expert opinions on financing political parties in Ukraine should be provided. V. Taran, in particular, believes that this law will take time to implement it if the parties are more virtuous and not tied to the money received from certain patrons. The expert also emphasised on foreign practice: in Lithuania and Estonia similar changes worked immediately, while in Latvia and Poland there are still problems [15, p. 70]. The system of state funding of parties is very simple – it assesses the effectiveness of parties by election results and, according to these results, political forces are compensated for their activities. In our country, the financing of political parties needs to be brought to a completely new transparent system. This should be a system of membership contributions, one-off contributions from party members in the election year, etc. Political parties should be financed exclusively from transparent, tax-confirmed funds, according to V. Tsybulko [17]. However, it is important to develop appropriate mechanisms for the legal accountability of political parties for violating the relevant rules of the law.

Moreover, it should be noted that this issue needs further thorough study due to the lack of trust of the citizens of Ukraine in the activities of political parties. As of March 2019, after a sociological survey, 76% of citizens expressed their distrust.

Thus, in March 2019, 1.4% of citizens fully trusted parties, 10.1% – rather trusted [18]. So, in general, the public is very negative about most parties. The early parliamentary elections in July 2019 had a significant impact on the Ukrainian political party and became unprecedented, with the first opportunity to form a coalition of members of one party (including majority members who are members of the respective party) – a total of 43,16% of votes.

Despite the recent developments, the political system of society in the sphere of political parties' activity needs significant modernization.

An important area for domestic parties is international cooperation. In particular, the implementation of Ukraine's European integration course requires consolidation of efforts by diplomats and non-governmental policy makers in promoting the country's interests in the European community. Inter-party cooperation has a significant potential in shaping the image of the state favourable for European integration and achieving political support for the country's position in the EU. Promising in this context is the development of links with European transnational parties, which are becoming increasingly influential in Europe [19].

Sufficient social experience of the developed democracies is convincing evidence that the current political system, in its present form, could not have developed without the influence of the institution of local self-government. The question of the existence and development of the system of local self-government is a dialectical transformation of the whole system of power relations in the country, and its local economic, political and other local and autonomous activity serves as a powerful source of change in these spheres. Under this approach, local self-government should be characterized as a power. But it is a power of a special kind, the power of the people, which has all the necessary capabilities for self-organization in the local territory, without the pressure of strict standards, capable of realizing its control function [20, p. 218]. In the modern democratic, social-legal state the necessity of formation and development of local self-government is caused by a number of reasons. One of them is the growing importance and strengthening of the role of territorial communities. Under the conditions of a

political system of a democratic society, the territorial communities, which are the basis and the primary subject of local self-government, play an undeniable role, since they ensure its normal and effective functioning.

The importance of the development of the scientific problems of the place of the territorial community in the political system of society in the present transformational conditions requires comprehensive research. This is due to their mobile nature, dependence of development and essence on changes in state and public life, on political, economic, social and other transformations.

It is the awareness of the importance of the territorial community in the political system of society that significantly updates the search for researchers in this field.

Territorial communities are one of the important institutions of the political system. The concept of territorial community is relatively new to the legal science of Ukraine. Despite the lack of consensus among scientists on the definition of "territorial community", it has received its legislative definition, including in the Constitution of Ukraine. This once again confirmed the importance of this institute. According to the provisions of the Basic Law of the state and the law of Ukraine "On local self-government in Ukraine", a territorial community is residents united by permanent residence within a village, settlement, city, which are independent administrative-territorial units, or voluntary union of residents of several villages having a single administrative centre. Also, the legislation of Ukraine, in particular in the mentioned legal acts, enshrines a rather wide range of powers of the territorial community in public administration, namely elections of deputies of local councils, village, town and city mayors, local referendums, general meetings (conferences), public hearings initiatives, management of communal property, approval of the programme of socio-economic and cultural development and control of their implementation, etc.

Territorial community in modern conditions acts as a form of social organization of society, a kind of social institution that provides implementation in a certain area of integration policy on the common interests of local residents [21, p. 6]. An active, influential and advanced civil society is an essential element of any democratic state and plays one of the key roles in implementing urgent social change and good governance, managing public affairs and addressing local issues, developing and implementing effective public policies, asserting the rule of law responsible to the person, solving political, socio-economic and humanitarian problems. The empowerment of the local community in the exercise of local self-government is defined as an important direction in the implementation of the National Strategy for Promoting Civil Society Development in Ukraine for 2016-2020 [22]. In spite of the thorough regulatory support of the rights of the territorial community, there are still some gaps in their legislative regulation and a number of problems in the mechanism of their implementation.

Since becoming an independent state, Ukraine has developed a system of local self-government, but in its essence it has many Soviet features, which hinders the democratic development of society and the state. Therefore, the current direction of institutional changes in the political system of Ukrainian society is the reform of public authorities at the regional and local levels.

Without a doubt, reforming the system of local self-government to a state that would maximize the interests of citizens in all spheres of life is of utmost importance. According to the majority of experts and practitioners, the main task of reforming the system of organization of power at the local level is the formation of a proper resource base for the realization of the right to local self-government by territorial communities [23].

The implementation of a series of effective measures will help to establish in Ukraine a democratic model of the political system of the European model, which will allow to ensure in practice the principles of the rule of law, the possibility of real implementation of the constitutional rights of territorial communities, their proper management, the effective functioning of local self-government.

The legal institutionalization of a territorial community is conditioned by the growing role of the territorial community and the need to strengthen legal statehood. The territorial community is an important component of the political system of society and plays a decisive role in the democratization of Ukraine's state system. Further scientific elaborations of this problem are necessary for the prospect of development of local self-government, extension of rights of territorial communities and improvement of the mechanism of their realization, in the conditions of formation of the rule of law and civil society.

Conclusion. Based on a comprehensive theoretical and legal analysis of the political

system of society, we can state the following. The political system of society is a coherent and complex set of elements, the task of which is aimed at achieving and ensuring the stable functioning of society through their effective interaction and exercise of political functions in accordance with the fundamental principles of law. Features of the political system of society are: the integrity and complexity of the elements; conditional independence; internal and external relationships; static and dynamic character; normative regulation. The following is defined: 1) in Ukraine, civil society institutions do not act as full (real) subjects of political and public activity; 2) the national model of political culture as a component of the political system of society has not been formed in society. This causes the social order of Ukraine to be frozen; active participation of the public in the management of public and state affairs will produce renewal and modernization of the political system, emergence of new public and political leaders, formation of citizens' trust in the authorities, strengthening of democracy. Political opposition is a necessary element and factor in the development of an open society, a democratic and rule of law. It is important to develop inter-party cooperation at: 1) internal (between domestic parties) level and 2) external (implies two strategic directions: European parties and parties of other democratic states of the world). The current political system of Ukrainian society is open and requires communication of its subjects with international partners. In today's democratic, social-legal state, the need for the establishment and development of local self-government is due to a number of reasons. Under the conditions of a political system of a democratic society, the territorial communities, which are the basis and the primary subject of local self-government, play an undeniable role, since they ensure its normal and effective functioning.

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Summary

The article deals with the problems of functioning of the political system of society in Ukraine from the standpoint of theoretical and legal science. At the present stage, Ukrainian society is in the active phase of transformation of its political component. This is due to a number of factors, among the leading ones, on the one hand, is the intention to form a democratic, rule of law state, on the other hand – to create a real civil society that will testify to the actual achievement of the provisions of the current Constitution of Ukraine. It is determined that the political system of society is a coherent and complex set of elements, the task of which is aimed at achieving and ensuring the stable functioning of society through their effective interaction and implementation of political functions in accordance with the fundamental principles of law. The features of the political system have been identified. It is emphasised that in Ukraine civil society institutions do not act as full (real) subjects of political and public activity. It is pointed out that the modern political system of Ukrainian society is open and requires communication of its subjects with international partners. It is highlighted that the development of inter-party cooperation at the internal (between national parties) and external (implies two strategic directions: European parties and parties of other democratic states of the world) levels is important. The current political system of Ukrainian society is open and requires communication of its subjects with international partners. The role of the territorial community in the development of the political system of Ukraine is revealed.

Keywords: *political system of society, democratic state, civil society, national security, political culture, territorial community.*

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BIOETHICS IN THE CONTEXT OF MODERN LEGAL DOCTRINE

Ірина Алєксєєнко. БІОТЕХНОЛОГІЇ В КОНТЕКСТІ СУЧАСНОЇ ЮРИДИЧНОЇ ДОКТРИНИ. Розвиток біотехнологій та впровадження в практику їх досягнень окреслило проблему безпеки здоров'я людини та навколишнього середовища, як складових людської безпеки вцілому. Сьогодні використання на практиці сучасних біотехнологій вимагає належного правового регулювання, адже дана сфера суспільних відносин нова і раніше не регулювалася нормами права. Звертаючись до проблеми правового регулювання біотехнологій, слід брати до уваги не лише позитивні наслідки їх розвитку (боротьба з голодом, захист екології, нові можливості лікування хвороб), а й ризики існуючих численних негативних наслідків використання цих технологій для здоров'я людей і навколишнього середовища.

Більшість дослідників відзначають важливість норм біоетики в регулюванні біотехнологій, що, в свою чергу, породжує труднощі в створенні на міжнародному рівні єдиного правового акта, оскільки принципи біоетики визначаються світоглядом – системою узагальнених знань про об'єктивний світ, ставлення людини до навколишньої дійсності з позиції своїх ідеалів, принципів і переконань. А принципи і переконання унікальні у громадян різних країн.

На думку низки дослідників, характерною особливістю міжнародних правових норм, що регламентують біомедичні відносини, є інтегрованість в них принципів біоетики. Виникнення біоетики і подальша її інтеграція в право обумовлені, з одного боку, можливістю реалізації досягнень медичної та біологічної науки на практиці, з іншого – наявністю правового вакууму в цій галузі.

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В юридичній доктрині активно обговорюється роль біоетики в сучасному суспільстві, оскільки право, як інституційний регулятор не може охопити всі суспільні відносини. Зокрема, воно обмежене в можливості вирішувати проблеми регулювання відносин, що виникають при проведенні абортів, трансплантації органів, модифікації ДНК й інших, відносин, пов'язаних із захистом права на життя, здоров'я.

Тому, незважаючи на розходження в думках щодо користі біоетики та її значущості, принципи біоетики включаються в національні й міжнародні правові акти. При цьому ступінь їх інтегрованості опосередкована сферою застосування біотехнологій і потребує подальших грунтовних наукових викладок.

Ключові слова: *біотехнології, генна інженерія, біобезпека, права людини, глобальні проблеми, біоетика.*

Problem statement. This article summarizes different points of view in the context of scientific discussion on biosafety and the legal regulation of biotechnology use by states. The legal regulation of biotechnology and nanotechnology, as a rapidly developing branch of science, concerns, first and foremost, activities related to the development, use and transfer of technologies for the use of living organisms. The main purpose of this study is to verificate the need to develop a mechanism that, according to the authors, will be able to implement the state biosafety policy based on the development of certain standards by international organizations and that will serve as a platform for the formation of international biomedical law, through integration principles of bioethics into biomedical relations.

The **research object** is the rules of international law in the area of international legal regulation of the use of modern biotechnology through the lens of bioethics.

The *methodological basis of the research* is comparative legal, dialectical, historical legal, comparative, and other research methods.

Results. As a result of the analysis of scientific sources and approaches to solving this problem, evidence of the need for a comprehensive study of the existing scientific array to highlight bioethics has been obtained, and therefore biosafety, as an independent scientific direction in the context of modern legal biotechnology and nanotechnology research and as part of the national security of the state.

In the present conditions, many researchers are of the view that biological weapon represents the type of weapon of mass destruction, whose action is based on the use of the properties of pathogenic microorganisms and their metabolic products of [8].

The revolution that takes place in the field of biotechnology can lead to creating biological weapons, which in terms of affecting parameters are not inferior to nuclear weapon and are more flexible in its application.

Biological weapon because of its combat characteristics, the relative ease of access to its preparation by the terrorist organizations, ease of use, variability of algorithms used to commit acts of biological terrorism and their possible effects acts as the most likely instrument of committing acts of international terrorism among other types of weapons of mass destruction.

It is obvious that biotechnologies have enormous potential and opportunities to influence people and society. However, these perspectives are dual. Noting their scientific and economic significance, it is also necessary to bear in mind their potential threat to man and humanity, in particular, the dangers that may arise with the further penetration of the human mind into the natural forces of nature.

The movement for the protection of human rights that has developed around the world now relies on an extensive system of very diverse international legal agreements relating to the legal status of the individual. The deepening of this process in this area is carried out in several directions. The greatest importance is given to efforts aimed at ensuring the most representative participation of states in agreements on humanitarian issues, including the preservation of biological security on the planet, in order to transform these documents into reliable universal tools for ensuring human rights. Despite the improvement of bioengineering methods, the expansion of the market for biotechnological products, the obvious benefits and efficiency of using environmentally friendly biotechnologies in industry, agriculture and health care, there are still concerns in the society over the possible undesirable consequences for humans of biotechnological production and genetic engineering experiments.

A lot of international bodies that operate under the auspices of the United Nations take the subject of special consideration the protection of the human person in the face of advances in biology, medicine, especially as a result of advances in genetic engineering and biotechnology in general. When creating ever-growing opportunities for improving the living conditions of people, progress in science and technology generate, at the same time, a number of serious

social problems requiring immediate solutions, including international legal cooperation in ensuring human safety and the environment.

The rapid development of biomedical disciplines significantly affects human rights, such as the right to life, the protection of honor and dignity, health, immunity, and a number of others. Since 1968, the international bodies operating under the auspices of the United Nations have constantly considered questions about the protection of the human personalities, their physical and intellectual integrity in the face of advances in biology, medicine. Since the early 1980s the similar situation exists in genetic engineering, which is a major component of biotechnology.

However, it is precisely now that fears arise that, in the course of realizing the positive potential of biotechnology and genetic engineering, unintended release of genetically modified organisms and recombinant proteins can occur in laboratories, at work, during field trials; and recombinant products which have not passed the appropriate control and prior approval by the competent authorities can come into the market. Despite the improvement of bioengineering methods, the expansion of the market for biotechnological products, the obvious benefits and efficiency of using environmentally friendly biotechnologies in industry, agriculture and health care, there are still concerns in the society over the possible undesirable consequences for humans of biotechnological production and genetic engineering experiments.

Mastering the methods of genetic engineering and its application leads to creating the new biologically active structures that can not be occur in nature.

In many countries of the world, numerous legislative acts that regulate activities and social relations in the field of genetic engineering are in a force for a relatively long time, while the questions of organization and safety of work with recombinant DNA and the problems of the planned incorporation of genetically modified organisms into the environment are under the attention legal services, scientists and society.

It cover a lot of issues and concerns the cases of loss of control over transformed organisms in the laboratory, production, during field trials; the risk of genetic instability of transgenic plants and animals in a series of subsequent generations and the emergence of unpredictable species of plants and animals; the release of genetically engineered products on the market without proper verification.

These concerns are caused by poor public awareness, imperfect legislation, and insufficient popularization of scientific knowledge among the population. In order to avoid incompetent forecasts and estimates, it is necessary today to bring to the public objective information about the existing balance between the achievements of biotechnology and the risk of genetic consequences; clearly demonstrate whether the danger of specific biotechnologies or experimental areas of bioengineering is real.

Some aspects of the legal regulation of the use of biotechnologies were studied by the following researchers: Beyleveld D., Brownsword R., Feiler W., Ruggiu D., Sasson A., Sedova N., Plomer A. [1-6]

When paying attention to this situation, in this article the authors aim to conduct a retrospective analysis of the legal field of the use of biotechnology, as well as modern political and legal approaches to solving the problem of biosafety in the era of globalization. Due to the incredibly rapid progress of genetic engineering, resulting in relatively short intervals of time to the emergence of completely new levels of knowledge, qualitative and quantitative changes, public policy should be aimed at the constant improvement of legislation on the safety of genetic engineering based on to carry out constant propaganda of knowledge in this area to reduce the unreasonable fears of the population.

Certain contradictions arose between the long-standing norms for ensuring the safety of biological interventions in the environment, human health and the latest advances in science and technology. Therefore, there is a clear evidence of international legal regulation and control over scientific research related in one way or another to a person.

Thus, nowadays the international community has been faced with the task of creating comprehensive guarantees for ensuring the safety of people in conditions of a medical and biological impact on the environment and humans. The importance of the above mentioned issues, as well as the lack of comprehensive researches on this issue, led to the choice of the topic of our scientific article.

Basic content. The legal regulation of biotechnology, a rapidly developing branch of modern science, concerns, first and foremost, the wide range of activity related to the development, use and transfer of technologies for the use of living organisms.

The twenty-first century is characterized by tremendous discoveries in the field of science and technology, including in the spheres of biology and medicine. Today, new biotechnologies are being developed; they open up new perspectives for people in solving the problems of curability of diseases, extending human life, and solving social problems. Cloning, genetic engineering, reproductive technologies, cellular technologies and other up-to-date technologies globally changed medicine and, thus, initiated the development of certain law standards by international organizations. This process determined the start of the formation of international biomedical law. A characteristic feature of international legal norms that govern biomedical relations is the integration of the principles of bioethics into these international regulations (Beyleveld D., and Brownsword R., 2001).

Emergence of bioethics and its further integration into law is due, on the one hand, to the possibility of realizing the achievements of medical and biological science in practice, on the other hand, the absence of a legal regulation in this area. The legal doctrine actively discusses the role of bioethics in modern society, because the law, as an institutional regulator, cannot cover all social relations. In particular, it is limited in its ability to solve the problems of regulating relations arising during abortions, organ transplantation, DNA modification and other relations related to the protection of the right to life and health.

Traditionally, there are three main models of the relationship between law and bioethics:

– the sociological model, according to which the law is recognized to be incapable of solving ethical problems and, as a result, the standards of bioethics are considered to be the only regulator in the use of biotechnology;

– a formalistic model where the law plays a major role in regulating any biotechnological issues, since the law establishes sanctions for violation of regulatory prescriptions.

Supporter of the formalist model A. Sasson (1987) points out that most international regulations that govern the use of biotechnology, reflect mainly ethical principles. In his opinion, such a mixture of norms of law and ethics creates the threat of legal uncertainty (Sasson A., 1987).

For this reason, it is necessary to rethink the role of ethics in the regulation of biotechnology. It is necessary to define clear boundaries of the legal regulation of biotechnology. D. Ruggiu (2018) takes the similar position. He believes that great amount of blanket law applied to the principles of ethics does not allow increasing the level of legal regulation. This state of affairs makes it difficult to implement the protective function of the law, and in the conditions of a low legal culture of the society, it contributes to the violation of legal regulations; (Ruggiu D., 2018)

– the liberal model, according to which the right confirms only some general bioethical principles. The ideas of the liberal model are presented in the works of N. Sedova (2004). (Sedova N., 2004). The researcher assumes that the principles of bioethics in relation to the of law act as legal custom, and the provisions of the law outline the framework in which the principles of bioethics apply. Plomer A. (2015), emphasizes that the principles of bioethics are a special source of bioethics. Practice shows that despite differences in opinions regarding the benefits of bioethics and its significance, the principles of bioethics are included in national and international legal acts.

Moreover, the degree of their integration is determined by the scope of application of biotechnology. So the cross – boundary move of GMOs is regulated by a universal international legal act such as the Cartagena Protocol. It contains a minimum of references to the principles of bioethics. At the same time, the regulation of biomedical technologies is mainly carried out by the norms of bioethics, since this sphere of social relations objectively cannot be completely regulated by the norms of law.

Discussion. The great importance of bioethics norms while regulating the biotechnology makes difficulties in creating a single legal act at the international level, since the principles of bioethics are determined by the worldview as a system of generalized knowledge of the objective world, people's attitude to the surrounding reality from the standpoint of their ideals, principles and beliefs. But principles and beliefs are various among citizens of different countries.

The need to unify activities in the field of biomedical technologies was the main reason for the adoption of legal acts in the field of bioethics. The first laws were: the Nuremberg Code (August 1947, Nuremberg), the Helsinki Declaration of the World Medical Association "Ethical Principles of Medical Research with Human Participation as a Subject", adopted at the 18th Assembly in 1964,"International Ethical Guidelines for Biomedical Research on Human Beings", adopted by the Council of International Scientific and Medical organizations in 1982

(amended in 1993 and 2002), and others laws.

At present, only the Nuremberg Code is in force. The regulation of biotechnology is effected by above mentioned international legal acts, such as the "Universal Declaration on the Human Genome and Human Rights" (1997), "the Convention on Human Rights and Biomedicine" (1996).

A number of conventions and international treaties reinforce the common ethical issues of medical research using biotechnology. Among them are: the UN Convention on Human Rights (1989), the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the International Covenant on Human Rights (1966).

The basic biotechnological principles were formulated in 1998 at the IV International Congress on Bioethics, held in Tokyo. They include recognition of the autonomy of the individual, the human right to self-resolution of issues relating to his psyche, emotional status, securing the right to free informed consent; the principle of justice as equal access to social benefits; the fulfillment of the Hippocratic oath and its expansion – not only do no harm, but also do good.

At present, the Universal Declaration on the Human Genome and Human Rights in the CIS enshrined the principle of preventing practices that are contrary to human dignity – prohibiting the practice of cloning for the purpose of reproducing a human individual (Article 11). States are encouraged to take measures at the national level, consistent with the principles outlined in the declaration. However, taking into account that specific obligations are not reflected in the declaration, one can be concluded that the international act is only a recommendation.

A similar principle is confirmed in the UN Declaration on Human Cloning (2005), which is a statement to Member States and contains "a call to ban all forms of human cloning to the extent that they are incompatible with human dignity and protection of human life ..." (A. b). It creates the opportunity for human cloning "to the extent that cloning is compatible with human dignity."[15]

The most important document in the field of regulating biomedical research at the international level is the Council of Europe Convention on the Protection of Human Rights and Dignity in Connection with the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (1997).[10] The document contains the real obligations of states. The Convention calls the priority of the interests and benefits of the individual in comparison with the interests of society and science as the main principle of medical intervention in the human body.

The Model Law "On the Protection of Human Rights and Dignity in Biomedical Research in the CIS Member States"[13], adopted by the Inter-Parliamentary Assembly of the CIS Member States, is in force. The law extends to citizens of states participating in biomedical research and applies to all institutions and individuals involved in conducting this type of research.

According to Article 10 of the Law, all projects involving human biomedical research must undergo an independent ethical review by the ethics committee. Thus, the normative act contains the mechanism of moral evaluation of the technologies being developed before they are put into practice.

The 1994 UN Cairo Convention on Democracy and Development, the World Conference on Women (Beijing, 1995) and other international instruments enshrined a number of reproductive rights, including the right to make decisions regarding the reproduction of offspring, the right to achieve the highest possible level of reproductive health, including through the treatment of infertility.[12]

In the field of assisted reproductive technologies, like other biomedical technologies, there is no single international legal act. It often causes serious problems. As a result, it seems reasonable of adopting a single international law in the field of biotechnology applications (including in the field of assisted reproductive technologies, or at least in the field of legal regulation of surrogate maternity common principles for conducting medical biotechnological research. It will help to solve the problem of controversial situations.

At the 1992 conference in Rio de Janeiro, the countries of the UN recognized the international need for regulating activities related to biotechnology. A committee was created to draft an act, which was later named the Cartagena Protocol. This law is to regulate the issues of protected the move across state borders, the processing, and use of products of modern biotechnology, including organisms modified at the gene level.

Despite the importance of this document, it was signed by only 57 states. In addition to

the medical field, biotechnology is now widely used in other sectors of the economy. The most significant branches are agriculture, food and pharmaceutical industries.

Since 1996, seeds of genetically modified plants are available for sale. Taking into consideration the solving global food problems in the world, the most significant results in obtaining products using biotechnology, in our opinion, were achieved precisely in the agro-industrial complex (AIC).

Genetically modified fruits and vegetables, legumes have already been represented on world markets. At the same time, there are more and more questions on ensuring environmental and food security, since the consequences of prolonged use of GMOs are not fully understood.

In addition, agricultural crops with new consumer properties, resistant to viruses and parasites, new agricultural plants and animals are being created by using biotechnological developments; genomic certification is being introduced to improve the quality of breeding work. New veterinary biologics are being produced.

Another, no less important area of application of biotechnologies in the agro-industrial complex is the improvement of the feed base for farm animals. Nowadays it is difficult to imagine modern livestock farming without the use of various biologically additives to animal feed and vitamins.

The pharmaceutical industry accounts three quarters of the total sales of a product obtained using biotechnology. It is, above all, the production of drugs and vaccines, diagnostic tools. Thanks to the widespread use of biotechnology in the pharmaceutical industry, a new concept of "personalized medicine" has emerged, when a patient is treated on the basis of his genetic characteristics, including the creation of individual medical products.

Results. The development of biotechnology, the introduction of their achievements into practice has identified the problem of ensuring the safety of human health and the environment. The use of modern biotechnology in practice requires proper legal regulation, because this sphere of social relations is new and not previously regulated by the rules of law. At the same time, it is necessary to take into account not only the positive effects of the development of biotechnologies (combating hunger, protecting the environment, new possibilities for treating diseases), but also all possible risks of the negative consequences of using these technologies on human health and the environment.

Another, no less important area of application of biotechnologies in the agro-industrial complex is the improvement of the feed base for farm animals. Since at present, modern livestock farming is difficult to imagine without the use of various biologically additives to animal feed and vitamins. The pharmaceutical industry accounts for up to of the total sales of a product obtained using biotechnology.

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The development of biotechnology, the introduction of their achievements into practice has identified the problem of ensuring the safety of human health and the environment. The use of modern biotechnology in practice requires proper legal regulation, because this sphere of social relations is new and not previously regulated by the rules of law.

At the same time, it is necessary to take into account not only the positive effects of the development of biotechnologies (combating hunger, protecting the environment, new possibilities for treating diseases), but also all possible risks of the negative consequences of using these technologies on human health and the environment. Based on the above, legal regimes have the following provisions:

Biotechnology research takes place in two directions: regulatory and protective;

It will be correct to distinguish between legal studies of biotechnology on the basis of the subject (substantive, structural) and functional criteria;

The study of biotechnologies on the basis of the objective criterion (elements of biotechnologies) should be limited to the legal regimes of the regulatory orientation, with emphasis on static patterns, based on the inductive method;

Studies of biotechnology with the application of the law, occur on the basis of functional criteria (scope) require translational and variability in terms of temporal relevance;

It is necessary, on the one hand, to determine the identification of the most significant object elements and process elements (actions) in each individual area of application of bio-

technology.

And on the other hand, it is necessary to limit the research to the framework that establishes legal norms, protective focus, with the identification of dynamic patterns.

Conclusion. The analysis of the study is resulted into the following conclusions:

First, the analysis of the history of emergence of legal regulation of biotechnologies allows us to conclude that because biotechnologies are understood in a broad sense, and cover many areas of the economy, and there is no clear definition of biotechnologies, it is necessary a multilateral development of legal regulation of the performing and implementation of biotechnologies both into a separate state and into the entire global community.

Secondly, international acts, mainly, are declaratively aimed solely at protective legal regimes (preservation of biological resources), and permits for the use of biotechnologies are simultaneously combined with restrictions and prohibitions.

Ukraine has not acceded to some international regulations governing the use of biotechnology yet. Thus, it is necessary to improve domestic legislation, taking into account international experience in creating a legal framework for regulating the use of biotechnologies in various areas of the economy.

Moreover, the great importance of bioethics while regulating of biotechnology makes difficulties in creating a single legal act at the international level. The principles of bioethics are determined by the worldview as a system of generalized knowledge of the objective world, people's attitude to the surrounding reality from the standpoint of their ideals, principles and beliefs. The principles and beliefs are various among citizens of different countries. Thus, having analyzed the international legal acts that regulate the sphere of biotechnologies, it can be concluded that the international community requires developing cooperation and international relations in this area.

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Summary

The scientific novelty of this study consists in conducting comprehensive comparative analysis of the process of formation of legal norms for the protection of human rights. These norms are contained in existing international agreements on the development of biotechnology, from the point of bioethics as a component of state biosafety. Thus, the practical sphere of implementation of the results of this study is a modern international lawmaking process that must adequately reflect the most important aspects of the application of modern biotechnology by the states of the international community. These important aspects must form the basis of the international biomedical law and the Code of Bioethics. Moreover, the authors make no claims a comprehensive analysis of the problem posed in their work, since many important aspects need further study.

Keywords: *biotechnology, genetic engineering, biosafety, human rights, global problem, legal guarantees.*

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THE RIGHT TO FREEDOM OF OPINION AND SPEECH: THEORETICAL-LEGAL ASPECTS OF IMPROVEMENT OF Art. 34 OF THE CONSTITUTIONS OF UKRAINE

Юрій Кириченко. ПРАВО НА СВОБОДУ ДУМКИ І СЛОВА: ТЕОРЕТИКО-ПРАВОВІ АСПЕКТИ УДОСКОНАЛЕННЯ ст. 34 КОНСТИТУЦІЇ УКРАЇНИ. Досліджено конституційну практику нормативного регулювання права на свободу думки і слова, закріпленого в ст. 34 Конституції України та в аналогічних нормах конституцій європейських держав. Обґрунтовано необхідність внесення змін до ст. 34 Конституції України.

Зазначено, що право на свободу думки і слова посідає особливе місце в системі прав людини, що надає людині можливість вільно висловлювати власну думку, погляди й переконання та впливати на різні політичні процеси, які відбуваються в державі.

Констатовано, що право на свободу думки і слова знайшло своє закріплення в міжнародно-правових документах з прав людини, зокрема в Загальній декларації прав людини, Міжнародному пакті про громадянські і політичні права, Конвенції про захист прав людини та основоположних свобод, а також у всіх конституціях держав континентальної Європи.

Зроблено висновок, що наявна юридична конструкція ч. 1 ст. 34 Конституції України в цілому відповідає вимогам міжнародно-правових документів з прав людини.

Наголошено на недоцільності у ч. 2 ст. 34 Конституції України деталізовувати способи реалізації права на інформацію. У звязку з чим, запропоновано, припис "усно, письмово або в інший спосіб – на свій вибір" вилучити із зазначеної частини, а замість нього закріпити словосполучення "в будь-який спосіб, не заборонений законом".

Підкреслено, що на відміну від конституцій зазначених європейських держав, Конституція України передбачила доволі широкий перелік правових підстав обмеження права на свободу думки і слова та права на інформацію, що, на думку авторів, є зайвим, адже будь-які підстави правового обмеження повинні міститись виключно в нормах галузевого законодавства.

Отже, враховуючи європейський досвід щодо конституційно-правового регулювання права на свободу думки і слова та права на інформацію, запропоновано ст. 34 Конституції України викласти в оновленій редакції, а саме:

"Кожному гарантується право на свободу думки і слова, на вільне вираження своїх поглядів і переконань.

Кожен має право вільно одержувати, збирати, зберігати, використовувати і поширювати інформацію в будь-який спосіб, не заборонений законом.

Здійснення цих прав може бути обмежене в інтересах національної безпеки, територіальної цілісності або громадського порядку та лише у випадках, передбачених законом".

Ключові слова: *конституція, свобода думки, свобода слова, право на свободу думки і слова.*

Problem statement. A special place in the human rights system is the right to freedom of opinion and speech, which is enshrined in Part 1 of Art. 34 of the Constitution of Ukraine, and gives a person the opportunity to freely express their opinions, views and beliefs and thus influence the socio-political processes that take place in the state.

At the present stage, this right is an indispensable guarantor of public control over the state, enabling mutual bilateral communication between the state and society, as well as creating preconditions for effective balancing, taking into account the interests of both parties, contributing to the maintenance of democratic social order and the realization of all forms of democracy. That is, without a clear guarantee of this right, it is impossible to have democracy and to develop an independent, social, and legal state.

Analysis of publications that started solving this problem. The study of the problems of constitutional securing of the right to freedom of opinion and speech was carried out by such

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scientists as T.M. Zavorotchenko, T.A. Kostetska, N.V. Kushakova, O. Nesterenko, L. Nudnenko, V.F. Pogorilko, V. Ya. Tatsiy, Yu. M. Todyk, V.L. Fedorenko and others.

The article's objective is to make a comparative analysis of the provisions of the constitutions of Ukraine and European states, which enshrines the right to freedom of opinion and speech, as well as formulating specific proposals for improving the provisions of Art. 34 of the Constitution of Ukraine.

Basic content. It should be emphasized that in the theory of constitutional law there has been a certain evolution in understanding the right to freedom of thought and speech and the right to information. At the same time, some scholars and legislators of certain European states consider these rights only as a political possibility of the citizen. For example, Art. 26 of the Slovak Constitution and Art. 17 of the Czech Constitution, which guarantees freedom of expression and the right to information, are available in the section entitled "Political Rights". A similar approach was applied by the legislator of Montenegro. In turn, V.Ya. Tatsiy, V.F. Pohorilko, and Y.M. Todyka refer the right to freedom of thought and speech to personal (civil) rights, and the right to information – to political rights [1, p. 126-137]. The right to information is also attributed to political rights and freedoms by T.M. Zavorotchenko [2, p. 48]. At the same time, N.V. Kushakova argues that the right to information is obviously not only a political right of a citizen, but also a natural personal right, such as the right to life, freedom of movement. It is inherent in a person from birth, not only in the context of participation in the political life of the country [3, p. 52]. But despite this, most domestic scientists attribute the analyzed rights primarily to civil rights, because they belong to every human being, which is a natural right that is inseparable from the person of its bearer. While supporting this view, we should also agree with T.A. Kostetska, who emphasizes that the right to information is a universal right and can be attributed to the so-called "rights-guarantees", ie rights related to the realization, protection of other rights and freedoms (political, economic, social, cultural) [4, p. 94]. This is discussed in Part 2 of Art. 38 of the Constitution of Croatia, which states that "freedom of expression includes, above all, freedom of the press and other media, freedom of expression and public speech, and the free establishment of the media" [5, p. 454].

The right to freedom of opinion and speech implies that everyone has the inalienable right to define for themselves a system of moral, ethical, philosophical, spiritual and other ideas and ideals, as well as freely, without any ideological or other control, to publish and defend their own opinions and views in all spheres of public and state life [6, p. 229]. And this is why this fundamental human right has been enshrined in Art. 18 and 19 of the Universal Declaration of Human Rights, Art. 18 and 19 of the International Covenant on Civil and Political Rights, Art. 9 and 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as in all the Constitutions of the States of Continental Europe.

In the comparative legal analysis of Art. 34 of the Constitution of Ukraine and the relevant norms of the constitutions of European states, it is established that the studied provisions have both some common features and significant differences in the scope and ways of their expression. For example, in subparagraphs g) and h) h. 3 Art. II of the Constitution of Bosnia and Herzegovina only states that all persons on the territory of the country enjoy respectively "freedom of thought" and "freedom of expression" [7, p. 436]. At the same time, Article 12 § 2 of the Basic Law of Finland states that "everyone has the right to freedom of expression. Freedom of expression means the right to transmit, impart and receive information, views, other information ... "[5, p. 373]. In the vast majority of European countries, the right to freedom of opinion and speech, as well as the right to information, is enshrined in one article of the basic law. In the constitutions of Azerbaijan, Albania, Andorra, Belarus, Bulgaria, Armenia, Georgia, Lithuania, Moldova, Poland, Romania, Turkey and Montenegro this right is reflected in two articles, and in the constitutions of Estonia – in three paragraphs. For example, in item 1 of Art. 22 of the Albanian Constitution states that "freedom of speech is guaranteed" and in Art. 23 of this Constitution – "guaranteed right to disseminate information" [7, p. 185]. In addition, in fulfilling the requirements of the mentioned international human rights instruments, the constitution of Andorra, Bosnia and Herzegovina, Armenia, Georgia, Latvia, Lithuania, Serbia, Czech Republic and Montenegro consolidated the right to freedom of thought along with the right to freedom of conscience and religion. For example, in Part 1 of Art. 26 of the Constitution of Armenia states that "everyone has the right to freedom of thought, conscience and religion" [8]; and in item 1 of Art. 15 of the Czech Constitution states that "freedom of thought, conscience and religion is guaranteed" [5, p. 524]. In other constitutions of the states of continental Europe, this right is set apart from other human rights.

Comparative legal analysis of the text of Art. 34 of the Constitution of Ukraine, international legal acts and similar provisions of the constitutions of European states shows that the legal construction of the first part of this article, which enshrines the right to freedom of opinion and speech, to the free expression of their views and beliefs, in general meets international legal standards and it is harmonized with the constitutions of the states of continental Europe and therefore does not need further modernization.

Considering that the development of the information society in Ukraine is recognized as one of the priority directions of the state policy regarding the availability of information, protection of information about the individual, support of democratic institutions, as well as the importance of information in the life of society, the Constitution of Ukraine in Part 2 of Art. 34 enshrined a provision in which, through a set of powers such as: the right to collect information; the right to store information; the right to use information; the right to disseminate information reveals the content of the right to information, which, incidentally, is not directly highlighted in the text of the Constitution of Ukraine, unlike other European states. For example, in item 1 of Art. 17 of the Czech Constitution states that "… the right to information is guaranteed" [5, p. 524]. But, as O. Nesterenko emphasizes, the main content of this right is contained in Part 2 of Art. 32, Part 2 of Art. 50 and Art. 57 of the Constitution of Ukraine [9, p. 31]. It should also be emphasized that the domestic legislator, in formulating the analyzed provision, bypassed such power as the right to receive information, which, according to N. Petrova, is a disadvantage, since the legal ability to collect information does not cover the power to receive it [10, p. 7]. That is, there is a difference between the right to receive and the right to collect information, because these powers imply different actions, and hence it can be argued that the concept of "receive" and the concept of "collect" are not identical.

At the same time, the right to receive information was enshrined in the constitutions of Belarus (Part 1 of Article 34), Bulgaria (Item 1 of Article 41), Armenia (Item 2 of Article 27), Georgia (Item 1 of Article 24)), Estonia (Part 1 § 44), Latvia (Part 1 of Article 30), Lithuania (Part 2 of Article 25), Macedonia (Part 3 of Article 16), Germany (Part 1 of Article 5) , Portugal (§ 1, Art. 37), Russia (§ 4, Art. 29), Slovenia (Art. 1, Art. 39), Turkey (Art. 1, Art. 26), Finland (Art. 1, § 12), and Switzerland (Article 16 § 3). For example, in paragraph 3 of Art. 16 of the Swiss Constitution states that "everyone has the right to freely receive information…" [5, p. 539]. It should be noted that in the constitutions of European states, as a rule, the terms "collect", "receive" and "disseminate" information are used. And the term "save", which is written in Art. 34 of the Constitution of Ukraine, enshrined only in Part 1 of Art. 34 of the Constitution of Belarus, and the term "use" is not present at all in the texts of the European constitutions. In view of this, in accordance with the requirements of Art. 19 of the Universal Declaration of Human Rights and Article 2 para. 19 of the International Covenant on Civil and Political Rights, which refers to the freedom to seek, receive and impart information, we consider the necessary provision of Part 2 of Art. 34 of the Constitution of Ukraine to supplement the right to receive information freely.

In addition, in our opinion, it is inappropriate in Part 2 of Art. 34 of the Constitution of Ukraine to detail ways of exercising the right to information, due to the fact that no constitution of the states of continental Europe contains such a prescription. On the contrary, the overwhelming majority of legislators of European states have applied the analyzed prescription to the right to freedom of opinion and speech, to the free expression of their views and beliefs. For example, in Part 1 of Art. 13 of the Austrian Constitution stipulates that "everyone has the right, within the law, to express his views orally, in writing, through print and with an artistic image" [11, p. 94]. Therefore, we propose to remove the phrase "verbally, in writing or otherwise – of your choice" from the said section, and instead to affirm the phrase "in any way not prohibited by law", as set forth, for example, in paragraph 4. Art. 29 of the Constitution of, which states that "everyone has the right freely to seek, receive, transmit, produce and impart information in any lawful manner" [12, p. 344].

Declaring the right to freedom of opinion and speech and the right to information, and in accordance with the requirements of paragraph 2 of Art. 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Constitution of Ukraine in Part 3, Art. 34 established restrictions on these rights that could only be exercised "in the interests of national security, territorial integrity or public order to prevent disturbance or crime, to protect public health, to protect the reputation or rights of others, to prevent the disclosure of information, obtained privately or to uphold the authority and impartiality of justice "[13]. It should be emphasized that if freedom of thought is absolute and it is subject to any restrictions, then free-

dom of speech is not an absolute right that does not fall under any restrictions. The "opinion expressed" is subject to restrictions and therefore restrictions on freedom of expression occur in all democratic states [14, p. 101, 103]. Legal restrictions on the right to freedom of opinion and speech, the right to information were also enshrined in their constitutions by the legislators of Belarus (part 3 of article 34), Armenia (part 2 of article 26), Georgia (paragraph 4 of article 24), Estonia (Part 3 § 44 and Part 1 § 45), Lithuania (Part 3, Art. 25), Liechtenstein (Art. 40), San Marino (Art. 1 Art. 6), Romania (Art. 7, Art. 30)), Serbia (Part 2 of Article 46), Turkey (Part 1 of Article 26), Czech Republic (Part 4 of Article 17), Montenegro (Article 47), Sweden (Part 1 of Section 13) and other European countries. states. For example, in Part 3 of Art. 34 of the Constitution of Belarus stipulates that "the use of information may be restricted by law in order to protect the honor, dignity, privacy and family life of citizens ..." [12, p. 125], and in Part 1 § 13 of the Swedish Constitution states that "freedom of expression and freedom of information may be restricted in the interests of national security, the economy, public order and security, dignity of the individual, holiness of privacy, crime prevention and prosecution. them ". In addition, part 4 of this article states that "the provisions of the regulations which, regardless of the content of the statements, regulate in more detail the ways of their distribution and accounting" are not considered as a restriction on freedom of expression and freedom of information [5, p. 602]. It should be emphasized that, unlike the constitutions of these European states, the Constitution of Ukraine provided for a fairly wide list of legal grounds for restricting the right to freedom of thought and speech and the right to information, which, in our opinion, is superfluous, since any grounds for legal restriction should be contained exclusively in the norms of sectoral legislation, as the German legislator did, enshrining in the Basic Law a norm (paragraph 2 of Article 5), which provides for the restriction of the law under study only by the provisions of general laws [11, p. 182]. To support this thesis, we can give an example of discussing this issue at the meeting of the Working Subcommittee No. 6 of the Constitutional Commission of Ukraine on December 9, 1995, during which it was suggested that the purpose of the restriction should not be defined but disclosed in the law; goals "[15, p. 207–209]. In view of this, we propose Part 3 of Art. 34 of the Constitution of Ukraine read as follows: "The exercise of these rights may be restricted in the interests of national security, territorial integrity or public order and only in cases provided for by law."

Conclusion. Therefore, analyzing the European experience on the constitutional and legal regulation of the right to freedom of opinion and speech and the right to information, we propose Art. 34 of the Constitution of Ukraine in the revised version, namely:

"Everyone is guaranteed the right to freedom of opinion and speech, to the free expression of their views and beliefs.

Everyone has the right to freely receive, collect, store, use and disseminate information in any manner not prohibited by law.

The exercise of these rights may be restricted in the interests of national security, territorial integrity or public order and only in cases provided for by law. "

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Summary

The article deals with constitutional practice of normative regulation of the right to freedom of opinion and speech enshrined in Art. 34 of the Constitution of Ukraine and similar rules of the constitutions of European countries. It has been emphasized that, unlike the constitutions of European countires, the Constitution of Ukraine provided for a fairly wide list of legal grounds for restricting the right to freedom of opinion and speech and the right to information, which, in the authors' opinion, is superfluous, since any grounds for legal restriction should be contained exclusively in the rules of sectoral legislation.

The author has grounded the necessity of amending Art. 34 of the Constitution of Ukraine.

Keywords: *constitution, freedom of thought, freedom of speech, right to freedom of opinion and speech.*

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ANALYSIS OF SCIENTIFIC CONCEPTS AND THE LEGAL FRAMEWORK OF THE CONCEPT OF INFORMATION SUPPORT FOR ADMINISTRATIVE LEGAL PROCEEDINGS

Євген Легеза. АНАЛІЗ НАУКОВИХ КОНЦЕПЦІЙ ТА ПРАВОВИХ ЗАСАД КОНЦЕПЦІЇ ІНФОРМАЦІЙНОГО ЗАБЕЗПЕЧЕННЯ АДМІНІСТРАТИВНОГО СУДОЧИНСТВА. Стаття присвячена аналізу наукових концепцій та правових засад концепції інформаційного забезпечення адміністративного судочинства. Вивчаються особливості надання інформації для адміністративного судочинства; підкреслено його відмінності від інформаційного забезпечення адміністративного суду. Запропоновано авторські визначення поняття інформаційного забезпечення адміністративної процедури та інформаційного забезпечення адміністративного суду. Виокремлено три етапи формування національного законодавства, що регулює інформаційне забезпечення адміністративного судочинства. Уточнено систему законів та нормативно-правових актів, положення яких закріплюють правові основи інформаційного забезпечення адміністративного судочинства. Розкрито перспективні напрями розвитку наукового дослідження у сфері інформаційного забезпечення адміністративного судочинства та його правового регулювання.

Визначені умовні етапи формування правового регулювання інформаційного забезпечення адміністративного судочинства ґрунтувалися на подіях, що мають ключове значення для формування системи інформаційного забезпечення адміністративного судочинства, і супроводжувалися вторинними фрагментарними змінами, які стосувалися лише інформаційне забезпечення окремих видів адміністративних справ.

При дослідженні інформаційного забезпечення адміністративного судочинства необхідно відрізняти його від інформаційного забезпечення адміністративного суду. Інформаційне забезпечення адміністративного суду є частиною адміністративної діяльності щодо аналізу, планування та підготовки управлінських рішень, що є безперебійним процесом обробки та використання інформації про стан функціонування апарату суду та робота суддів, яка здійснюється за допомогою інформаційних засобів та методів, призводить до формування інформаційних фондів і спрямована на забезпечення належного функціонування адміністративного суду. У той же час, як інформаційне забезпечення адміністративного судочинства України, це, виходячи з вимог чинного національного законодавства, є сукупністю заходів, пов'язаних з обігом процесуальної інформації, що реалізуються в рамках своїх функцій уповноваженими агентами та через функціонування автоматизованих систем та спрямовані на забезпечення належного функціонування адміністративних судів з розгляду та вирішення публічно-правових спорів.

На сучасному етапі розвитку вітчизняного законодавства правове регулювання інформаційного забезпечення адміністративного судочинства здійснюється відповідно до таких законів та нормативно-правових актів: Закони України «Про судоустрій та статус суддів», «Про внесення змін до деяких Законодавчі акти України щодо впровадження автоматизованої системи документації в адміністративних судах »; «Про доступ до судових рішень», «Про внесення змін до Господарського процесуального кодексу України, Цивільного процесуального кодексу України, Кодексу адміністративного судочинства України та інших законодавчих актів», Кодексу адміністративного судочинства України, а також Положення «Про автоматизовану систему документообігу суду», Порядок ведення Єдиного державного реєстру судових рішень, Положення про Єдину базу даних електронних адрес, факс-номерів (телефонів) органів влади. Деякі аспекти інформаційного забезпечення адміністративного судочинства України регулюються на рівні підзаконних актів, прийнятих Державною судовою адміністрацією України, які затверджують Типові інструкції щодо роботи працівників адміністрації місцевого загального суду; Інструкція про порядок роботи з технічними засобами ведення судового провадження (судові засідання); Інструкція з управління справами в адміністративних судах тощо.

Ключові слова: *адміністративна юрисдикція, адміністративне судочинство, адміністративна процедура, правила судів, предмет.*

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Problem statement. Article's objective. For the effective functioning of the state and all state mechanisms, information provision of administrative legal proceedings of Ukraine is of key importance. As V. B. Pchelin notes, the proper functioning of administrative legal proceedings of Ukraine, within which the consideration and resolution of public-law disputes related to the protection and restoration of violated, unrecognized, disputed rights, freedoms, and interests of individuals and legal entities take place, may be only in the case of its effective information support [7]. The content and scope of information relations arising in the field of administrative legal proceedings with each stage of development of domestic information and procedural legislation are increasingly specified. At the same time, the growth of the circle of such relations, the increase of the types of information used within the administrative legal proceedings, and the growing importance of information support for administrative legal proceedings are observed. The current legal community of Ukraine is looking for ways to optimize the work of the entire judicial system in general and administrative legal proceedings in particular.

Basic content. The volume of cases handled by administrative courts remains significant every year. Thus, in 2016, 215 319 administrative cases were received for consideration by local administrative courts, and 76 184 cases – by administrative courts of appeals. In 2017, 121 692 cases were submitted for consideration to the local administrative courts and 73 496 cases – to the administrative courts of appeal. Accordingly, the amount of information used to resolve such a circle of cases invariably grows; the need for optimization of information databases, their integration, and improving the efficiency of the search for the necessary information increases.

Legal fundamentals of information provision of administrative legal proceedings in Ukraine and the stages of their formation. In the dictionaries, the term «provision» is interpreted in similar terms, but they have certain differences. Thus, in the new explanatory dictionary of the Ukrainian language, it is considered in two meanings: 1) the provision or creation of material resources; 2) guaranteeing something [12]. In the great explanatory dictionary, the term «provision» is explained through the verb «to provide», which is used in several meanings: «to create reliable conditions for the implementation of something»; «to guarantee something»; «to defend, to protect someone, anything from danger». The above interpretation of the concept of «provision» allows considering it as an activity, a system of measures aimed at improving something specific. So, one can agree with the conclusion of V.B. Pchelin that the category of «provision» is denoted by a long process aimed at guaranteeing the functioning of the relevant institu [8].

The term «provision» can be used in various areas of legal regulation and have some peculiarities depending on it. However, for the purpose of studying the issues of information provision of administrative legal proceedings, the results of the search of scientists are important in terms of approaches to the content of the concept of information provision. So, R. A. Kaliuzhnyi, investigating information provision of a management system, proposes to understand it as a combination of all the information used, specific means and methods of its processing, as well as the activities of specialists on the efficient use of data, information, knowledge in the management of a particular system [5, p. 11]. Studying the information provision of management, S.M. Petrenko believes that it is a set of implemented decisions on the volumes of information, its qualitative and quantitative composition, location, and forms of organization, the purpose is timely provision of necessary and sufficient information for the adoption of managerial decisions that ensure the effective operation of both the enterprise as a whole and its structural subdivisions [9, p. 20].

O.K. Yudin and V.M. Bohush, studying the provision of information security, define it as a set of measures designed to achieve the state of protection of the needs of individuals, society, and the state in information [12, p. 52].

Directly informational support as an independent concept, L. V. Balabanova proposes to understand as a set of actions to provide the necessary management information in the specified place on the basis of certain procedures with a given periodicity [3, p. 9]; A. V. Chernoivanenko – as a system for managing the totality of representations, concepts, data, and as activities related to means of collecting, registering, transmitting, storing, processing, and presenting information [4].

Under the legal principles of information provision of administrative legal proceedings, V.B. Pchelin proposes to understand the totality of legal acts of various legal force, which, taking into account their hierarchical links, carry out statutory regulation of the activities of authorized entities and the functioning of automated information systems with the operation of

information in order to ensure proper activities of administrative courts for the consideration and resolution of public-law disputes.

The current state of legal regulation of information provision of administrative legal proceedings preceded the long period of development of domestic administrative-procedural and information legislation. The general principles of information provision of administrative legal proceedings are determined by the following laws of Ukraine: «On Personal Data Protection» on June 1, 2010; «On Court Fees» on July 8, 2011; «On Appeal of Citizens» on October 2, 1996;

«On State Secrets» on January 21, 1994; «On Electronic Documents and Electronic Document Circulation» as of May 22, 2003; «On Electronic Digital Signature» on May 22, 2003; «On Information » dated October 2, 1992; «On Access to Public Information» on January 13, 2011; «On Information Protection in Information and Telecommunication Systems» dated July 5, 1994; etc. Special laws and regulations detail the order of information provision of administrative legal proceedings.

The stages of formation of the legal regulation of information provision of administrative legal proceedings, determined by us, are based on large-scale structural changes that have led to global processes in the field of information provision of administrative legal proceedings.

We associate the first stage of the formation of legislation regulating the information provision of administrative legal proceedings with the adoption of the Code of Administrative Legal Proceedings of Ukraine (hereinafter referred to as CALP) on July 6, 2005. Thus, the first edition of the CALP identified such important components of the information provision of administrative legal proceedings as the principles of transparency and openness of the administrative process (Article 12), the principles of recording the court session by technical means (Article 41), reproduction and printing of the technical record of the court session (Article 44); types of procedural information and its carriers.

The second stage of the formation of legal norms regulating information provision of administrative legal proceedings is connected with the introduction of an automated system of document circulation in administrative courts. The Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine Regarding the Introduction of Automated System of Document Circulation in Administrative Courts» on June 5, 2009, No. 1475-VI supplemented the CALP by Art. 15-1 «Automated System of Court Documents». By the Order of the State Judicial Administration of Ukraine as of 03.12.2009 N° 129, the provision «On Automated System of Document Circulation in Administrative Courts» [2] was approved, which expired pursuant to the Decision of the Council of Judges of Ukraine as of 26.11.2010 No. 30, which introduced the Regulation on the Automated System of Document Circulation of the Court [2].

The second stage in the formation of information provision of administrative legal proceedings is also characterized by a fragmentary development of certain rules regulating the information provision of certain categories of administrative cases. One of such legal acts, which caused changes in this area, is the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine on Elections of the President of Ukraine» as of August 21, 2009, No 1616-VI, which identified the features of the use of procedural information under the proceedings in cases related to the election of the President of Ukraine. The Law of Ukraine «On Alienation of Land Plots and Other Immovable Property Located Thereon, Which are in Private Property, for Public Needs or Social Necessity» on November 17, 2009, N° 1559-VI, supplemented the CALP by Article 183-1 «Peculiarities of the Proceedings in Administrative Cases Concerning the Compulsory Alienation of a Land Plot, Other Objects», this article defines a circle of procedural information characteristic for this category (The Legislation of Ukraine, 2009). Also, at this stage, there was an extension of the circle of legal norms regulating the information provision of certain stages and types of proceedings in administrative legal proceedings (Article 174, Article 183-2 of the CALP), the circle of information used in administrative legal proceedings was expanded, etc.

At this stage, the formation of the legal regulation of the information provision of administrative legal proceedings also introduces changes to Art. 12 «Publicity and Openness of Administrative Process» regarding the recording of the trial by technical means.

The third stage of the formation of the legislation regulating information provision of administrative legal proceedings began on November 22, 2017, with the signing of the Law of Ukraine «On Amendments to the Commercial Procedural Code of Ukraine, the Civil Procedural Code of Ukraine, the Code of Administrative Legal Proceedings of Ukraine, and other legislative acts». This stage is characterized by the introduction of the electronic justice system at all stages of the process and the transition to the Single Judicial Information and Telecom-

munication System, the creation of the possibility of remote participation in the trial, the presentation of various documents, familiarization with the case. The specified system provides for the exchange of documents in electronic form between courts, between the court and participants in the trial, as well as recording the trial and participation of participants in the court proceedings in a court session in a video conferencing mode.

In accordance with the said law, the system of organization of legal proceedings in Ukraine undergoes certain changes, namely: obligatory registration of procedural documents in the system on the day they are received; committing any actions in electronic form using an electronic digital signature; automatic determination by the system of a judge or panel of judges for consideration of a particular case in accordance with the procedure established by the Codes; storage of case materials in electronic form; preservation of the right of the parties to the case to apply to the court in paper form and receive the relevant documents after the introduction of the system; obligation to broadcast a court session in a video conferencing mode via the Internet; functioning of the Unified State Register of Executive Documents [10]. The information provided indicates the phased development of the legal norms that are in the CALP and regulate the information relations in the administrative legal proceedings.

Conclusions. The conditional stages of the formation of the legal regulation of the information provision of administrative legal proceedings determined by us were based on events of key importance for the formation of the information support system of administrative legal proceedings and were accompanied by secondary fragmentary changes that concerned only information provision of certain types of administrative cases.

When investigating the information support of administrative proceedings, it is necessary to distinguish it from the information support of the administrative court. In our view, the information support of the administrative court is a part of the administrative activity for the analysis, planning, and preparation of management decisions, which is an uninterrupted process of processing and using information on the state of functioning of the court apparatus and work of judges, which is carried out with the help of information tools and methods, leads to the formation of information funds, and is aimed at ensuring the proper functioning of the administrative court. At the same time, as information provision of administrative legal proceedings of Ukraine, this is, based on the requirements of the current national legislation, a set of measures related to the circulation of procedural information, which are implemented in the framework of their functions by authorized agents and through the functioning of automated systems and aimed at ensuring the proper functioning of administrative courts on consideration and resolution of public-law disputes.

At the current stage of development of domestic legislation, the legal regulation of information provision of administrative legal proceedings is carried out in accordance with the following laws and regulations: Laws of Ukraine «On the Judiciary and Status of Judges», «On Amendments to Certain Legislative Acts of Ukraine on the Introduction of Automated System of Documentation in Administrative Courts»; «On Access to Court Decisions», «On Amendments to the Commercial Procedural Code of Ukraine, the Civil Procedural Code of Ukraine, the Code of Administrative Justice of Ukraine, and other legislative acts», the Code of Administrative Legal Proceedings of Ukraine, as well as the Regulation «On Automated System of Documentation of the Court», the Procedure for the Management of the Single State Register of Court Decisions, the Regulation on the Single Database of Electronic Addresses, Fax Numbers (Telefaxes) of the Authorities. Some aspects of the information provision of administrative legal proceedings of Ukraine are regulated at the level of subordinate legislation adopted by the State Judicial Administration of Ukraine, which approve the Typical Job Instructions for Employees of the Administration of the Local General Court; Instruction on the Procedure for Working with Technical Means of Recording Court Proceedings (Court Sessions); Instruction on Case Management in Administrative Courts, etc.

The nearest changes in the system of information provision of the administrative process in accordance with the Action Plan on the implementation of the Law of Ukraine as of 03.10.2017 N° 2147-VIII «On Amendments to the Commercial Procedural Code of Ukraine, the Civil Procedural Code of Ukraine, the Code of Administrative Legal Proceedings of Ukraine, and other legislative acts» is the introduction of the Unified State Register of Executive Documents and the Single Judicial Information and Telecommunication System.

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Summary

The article is devoted to the analysis of scientific concepts and the legal framework of the concept of information support for administrative legal proceedings. Features and peculiarities of information provision for administrative legal proceedings are studied; its differences from information support for the administrative court are stressed. The author's definitions of the concept of information support for the administrative procedure and information support for the administrative court are proposed. Three stages of formation of national legislation regulating information provision of administrative legal proceedings are singled out. The system of laws and regulations, which provisions consolidate legal fundamentals of information support for administrative legal proceedings, is clarified. Prospective directions for the development of scientific inquiry in the field of information support for administrative legal proceedings and its legal regulation are revealed.

The conditional stages of the formation of the legal regulation of the information provision of administrative legal proceedings determined by us were based on events of key importance for the formation of the information support system of administrative legal proceedings and were accompanied by secondary fragmentary changes that concerned only information provision of certain types of administrative cases.

Keywords: *administrative jurisdiction, administrative legal proceedings concept, administrative procedure, courts rules, subject.*

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MEASURES TO ENSURE PROCEEDINGS IN ADMINISTRATIVE OFFENSES THAT RESTRICT PROPERTY RIGHTS

Андрій Собакарь, Оксана Мислива. ЗАХОДИ ЗАБЕЗПЕЧЕННЯ ПРОВАДЖЕННЯ У СПРАВАХ ПРО АДМІНІСТРАТИВНІ ПРАВОПОРУШЕННЯ, ЩО ОБМЕЖУЮТЬ НЕМАЙНОВІ ПРАВА. В Україні передбачено чимало адміністративно-правових інструментів охорони правопорядку, захисту прав та інтересів громадян, в переліку яких особливе місце займають заходи забезпечення провадження у справах про адміністративні правопорушення. Їх застосування реалізує припинення адміністративних проступків, встановлення особи порушника, складання протоколу про адміністративне правопорушення, забезпечення своєчасного і правильного розгляду справи, забезпечення виконання постанов у справах про адміністративні правопорушення, документування факт доказів його вчинення. Останнім часом законодавство зазнало суттєвих змін у

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зв'язку з реформуванням правоохоронних органів і судової системи. Отже, удосконалення законодавства з указаних питань буде сприяти створенню передумов формування надійних засобів захисту прав і свобод людини і громадянина, інтересів суспільства і держави, підвищенню ефективності адміністративно-правового впливу.

Отже, у статті проаналізовано нормативні джерела регламентації заходів забезпечення провадження за класифікацією, яка включає три групи заходів забезпечення провадження у справах про адміністративні правопорушення за правовою природою обмеження конституційних прав особи у зв'язку із застосуванням до неї примусових заходів за вчинене правопорушення: майнових, немайнових і комбінованих. З них до немайнових саме і належать заходи забезпечення провадження у справах про адміністративні правопорушення, що обмежують немайнові права: право на свободу пересування та особисту недоторканність тощо. Наголошується, що норми КУпАП про адміністративне затримання (ст. 261-263), доставлення (ст. 259) та привод (ст. 268) особи і є тими засобами забезпечення провадження у справах про адміністративні правопорушення, які обмежують її свободу пересування.

На підставі відмежування понять правових режимів «затримання», «арешту», «ув'язнення», «обмеження пересування особи» та «утримання особи в спеціально відведених для цього приміщеннях», обґрунтовується потреба законодавчого закріплення поняття «момент (фактичного) затримання», початком якого пропонується вважати момент фактичного обмеження свободи пересування шляхом психологічного впливу на свідомість особи правопорушника (усний наказ) або шляхом вчинення конклюдентних дій (тактильний контакт: фізична сила, кайданки та інші заходи, передбачені чинним законодавством).

У статті обґрунтовується потреба удосконалення поняття «адміністративний привод» та його змісту, адже системний аналіз законодавства щодо заходів забезпечення провадження майнового характеру дав можливість виявити невідповідність назви та змісту ст. 268 КУпАП, оскільки привод особи та її обов'язок з'явитися до суду не мають нічого спільного з правами учасника провадження.

***Ключові слова**: адміністративне правопорушення, провадження у справах, обмеження, немайнові права*

Problem statement. Among the wide arsenal of administrative and legal instruments of strengthening in the society of law and discipline, protection of law and order, protection of rights and interests of citizens, creation of normal conditions for the activity of the apparatus of public power occupy a special place measures to ensure proceedings in cases of administrative offenses. Their application is of double importance: first, they are used to stop administrative misconduct when other measures of influence have been exhausted, to identify the offender, to draw up a report on an administrative offense, to ensure timely and correct consideration of the case, to resolve it in exact accordance with the law, to ensure execution of decisions in cases of administrative offenses, etc.; secondly, they are regarded as fixing not only the fact of the offense but also the evidence of its commission.

Characteristic features of administrative enforcement proceedings are that they are independent, and thus are ancillary to influence, are not considered sanctions and do not impose additional restrictions on the offender. However, the current legislation, in particular. Code of Ukraine on Administrative Offenses (hereinafter referred to as the CUAO) [1], although the procedural procedure for their application (list of authorized bodies and officials having jurisdiction, terms, procedural procedure, procedure for appeal), definition of substance, content, grounds, grounds, procedures and features of their application is of great importance both theoretical and practical.

Most of the national **scientific works on the studied issues** have significant achievements, however, they are somewhat outdated. Emphasis should be placed on the numerous reforms introduced in Ukraine. Thus, the insufficiency of theoretical developments and the existence of practical legal problems in the application of measures to ensure proceedings in administrative offenses led to the choice of the topic of the dissertation. Improvement of legislation on these issues will help to create the preconditions for streamlining the activities of administrative jurisdictions, the formation of reliable means of protection of human and citizen's rights and freedoms, the interests of society and the state, strengthening the rule of law, increasing the effectiveness of administrative and legal influence.

The article's objective is to determine, on the basis of the analysis of the current legislation and the general practice of its application, the theoretical basis, the legal nature and the peculiarities of the application of measures for the maintenance of administrative offenses in cases of administrative offenses and on that basis to develop proposals for their improvement.

Basic content. Administrative detention (Art. 261-263 of the CUAO), delivery (Article 259 of the CUAO es) and the occasion (Article 268 of the CUAO) are the means of ensuring proceedings in administrative offenses which restrict its freedom of movement. The measures

under consideration are the same in nature, as they restrict the freedom of movement of the offender and should therefore constitute a single system of measures and be contained in Chapter 20 of the CUAO.

The general principles of their application are provided by the const. 29 and 59 of the Constitution of Ukraine, General Assembly Resolution 43/173 of December 9, 1988 "A set of principles for the protection of all persons subject to detention or imprisonment in any form" [2], Art. 37 of the Law of Ukraine "On the National Police" and other laws and by-laws.

Yes, in Art. 29 of the Constitution of Ukraine, every person is guaranteed the right to liberty and security of person, which is that no person can be arrested (or remanded in custody) except by reasoned court decision and only on the grounds and in accordance with the procedure established by law. According to Art. 59 of the Constitution of Ukraine, every detainee has the right to use the assistance of a lawyer (defender) from the moment of detention [3]. In each case of administrative detention, the authorized person is obliged to immediately notify the center for the provision of free secondary legal assistance by telephone or other communications [4]. Refusal of the defender can only occur after the lawyer has arrived at the specified premises and has received it himself in the form of a written application, a copy of which he submits to the respective regional center.

The principle of protection of all persons subject to detention or imprisonment in any form emphasizes that protection is required of every person "who is detained in any form" [2]. This international act defines the concept and legal regime of "detention", "arrest" and "imprisonment". The term "detention" should be understood as such a person's condition if he or she is deprived of his personal liberty "not as a result of a conviction for an offense". The term "imprisonment" includes conviction when a person is deprived of his personal liberty for committing any offense, and "arrest" is the act of detaining a person on suspicion of committing any offense or at the discretion of a specific authority. According to the rules of formal logic, the terms "arrest" and "detention" in international documents are used in connection with the procedure of prosecution for committing a crime, and "detention" for offenses (misdemeanors).This is borne out by the content of Principle 8 of the Code, which requires detainees to be held in non-convicted status and kept separate from prisoners.

The Code of Conduct regulates relations in this area, although unlike the previous normative act, it does not provide any definition of delivery, administrative detention and reason. In determining their content, it is advisable to refer to their scientific and logical interpretation.

The term "detention" is used in Art. 37 of the Law of Ukraine "On the National Police" in connection with the application to the person of such preventive police measure as "restriction of movement of the person", and "on the grounds, in the order and for the terms determined by ... Code of Ukraine on Administrative Offenses, as well as other laws Of Ukraine "(part 1) [5]. Also restriction of movement of a person in accordance with Part 2 of Art. 37 of the that Law may take the form of "detention of a person in specially designated premises", the countdown of which begins from the moment of actual detention.

In addition, the procedure and grounds for detention and detention of a foreigner or stateless person in a temporary detention facility to secure forced expulsion outside Ukraine is provided for by the Law of Ukraine "On the Legal Status of Aliens and Stateless Persons" [6].

The term "detention of persons in detention rooms" is used by the legislator in the Instruction on Organizing the Activity of the Service of Bodies (Units) of the National Police of Ukraine (paragraph 6 of Part 7 of Section I), which essentially includes not only restriction of the freedom of movement of a person in within certain premises, as well as organization of work with detainees (filing commands, use / removal of handcuffs, etc.), ensuring their constitutional rights and freedoms, etc. (food, water, toilet, notification of location) [7].

The current legislation lacks a common understanding of the moment when the detention period begins to be calculated. The concept of "moment of actual detention" (Article 115 and Article 186) and "Actual detention" (Article 209) are contained in the CPC of Ukraine. Thus, Art. 209 of the CPC of Ukraine defines the moment of detention: "A person is detained from the moment when by force or by subjugation of an order he is forced to stay near an authorized officer or in a premises designated by an authorized official" [8]. At the same time, in Part 4. Art. 507 of the Criminal Code of Ukraine "the term of administrative detention shall be calculated from the moment of delivery of the person to the official premises of the body of revenue and fees or to other premises…" [9]. Articles 260-263 of the CUAO do not contain information on the beginning and the end of detention. Administrative detention is a form of restriction of movement of a person of the kind which is to keep him in a specially designated room, which

starts from the moment when he is obliged by force or by subjugation to remain near an authorized officer or in a place designated by an authorized officer on the premises on the grounds, in the manner and for the terms, determined by the CUAO and other laws of Ukraine, and shall be terminated at the moment when the detained person is handed a copy of tokolu or decision of the offense and in case of refusal to receive it – the signing of these documents witnesses.

As previously emphasized, the notion of "detention" in current legislation and international norms applies not only to an individual, but also to things. Thus, in Part 4 of Art. 36 of the Air Code of Ukraine contains the concept of "aircraft detention", which is used as a fiscal security measure [23].

A number of scientists propose that under the delivery of the offender as a measure of enforcement proceedings to consider a coercive measure that restricts the freedom of action and movement of the person, affecting his honor and dignity, because "delivery of the offender is not only the forced escort of the person to law enforcement, but also the implementation of the law provided to personal freedom of the person in the interests of law enforcement » [66, p. 195-196]. There is a reasonable view that delivery is a preliminary stage of administrative detention [10, 162].

The individual normative regulation of each of the investigated procedures testifies to their certain independence. They should be considered within the framework of a single procedural model, because they are interconnected and interconnected in terms of content and legal status. Delivery law uses the term "stay" of the delivered person in the listed service premises. Administrative detention also implies a similar “offender” stay, but with compulsory drafting of the relevant Protocol, while only the authorized person's report is made on delivery. In our view, this creates confusion in delimiting activities that restrict one's personal freedom.

The possibility of delivering a person who has committed an offense not authorized by that person is allowed not by administrative but by the criminal procedural legislation in the order of Part 2 of Art. 207 of the CPC of Ukraine “Legal detention” [99].

Analysis of the above list of persons in Art. 262 of the CAO of Ukraine states that not all administratively authorized officials are given the same powers of administrative detention, which emphasizes the relative autonomy of both measures. It is also worth noting that the Code of Conduct in the studied norm and now unjustifiably operates with outdated terminology "law enforcement agencies", which needs to be eliminated from the very beginning of the reform of the law enforcement system.

The list provided in Art. 262 of the Administrative Code of Officials is exhaustive because the detention of a person against his will is indoors (room, chamber, cellar, etc.) or in a complex of premises (basement of a multi-storey building, a hospital), and in other places (the roof of a multi-storey building, vehicle) by a person who is not empowered with special powers constitutes a crime under Art. 146 of the Criminal Code of Ukraine “Unlawful imprisonment or kidnapping” [106].

The term "drive" is found in the Criminal Procedural Code of Ukraine only in Art. 268. According to Part 2 of Art. 268 of the Administrative Code in the consideration of cases of administrative offenses, provided for in Part 1 of Art. 44, Art. 51, 146, 160, 172-4 – 172-9, 173, 173-2, Part 3 of Art. 178, Art. 185, 185-1, Art. 185-7, 187 of this Code, the presence of a person held administratively liable is obligatory. Therefore, in the event of evasio– of a summon by police or a judge of a district, district, city, city or district court, this person may be subject to reason by the National Police. At the same time in Part 3 of Art. 268 of the CAO of Ukraine states that the laws of Ukraine may provide for other cases where the appearance of a person held to administrative liability is compulsory.

Among the rules of current law, the concept of the drive provides only part 1 of Art. 140 of the Criminal Procedural Code of Ukraine "Drive": "The drive consists in the compulsory escort of the person to whom it is applied, by the person executing the decision to carry out the drive, to the place of its call at the time specified in the order" [8]. The grounds and conditions of the case for the purpose of ensuring the presence of the person who committed the offense and whose personal participation is considered compulsory by the court, are determined in Art. 272 "Drive" of the Code of Administrative Judiciary of Ukraine (hereinafter – CAJU) [11]. The reason for the use of the actuator is a court order stating the personal information of the individual, place of residence (stay), work, service or training, reasons for the use of the actuator, the subject of execution, time and place of delivery.

Art. 272 of the CAJU provides that the case is brought to court by the bodies of the Na-

tional Police (according to the wording of the rule, the outdated term "law enforcement agencies" is used, which must be corrected by the legislator). In practice, the decision to drive is transmitted for execution to the territorial police department at the place of proceedings or at the place of residence (stay), work, service or training of the person to be brought.

A special feature of the drive is the special subject of execution: a police officer. The enforcement of a case in enforcement proceedings is one of its main areas of activity in paragraph 11 of Part 2 of Section II of the Instruction on the Organization of the Activities of Police Officers of the Police (paragraph 12 of Part 3 of Section II). The district police officers interviewed by us believe that the involvement of district police officers in the occasions should be optional because the prevention sector is not operationally operational and there are criminal police units. In addition, stated in Art. 272 CAJU 's guarantee of reimbursement to the state of the expenses for the operation of the occasion does not have in practice a mechanism of implementation, which is why police officers often carry it out at their own expense. This negatively affects the quality of their work and promotes abuse.

In view of the above, we propose to provide in a separate rule of the Administrative Institution Administrative Instruction as an independent version of measures to ensure proceedings in cases of administrative offenses in a blanket standard and to state in the following wording: «On the implementation of the case, to the place of her summoning at the time specified in the order, in order to ensure her presence in the consideration of administrative offenses envisaged ... tattyamy this Code.. The enforcement of the decree on the implementation of the case may be entrusted to the relevant units of the National Police... The administrative act shall be subject to the requirements of Art. 272 of the Code of Administrative Judiciary of Ukraine... In case of non-fulfillment by the person subject to the law of the legal requirements for the execution of the decree on the exercise of the case, the measures of physical influence may be applied to it, in the manner and in compliance with the requirements stipulated by the legislation of Ukraine».

At present, the national legislation provides for several concepts that form a single institute of personal inspection: "superficial inspection" (Article 34 of the Law on the National Police), "personal inspection and review of things" (Article 264 of the Administrative Code and Article 340 of the CC of Ukraine), "Personal search" (Part 8 of Article 191, Part 6 of Article 208 of the CPC of Ukraine), "Person Search" (Part 3 of Article 208, Part 5 of Article 236 of the CPC). We distinguish the concept of personal inspection and review of things provided for in Art. 264 of the Code of Administrative Offenses from similar procedures.

Thus, in the Law of Ukraine "On National Police" among preventive police measures the legislator provided for a surface check, which is carried out by visual inspection of a person, conducting on the surface of a person's clothing with a hand, a special device or a means, a visual inspection of a thing or a vehicle [5]. This notion became the successor to the notion of “external review”, previously existing in the Statute of the Patrol and Police Service, but has changed substantially in content and legal status, since it is now enshrined in the norm of the Law and not a by-law.

The legislator does not provide definitions of personal inspection either in the CUAO or in the Customs Code of Ukraine. At the same time, in Art. 304 of the Criminal Code of Ukraine personal examination is determined by an exclusive form of customs control, which is carried out by a written decision of the head of the customs authority or the person who replaces it, if there are sufficient reasons to believe that the citizen conceals contraband or goods that are direct objects of violation of customs rules or prohibited for import to Ukraine, export from Ukraine or transit through the territory of Ukraine. The personal inspection states only that: "A personal inspection may be conducted by a person authorized to have the same sex with the person being examined and in the presence of two persons of the same sex." Empirical evidence confirms that, in practice, the requirement for the presence of witnesses is often violated, which is a consequence of the weak legal construction of obsolete Soviet law such as the Code of Administrative Offenses, as well as violations by the law enforcer.

Depending on the procedural order, the following basic procedures for examination of the person are distinguished: 1) superficial inspection; 2) personal inspection; 3) personal search / person search. These procedures are clearly regulated by applicable law and are not alternative, as they have their own grounds and procedure.

The content of the foreseen in Art. 264 of the CAO is hardly disclosed. The systematic analysis of scientific literature, interpretative dictionaries and legislation makes it possible to determine that personal examination is provided by the law of actions (manipulations) with the

body of a person, which restrict the right to liberty and privacy and are carried out by visual and tactile examination, which is carried out for the purpose ascertaining the person's involvement in the commission of an administrative offense or obtaining evidence of his / her commission for the proper consideration of this category of cases.

From the point of view of protecting human rights, which is of the highest social value in Ukraine, its review is a direct interference with privacy. If superficial verification can be carried out by law through both visual and tactile examination of the body of a person or his belongings in the course of preventive activity of authorized persons, then examination of a person in the course of administrative proceedings against a person who has committed an offense requires the fixing of an opportunity to be examined in relation to the offender is at least the same procedures that allow for tactile contact. Consequently, the conduct of a personal examination, especially a tactile one, requires the establishment of procedural safeguards for the protection of the dignity of a person in the Administrative Code.

Thus, we consider it inappropriate to conduct a personal inspection at the place of the offense, firstly, to preserve the evidence and ensure the personal safety of authorized persons, the legislator provides for a procedure of superficial examination, and secondly, the status of the detained person is not determined until the appropriate one is drawn up. procedural document – An administrative offense record or other document as appropriate. Therefore, we consider it quite reasonable to attach to the CAO the duty of a person invited by an authorized official to be present during separate proceedings in cases of administrative offenses when it is clearly necessary to obtain evidence. First of all, these are cases where one authorized person considers the materials and another decides.

Conclusion. Freedom of movement is one of the fundamental non-property human rights, the violation of which is possible only in statutory cases. Therefore, all processes related to their restriction and deprivation should be perfect. In particular, in order to harmonize the legislation, it is proposed to give a legislative definition of administrative detention and to enshrine in Art. 263 of the CUAO the concept of the moment of (actual) detention, the beginning of which is considered to be the moment of actual restriction of freedom of movement by psychological influence on the consciousness of the offender's personality (verbal order) or by taking conclusive actions (tactile contact: physical force, handcuffs and other measures provided by the current legislation).

In addition, in our opinion, it is advisable to strengthen the regulatory requirement to conduct a personal examination exclusively in a special room equipped with a separate from outsiders with legal guarantees of the dignity of the person.

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Summary

In Ukraine, there are many administrative and legal tools for law enforcement, protection of citizens' rights and interests, in which the special place is taken by measures of ensuring proceedings in cases of administrative offenses. Their application implements the termination of administrative misconduct, identification of the offender, drawing up a protocol on an administrative offense, ensuring timely and correct consideration of the case, ensuring the enforcement of decisions in cases of administrative offenses, documenting the fact of evidence of his commission. Recently, the legislation has undergone significant changes in relation to the reform of law enforcement and the judiciary. Therefore, the improvement of legislation on these issues will help create the preconditions for the formation of reliable means of protection of human and citizen's rights and freedoms, interests of society and the state, increase the effectiveness of administrative and legal influence.

Keywords: *administrative detention, delivery, inspection, administrative offense, means of enforcement.*

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GUARANTEES OF RIGHTS AND FREEDOM OF INTERNALLY DISPLACED PERSONS: THEORETICAL AND LEGAL CHARACTERISTICS

Олег Наливайко, Аліна Орєшкова. ГАРАНТІЇ ПРАВ І СВОБОД ВНУТРІШНЬО ПЕРЕМІЩЕНИХ ОСІБ: ТЕОРЕТИКО-ПРАВОВА ХАРАКТЕРИСТИКА. У статті акцентовано увагу, що внаслідок збройного конфлікту на територіях Донецької і Луганської областей, а також анексії Автономної Республіки Крим актуальним є питання гарантування прав і свобод внутрішньо переміщених осіб. Показником рівня цивілізованості досягнутого суспільством і державою є ступінь реальності та гарантованості прав і свобод внутрішньо переміщених осіб. Зазначено, що основоположними принципами демократичної правової держави визнаються не лише закріплені у нормативно-правових актах права і свободи внутрішньо переміщених осіб. Дієвим показником рівня цивілізованості досягнутого суспільством і державою є передбачені гарантії їх захисту. Наголошено, що гарантування прав і свобод внутрішньо переміщених осіб є основоположним чинником в політичній, економічній, культурній та інших сферах життєдіяльності суспільства. Зауважено, що на сьогодні не існує окремого комплексного системного дослідження з проблем гарантування прав і свобод внутрішньо переміщених осіб. Запропоновано авторську дефініцію визначення поняття «гарантії прав і свобод внутрішньо переміщених осіб». З метою повного та об'єктивного розкриття основних характеристик і особливостей визначення поняття «гарантії прав і свобод внутрішньо переміщених осіб», акцентовано увагу на найсуттєвіших його ознаках. Досліджено критерії класифікації видів гарантій прав і свобод людини і громадянина, які наведені в юридичній літературі. Запропоновано авторську систему гарантій прав і свобод внутрішньо переміщених осіб.

***Ключові слова**: внутрішньо переміщені особи, гарантії, загальносуспільні (загальносоціальні) гарантії, юридичні гарантії, нормативно-правові гарантії, організаційно-правові (інституційні) гарантії, реалізація прав і свобод, забезпечення прав і свобод, захист і охорона прав і свобод*

Problem statement. Due to the armed conflict in the territories of Donetsk and Lugansk regions, as well as the annexation of the Autonomous Republic of Crimea, the issue of guaranteeing the rights and freedoms of internally displaced persons (hereinafter – IDPs) has become urgent. An indicator of the level of civility achieved by society and the state is the degree of actuality and guaranteeing of the rights and freedoms of internally displaced persons. Thus, the state cannot be considered democratic, social and legal in the absence of guarantees that ensure the effective realization of human and citizen rights and freedoms, including such categories of persons as internally displaced persons, and in case of their violation – safeguard, protection and restoration. The practical role and importance of guaranteeing the rights and freedoms of internally displaced persons is determined by the fact that they are fundamental factors in the political, economic, cultural and other spheres of society.

Analysis of publications in which solving this problem was started. In the scientific literature different aspects of guaranteeing the rights and freedoms of human and citizen were

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explored in their works by such scientists as: Yu. Barabash, M. Gurenko, O. Goncharenko, A. Kolodii, V. Kravchenko, O. Kushnirenko, S. Moroz, A. Oliinyk, O. Petryshyn, V. Pogorilko, P. Rabinovych, V. Rechytskyi, V. Tatsii, Y. Todyka, V. Shapoval, Y. Shemshuchenko and others. However, although there are developments in the legal literature on certain aspects of the protection of human and citizen rights and freedoms, there is currently no separate comprehensive study on the system of guaranteeing the rights and freedoms of internally displaced persons, which in turn actualizes the scientific clarification and justification of the said question.

The **article's objective** is to provide the author's definition of guarantee of the rights and freedoms of internally displaced persons on the basis of methodological analysis.

Basic content. According to Article 3 of the Constitution of Ukraine, a person, his life and health, honour and dignity, integrity and security are recognized in Ukraine as the highest social value. Human rights and freedoms and their guarantees determine the content and orientation of the state. The state is responsible to the person for its activities. Promoting and safeguarding human rights and freedoms is a state's primary responsibility. Article 21 guarantees that all people are free and equal in their dignity and rights. Human rights and freedoms are inalienable and inviolable. Article 64 of the Basic Law contains provisions according to which the constitutional rights and freedoms of the individual and the citizen cannot be restricted, except in cases provided by the Constitution of Ukraine [1]. In our country, the current condition of the legal status of internally displaced persons in various spheres of society shows: first, the imperfection; secondly, the imbalance of guaranteeing their rights and freedoms. One of the important features of law and order in society is to guarantee the rights and freedoms of IDPs. It should be emphasised that the creation of effective conditions for the exercise of the rights and freedoms of the studied category of persons is possible thanks to an effective guarantee system.

In the context of the above-mentioned, Yu. Todyka points out that, first and foremost, for successful implementation of the human and citizen rights and freedoms enshrined in the Constitution of Ukraine, favourable circumstances, consisting of many subjective and objective factors designed to ensure favourable conditions for the exercise of rights and freedoms, are needed [2, p. 182]. The guarantees of the rights and freedoms of internally displaced persons are interconnected and interdependent; collectively, they ensure their effective implementation, comprehensive safeguarding and protection.

According to A. Kolodii and A. Oliinyk, the mechanism of ensuring the exercise of rights and freedoms includes such elements as: guarantees of their exercise; legal elements of the mechanism of realisation; the process of practical implementation of opportunity and need for activity; conditions and factors of such process [3, p. 221]. Guarantees are one of the key elements of an effective legal mechanism for ensuring the rights and freedoms of internally displaced persons.

True to this is the opinion of scientists who say that in the absence of guarantees, the rights, freedoms and responsibilities of the individual and the citizen take the form of "statements of intent". After all, they become ordinary declarations that have no practical basis and, accordingly, no social value. In addition, guarantees are a kind of external mechanism of restriction of power, which always strives for self-expansion and strengthening of its presence in all spheres of human life [4, p. 85]. The above applies, in particular, to the rights and freedoms of the category of persons under investigation, since in order for them to function normally, effective guarantees should be put in place to protect IDPs in the exercise of their rights and freedoms.

The issue of ensuring human rights and freedoms, and effective guarantees for their implementation are reflected in the writings of many scholars, but despite this, research into the issue of guaranteeing the rights and freedoms of internally displaced persons becomes relevant. The very study of this issue led to the introduction of such a concept as the guarantees of the rights and freedoms of internally displaced persons into legal circulation. In this context, it is paramount to define the etymological meaning of the term "guarantee", which comes from the French word "garantie" and is translated as a security, pledge, condition that provides anything. In dictionaries, the concept of guarantee has the following interpretations: surety in something, securing something; provided for by law or agreement; legislatively enshrined means of protection of rights and freedoms of citizens, ways of their realization, as well as methods of protection of law and order, interests of society and the state; conditions that ensure the success of anything; responsibility for anything [5, p. 55]. The term "guarantees of the rights and freedoms of man and citizen" in modern encyclopedic literature is defined as conditions, means,

ways that ensure the full and complete protection of the rights and freedoms of the individual. The concept of guarantee covers the whole set of objective and subjective factors aimed at the practical realization of rights and freedoms, and the elimination of possible obstacles to their full or proper exercise [6, p. 555]. Guarantees are the conditions, means, ways necessary for the effective exercise of the rights and freedoms of internally displaced persons, as well as the elimination of possible obstacles to their proper exercise.

As already mentioned, there is no single approach in the scientific literature to define the notion of guarantees of the rights and freedoms of internally displaced persons, so different scientific approaches are relevant, which is conditioned both by the scope and complexity of the concept under study.

As M. Vitruk notes, guarantees of human rights and freedoms are those conditions and means that ensure their actual implementation and reliable safeguarding (protection) for each person [7, p. 78]. M. Strogovych, believes that the guarantees are the legal means, norms of the law, the ways in which the rights of citizens are safeguarded and protected, their violations are terminated and eliminated, the violated rights are restored [8, p. 180]. Scholars consider the guarantees, conditions, ways and means by which the safeguarding and protection of rights and freedoms is exercised. A. Ivanov and V. Skobelkin considered guarantees in terms of their understanding as the means and methods by which the real exercise of democratic rights and freedoms of citizens is ensured [9, p. 108-109; 10, p. 10]. V. Kravchenko states that guarantees of human and citizen rights and freedoms are conditions and means that ensure the effective realization of the rights and freedoms of every person and citizen [11, p. 152]. In the abovementioned definitions the focus is on that the real enjoyment of democratic rights and freedoms is provided by means of guarantees. Soviet researchers have noted that guarantees of citizens' rights and freedoms are conditions, means, ways that ensure the full and comprehensive protection of human rights and freedoms. The notion of guarantee covers the whole set of objective and subjective factors aimed at the practical realization of rights and freedoms, the elimination of possible obstacles to their full or possible exercise [12, p. 41; 6, p. 555]. Thus, the rights and freedoms are realized by means of guarantees, and obstacles to their implementation are eliminated. According to A. Nikitin, guarantees of the rights and freedoms of a person are the obligations of the state to protect a person, to create legal, social and cultural conditions for the exercise of his rights and freedoms, as well as the activities of international and state human rights organizations [13, p. 76]. It is emphasised that guarantees are first and foremost a duty of the state; secondly, of the activities of international and national organizations for the protection of rights and freedoms. At the same time, S. Gusariev, A. Oliinyk, and O. Sliusarenko claim that guarantees of rights and obligations are appropriate conditions and means that contribute to the implementation of proclaimed rights and freedoms and fulfillment of obligations [14, p. 241]. K. Volynka substantiates a similar position in this regard [15, p. 18]. Under the guarantee of human and citizen rights and freedoms, scientists offer an understanding of the system of conditions and means that facilitate the practical exercise of rights and freedoms and the fulfillment of obligations.

According to the position of V. Pohorilko and V. Fedorenko, the guarantees of constitutional rights and freedoms of a person should be understood as a system of conditions and means, legal mechanisms for ensuring the proper realization of the rights and freedoms of a person and citizen defined by the Constitution and laws [16, p. 235]. In defining the concept, scientists focus on the system of conditions and means, the legal mechanisms through which rights and freedoms are realized.

The approach of M. Matuzov, O. Malko and A. Mordovets is meaningful in understanding the concept of guarantee, which states that guarantees are a socio-political and legal phenomenon, considering which the following points should be taken into account: cognitive, which allows to reveal the thematic theoretical knowledge about the object of their influence, to get practical knowledge about social and legal policy of the state; ideological, used by political authorities as a means of promoting democratic ideas inside and outside the country; practical, defined as a toolkit of jurisprudence, a prerequisite for satisfying person's social benefits. [17, p. 275]. The authors define guarantees as the preconditions, conditions, means and methods that make up the socio-economic, political, legal, organizational system and create personality opportunities for the exercise of the rights, freedoms and interests of the individual.

In his turn, O. Petryshyn interprets the guarantees of human and citizen rights and freedoms as a system of general (political, economic, spiritual, etc.) and special legal means and institutions aimed at creating conditions for the realization of human rights, as well as ensuring

their comprehensive safeguarding and protection against violations [18, p. 456]. This approach is significant in the current context, as the content of the concept under study includes not only general guarantees but also special legal means and institutions.

The complexity of the content of the concept definition under consideration necessitates the classification of guarantees. In particular, today there is no consensus on the classification of guarantees of the rights and freedoms of internally displaced persons. In the scientific literature it is customary to distinguish between general and special (legal) guarantees. General guarantees stand for the totality of economic, political and other conditions that make rights real. Some scholars characterize such guarantees as "substantive guarantees of rights" [19, p. 132; 20, p. 76; 21, p. 146]. They are also seen as a set of objective and subjective factors that make it possible to practically exercise the rights and freedoms of internally displaced persons, to eliminate probable causes and obstacles to their incomplete (improper) exercise, as well as to protect against violations. Special (legal) guarantees are legal means and methods, that is, provided by laws and other legal acts, with their help rights and freedoms of citizens are realized, safeguarded, protected, and violations of rights and freedoms are eliminated, violated rights are renewed [22, p. 132].

According to E. Bilozerova, the system of guarantees of rights and freedoms of a person is quite complex and extensive, it consists of such elements as: substantive and procedural guarantees; institutional and organizational guarantees; industry guarantees; international legal guarantees; legal liability [23, p. 217].

The system of guaranteeing human rights and freedoms, according to I. Rostovshchykov, consists of general conditions, as well as legal and other special means that ensure their lawful realization, and in necessary cases – protection [24, p. 50-58]. V. Pogorilko distinguishes two main groups of guarantees: general public (general social) and legal [25, p. 41]. At the same time, scholars share the general guarantees of political, economic, social and spiritual, where they are relevant social systems that have developed and function in society.

I. Magnovskyi, applying a narrow approach to the division of general guarantees, distinguishes political, economic and social guarantees [26, p. 13]. Together with the aforementioned guarantees, T. Slinko distinguishes spiritual, substantive and organizational guarantees. In particular, spiritual guarantees are the level of general and political and legal culture of citizens, their education, moral and psychological climate; political guarantees are a set of political measures and means by which the most optimal regime for the exercise of rights and freedoms is created; economic guarantees are a set of economic relations, the emergence and implementation of which promotes the exercise of constitutional rights and freedoms; substantive guarantees are specific objects and things by which the exercise of certain fundamental rights or freedoms is possible; organizational guarantees are systematic activity of the state and its bodies, officials, non-governmental organizations to create favorable conditions for the real enjoyment of citizens' rights and freedoms [27, p. 124]. The division of guarantees of human and citizen rights and freedoms into the general was traditional in the domestic legal literature of the Soviet and post-Soviet periods. In the current conditions, given the context of guaranteeing the rights and freedoms of internally displaced persons, it is impossible to consider the above classification as fundamental.

We should agree with I. Rostovshchykov's opinion, which states that in the sphere of rights and freedoms of citizens, their protection and implementation rely on the existence of appropriate general guarantees, without creating other guarantees and without taking additional measures it will lead to serious mistakes, which can have adverse effects, since any authority requires legal support. Legal guarantees include applicable principles, rules of law, other legal phenomena; in other words, it is a means of law envisaged to directly ensure the exercise and protection of subjective rights and freedoms [28]. This is the opinion of S. Bratus, who points out that general guarantees cannot directly guarantee the exercise of citizens' rights and freedoms. There is a need for specific legal guarantees without which legal rules cannot be put into practice [29]. Legal guarantees for the realization of human rights in society are the means enshrined in the law, which are the legal expression of the general conditions, and directly provide for the possibility of their legitimate implementation and protection [30]. V. Kopeichykov believed that legal guarantees of human rights and freedoms were a complex concept that extended to all spheres, forms and methods of activity of state and public organizations, as well as citizens, and encompassed the practical realization of the rights and legitimate interests of the individual [31]. By their very nature, legal guarantees are state-defined conditions, which are enshrined in the constitution, constitutional laws, as well as in sectoral legislation, and with which the internally displaced persons

have the opportunity to exercise their rights and freedoms.

According to V. Fedorenko, there are two types of legal guarantees: normative legal, and organizational legal. Normative legal guarantees are represented by a system of constitutional law norms, which establish and consolidate the principles, forms, methods, mechanisms and procedures for the realization of constitutional rights and freedoms [32, p. 261]. As a coherent construction, normative legal guarantees of the rights and freedoms of internally displaced persons are represented by a system of interrelated substantive and procedural rules of law, which are objectively reflected in national and international legal acts and treaties. However, normative legal guarantees of the rights and freedoms of internally displaced persons can only be recognized as a constituting element of guaranteeing if it is a logically designed, purposeful and realistically valid system of legal rules.

Due to normative legal guarantees, the content of the rights and freedoms of internally displaced persons, the forms of their realization and the procedural procedures of safeguarding and protection are determined. Their feature is that they are provided with law-making and enforcement activities. The normative part of guaranteeing the rights and freedoms of internally displaced persons in Ukraine consists of substantive and procedural components. As stated in the judgement of the Constitutional Court of Ukraine of April 12, 2012 – No. 9-rp / 2012, the equality guaranteed by the Constitution of all people in their rights and freedoms means the need to provide them with equal legal opportunities, both substantive and procedural in nature, for the realization of equal, according to the content and scope, rights and freedoms [33]. The substantive legal component includes the rights and freedoms of IDPs, and procedural legal forms and means aimed at the realization, safeguarding and protection of the rights and freedoms of IDPs.

Organizational and legal guarantees are the socio-political institutions envisaged in normative and legal acts, which are entrusted with the respective functions and which are given certain powers to organize and carry out legal support of the realization, safeguarding and protection of the freedom of the individual and the citizen. According to the scientist, the main subjects of constitutional law, which are intended to provide organizational and legal guarantees, are: the people of Ukraine; territorial communities; public authorities and local self-government bodies, their officials; political parties; civil society and its institutions; citizens of Ukraine [34, p. 262]. In researching the guarantee of the rights and freedoms of internally displaced persons, the term "institutional mechanism" is used in scientific literature, which, in our opinion, is incorrect. Thus, to refer to entities that act jointly in the context of the protection of the rights and freedoms of internally displaced persons, it is advisable to use such identical concepts as "organizational and legal", "institutional and legal" system. In the context of the study of the classification of guarantees of the rights and freedoms of internally displaced persons, we will use the term "organizational and legal (institutional) guarantees". The main organizational and legal (institutional) guarantors of human and citizen rights and freedoms, including internally displaced persons in accordance with the Constitution of Ukraine, are the Verkhovna Rada of Ukraine (Article 92), the President of Ukraine (Article 102), and the Cabinet of Ministers of Ukraine (Article 116), the courts (Article 55), the Commissioner of the Verkhovna Rada of Ukraine for Human Rights (Article 55), the Prosecutor's Office (Article 131-1), local governments (Article 143), the bar association (Article 59), political parties and public organizations (Article 36), international judicial institutions and relevant bodies of international organizations of which Ukraine is a member or a party (Art. 55) [14, p. 41-45]. Having taken as a basis the provision of the Constitution of Ukraine to the structure of organizational and legal (institutional) guarantors authorized to enforce the rights and freedoms of internally displaced persons, we can refer to the activities of such entities as: the Verkhovna Rada of Ukraine and its institutions; President of Ukraine and his institutions; the Cabinet of Ministers of Ukraine, as well as central and local executive authorities; the Constitutional Court of Ukraine and the courts of general jurisdiction; local governments; the prosecutor's office; the bar association; free legal aid centres; support services for victims (general and specialized); civil society institutions; international and national specialized agencies, representative offices, funds accredited in Ukraine; enterprises, institutions and organizations of state and private ownership, etc.

Effective development of the system of guaranteeing the rights and freedoms of internally displaced persons is possible due to the harmonization of the functioning of the organizational and legal (institutional) components.

At the same time, S. Kashkin proposes to divide the guarantees of human and citizen rights and freedoms into domestic (national) and international law [34]. The former include

judicial and extrajudicial domestic guarantees, and international legal guarantees are divided into universal (provided by the UN and specialized units) and regional (provided at the regional international level) [33, p. 453]. Universal protection is exercised within the activities of the UN and its specialized agencies (for example, the UN Commission on Human Rights, which has today been replaced by the New Council), which has the responsibility to monitor the human rights situation and assist individual states in improving their legislation [35]) and regional within the framework of the inter-American, European and African systems. The European system based on the European Convention for the Protection of Human Rights and Fundamental Freedoms is considered to be the most perfect [36]. Domestic (national) guarantees, which are provided by both judicial and extrajudicial bodies, protect the rights and freedoms of internally displaced persons in a particular state, and international guarantees are the actions of the entire human community. However, the division of guarantees of the rights and freedoms of internally displaced persons into domestic (national) and international law is inappropriate because they are part of the content of the organizational and legal (institutional) components.

The given classifications of the types of guarantees of the rights and freedoms of the person and the citizen can be supplemented by other criteria that will allow to deepen the basic knowledge about the variety of legal nature of the guarantees of the rights and freedoms of internally displaced persons.

Conclusions. On the basis of the stated scientific points of view regarding the understanding of the definition of guarantees of the rights and freedoms of man and citizen, we believe that the guarantees of the rights and freedoms of internally displaced persons are a set of general and specially legal conditions, means and methods, as well as institutions through which effective realization of the rights and freedoms of internally displaced persons and, in case of violation, the possibility of their protection and restoration is ensured.

However, the nature of the guarantees of the rights and freedoms of internally displaced persons cannot be known without analyzing their features. At the same time, in order to fully and objectively reveal the main characteristics and features of this complex in its content and multifaceted manifestations of the phenomenon, it is necessary to focus on its most essential features, among which we can distinguish the following:

first, the guarantees of the rights and freedoms of internally displaced persons have the form of a complex system, which is an aggregate of general (political, economic, etc.) and specially legal means and institutions that are inextricably linked and interacting;

second, the guarantees of the rights and freedoms of internally displaced persons are of a state nature. That is, they are created by it, expressing a measure of freedom, equality and justice that is embodied by recognizing in the world community and ensuring that the rights and freedoms of one person limit the rights and freedoms of another. Also, the enforcement of guarantees is supported and secured by the power of state influence, in particular through the use of coercive measures;

third, the guarantees of the rights and freedoms of internally displaced persons are reflected at the level of the relevant national and international legal acts, which confers upon them such properties as generality, universality and legal protection;

fourth, the guarantees of the rights and freedoms of internally displaced persons are universal and continuous. Thus, they mostly operate permanently and extend to the entire territory of the state;

fifth, the state and level of development of the main spheres of public life reflect precisely the guarantees of the rights and freedoms of internally displaced persons, because by means of their analysis it is possible to form an idea of the priorities of state policy, of the political, economic and social atmosphere in a country that is one on the level of development of the national legal system;

sixth, the guarantees of the rights and freedoms of internally displaced persons are real and appropriate, because they are conditions and factors that exist in an objective reality and make the process of realizing the rights, freedoms and legitimate interests clear, free, unimpeded and secure.

The structure of the system of guaranteeing the rights and freedoms of internally displaced persons is proposed to include: social, normative and legal, and institutional (organizational and legal) components. General social guarantees include political, economic, social and spiritual guarantees. Organizational and legal (institutional) guarantees are represented by the activities of such entities as: the Verkhovna Rada of Ukraine and its institutions; President of Ukraine and its institutions; the Cabinet of Ministers of Ukraine, as well as central and local

executive authorities; the Constitutional Court of Ukraine and the courts of general jurisdiction; local governments; the prosecutor's office; the bar association; free legal aid centres; support services for victims (general and specialized); civil society institutions; international and national specialized agencies, representative offices, funds accredited in Ukraine; enterprises, institutions and organizations of state and private ownership, etc. Legal guarantees provided by interrelated substantive and procedural norms of law, which are objectively reflected in the hierarchical system of national and international legal acts and treaties. However, it should be noted that the aforementioned system of guarantees needs substantial refinement, in particular, that further scientific analysis and study are needed to provide theoretical and practical guidance for further improvement. The guarantees of the rights and freedoms of internally displaced persons are a complex, structured, dynamic, integrated system that, through the social, normative, and institutional (organizational and legal) components, purposefully ensures and enforces the rights and freedoms of IDPs in all spheres of public life.

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Summary

The article emphasises that guaranteeing the rights and freedoms of internally displaced persons is a topical issue due to the armed conflict in the territories of Donetsk and Luhansk regions, as well as the annexation of the Autonomous Republic of Crimea. It is noted that not only rights and freedoms of internally displaced persons enshrined in the legal acts are recognized as the fundamental principles of a dem-

ocratic rule of law. An effective indicator of the level of civilization achieved by society and the state are the ensured guarantees of their protection. It is highlighted that guaranteeing the rights and freedoms of internally displaced persons is a fundamental factor in political, economic, cultural and other spheres of life of society. It is noted that at present there is no separate comprehensive systematic research on the problems of guaranteeing the rights and freedoms of internally displaced persons. The author's definition of "guarantees of the rights and freedoms of internally displaced persons" is proposed. In order to fully and objectively disclose the main characteristics and peculiarities of defining the concept of "guarantees of the rights and freedoms of internally displaced persons", attention is paid to its most essential features. The criteria of classification of the types of guarantees of human and citizen rights and freedoms, which are given in the legal literature, are investigated. The author's system of guarantees of the rights and freedoms of internally displaced persons is offered.

***Keywords**: internally displaced persons, guarantees, general public (general social) guarantees, legal guarantees, normative legal guarantees, organizational and legal (institutional) guarantees, realization of rights and freedoms, securing rights and freedoms, safeguarding and protection of rights and freedoms.*

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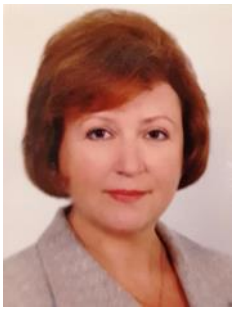

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STATE SOCIAL GUARANTEES OF WAR VETERANS AROUND THE WORLD: DERIVATION AND FORMATION BEFORE THE FIRST WORLD WAR (TAKING INTO CONSIDERATION THE USA, UNITED KINGDOM, FRANCE AND GERMANY EXPERIENCE)

Кирило Недря, Наталія Давидова. ДЕРЖАВНІ СОЦІАЛЬНІ ГАРАНТІЇ ВЕТЕРАНАМ ВІЙНИ У СВІТІ: ВИЗНАЧЕННЯ ТА ФОРМУВАННЯ ДО ПЕРЕШОЇ СВІТОВОЇ ВІЙНИ (ДОВІД США, ВЕЛИКОБРИТАНІЇ, ФРАНЦІЇ ТА НІМЕЧЧИНИ). Аналізується історія становлення і розвитку системи надання соціально-правових гарантій учасникам бойових дій на прикладі чотирьох держав: Великобританії, Франції, Німеччини та Сполучених Штатів Америки, у період до 1914 року. Зазначені країни були обрані не випадково. Критерієм добору виступила військова активність, яка була більш ніж високою у порівнянні з іншими державами, що пояснюється статусом колоніальних імперій. США ж були взяті як держава, яка була утворена саме у боротьбі проти колоніалізму. Було виявлено чітку взаємозалежність предмету дослідження від участі у бойових діях армій зазначених держав та чітку соціально-економічну спрямованість державних гарантій ветеранам, що пояснюється намаганням з боку державних структур зменшити власний соціальний тягар у вигляді зазначеної категорії. При цьому ж, практично не приділялася увага соціальній та психологічній адаптації після війни.

Зроблено висновок, що у тенденціях розвитку системи соціального забезпечення для учасників бойових можна чітко виокремити низку закономірностей. Першою з них є те, що незважаючи на цивілізаційний розвиток та державну приналежність, ключовою соціальною гарантією розглядалося виділення земельної ділянки, що, з одного боку, несло символічний зміст – за землю і воювали, а з іншого – суто практичний: вона мала велику цінність та розглядалася як база для самозабезпечення ветераном. А другою закономірністю є циклічність розвитку соціально-

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правових гарантій держави та його залежність від форми державного устрою та механізмів державного будівництва. Так, рушіями в цьому були саме імперії, які вели агресивну мілітаристську чи то колоніальну політику, сприймаючи війну не лише як спосіб управління, а і, в першу чергу, розширення життєвих меж. Окремо хотілося би відмітити той факт, що ще з часів Римської імперії було сформовано більш ніж вдалий і розумний принцип умовної соціальної адаптації – «Простіше дати заробляти, ніж утримувати», який намагалися використовувати держави, що і були у фокусі нашого аналізу. Інші ж види державної соціальної допомоги, перелік яких поступово зростав, теж були націлені на його всіляке впровадження. Прикладом цього можуть слугувати ті ж таки програми протезування, адже завдяки участі в них, продуктивність ветерана, соціальна значущість та професійна придатність збільшувалася в рази, тим самим зменшуючи соціальне навантаження за бюджет. Загалом, можемо зазначити, що станом на початок Першої світової війни, провідні світові держави, які, власне, і стали її головними учасниками, вже сформували ключові підходи до власних систем надання соціальної допомоги та підтримки ветеранів, як і нормативні межі їхнього функціонування, що є дієвими і дотепер.

***Ключові слова**: захист Батьківщини, ветерани, соціальні та правові гарантії, система соціальних гарантій, закон, війна.*

Problem statement. The protection of Motherland borders, integrity, sovereignty is one of the most honorable duties for a citizen of any state or even a member of a particular social group on the path to its formation. But, it is nothing more than a self-preservation instinct, manifestation of the struggle for right to life, taken at the higher social level. Considering the relevant risks, long ago, before the state structures and society, became necessary to create and implement a system of social guarantees for such category of the persons. With the states development and number war increasing the urgency of this problem has increased, for example, as in the context of the contemporary armed conflict in the east of Ukraine. The exploring of the existing world experience problem and the possibilities of its use in national practice is terminable.

The article's objective. This is confirmed by the general state of problem research , which, unfortunately, is still beyond the scrupulous attention of scientists. How can this be explained? In our opinion, the primary reason is the state policy relation to the armed conflict, as well as its consequences, which still do not have clear messages, and therefore need their scientific development and implementation.

Basic content. The first forms and methods of appropriate work, which can be conditionally regarded as a creation and maintenance of social guarantee prototype , rights and interests of servicemen and war veterans can be found in pre-Christian times. If at the stage of tribal order, it was more like the "right of force", which secured the warrior in society privileged , with the first states appearance and, moreover, of empires, the situation changed dramatically. Yes, the Greek Sparta is well known, where, in fact, only warriors had full civil rights. But for the first time, in the legal sphere, social and legal guarantees for veterans were enshrined in the Hellenic successor state – Ancient Rome [1]. With the expansion of the empire and its development a key tool, on the one hand, to support and motivate the legionnaire and on the other , to consolidate the power of Rome in the conquered lands, was the land allocation from the state fund. Ancient Rome Researcher S.V. Kovalyov notes that the land obtained by veterans could not be sold for twenty years, which led to the development of the farms (they grew grain, grapes and olives and it was cultivated by members of the veteran's family and two or three slaves) and led to self-employment [2, p. 457]. Separately, tax immunity was attached to veterans and their close relatives, which was considered the greatest privilege in the state at that time. This approach has contributed to the establishment and growth of the current and former military independence as well as their social status.

In addition to the above mentioned, each legionnaire after returning to civilian life received an administrative position of "decurion", which in the system of ancient Roman government corresponded to the modern understanding of a member (deputy) of the city council. Also veterans had the right to dock (register) in any territory, the right to vote in absentia at a national assembly, the ability to fulfill the priest duties, be magistrate or any elected official in the community. In addition, veterans' families were freed from military service.

With the gradual decline of Rome, the system of state veteran protection did so. According to I. Kolosovskaya "at the end of III. veteran tenure was in decline. The land was now handed over to veterans, but not in property, but in possession. The size of the issued plot became much smaller "[3, p. 88].

With the disappearance of Roman Empire and Europe transition to the Middle Ages, the practice of providing allotments for military service took root even more then it is reflected in the existing system named feudalism. In our opinion, the Crusades are the most striking illus-

trations of this and are motivated not only by the Holy Land and the Holy Sepulcherconquest but also by land acquisition in the Middle East, as well as by the United Kingdom in which 70% of the land was owned only by 1% of the population.

In the course of historical development in the modern Europe territory is one of the key monarchical state forms that, in fact, defined world history for a number of centuries, became empires largely colonial. The progress and existence of which depended on war expansion and influence increase. And with the number of war growth the soldiers need their social guarantee necessity increasing through the banal land resources limitations and civilized progress in particular. And we would like to single out three key empires whose impact on world history can hardly be overestimated. There are Germany, France and Great Britain.

By the way, the UK was the first among other European countries that began to take up the problem of protecting veterans. At the sixteenth century. the first norms that protected the interests of the disabled and even aimed at some adaptation in peaceful life were enshrined in law [4, p. 27]. This became possible with the beginning of the introduction of the centralized state pension system in the time of Elizabeth I (1558-1603). Initially, however, social guarantees were of a limited nature and only secured citizens were able to use them, since housing was required to receive a pension [5, p. 136-153].

Over time, wounded and crippled soldiers became distinguished into a special category. Unlike the poor and the needy, the disabled and former servicemen were given a life-long pension regardless of their financial situation. All powers to implement the law were delegated to local authorities, who, in the face of budget shortfalls, were forced to limit the number of recipients to disabled veterans.

In 1645, Parliament decided to form an army on a professional basis, changing the approach to the assessment of state obligations to military service [6, p. 75]. In some districts, for example, veterans were provided with jobs, usually as postmen and clerks, to increase profits.

And in December 1681, a royal decree of Charles II established the Royal Hospital in Chelsea, appointed to elderly lonely servicemen of various military ranks – from ordinary to field marshal. On a similar principle, a hospital for sailors was later organized in Greenwich (1694).

The French Republic has a centuries old tradition of war veteran right protection. It dates back to about the middle of the seventeenth century, which is closely linked to the process of the state army formation (by the time the soldiers were actually in the status of temporary mercenaries). Soldiers began to gain the status of lifelong defender of the state. At the same time, they lost all ties with existing civil society institutions, which necessitated the development of appropriate mechanisms, as well as the importance of organizing new social institutions designed to assist war veterans. However, the case from theory to practice only went to the turn of the eighteenth and nineteenth centuries, when there was a major revolution in veteran support, thanks to military campaigns known in history as the Napoleonic Wars. Also, at that time,due to the Enlightenment Era, ideas of the welfare state were popular, which greatly contributed to the beginning of the social protection formation as a system not only in the form of individual benefits, but as legislative one, providing economic and social guarantees for different population groups. , including veterans.

Yes, special attention was paid to those who lost their health due to military action or service. This category also includes those who left the service after the statutory term (always long enough) and became unfit for continued health. Such persons were entitled to society to provide for its material needs. In 1670 the King Louis of France, Louis XIV, for the first time in Europe, created the State House of Invalides (Hotel des Invalides), the purpose of which was to care of honored veterans. Initially, it was planned to accommodate 6,000 people, but due to redevelopment, the number of seats had to be reduced to 4,000. It includes a state military hospital, as well as an elderly house [7, p. 131-136].

At the end of the XVIII century the General Defense Committee established a school for veterans and disabled veterans, in which people were taught literacy. This education gave the right to be employed as secretaries or teachers.

After the French Revolution and the overthrow of the monarchy, political and social instability persisted for a long time in the country, which naturally affected the situation of veterans and war invalids. The situation changed under Napoleon I, under which the veterans were created conditions that testified to their honorary status in the army and society. As a result of the wars in France, there were special disabled companies – companies of the elderly, with old commanders who were to set an example for the younger generation [7].

The activities and reigns of Napoleon in the field of social protection of the combatants were extremely diverse. The pension legislation enshrined a reduction in the rates of compensation to veterans, including the lowest rank of soldiers. The issue of disability received was also regulated at the pension level. As a result, the "sacred duty" of honoring veterans in France was still preserved, but in a much more economical way for the state.

The experience of the French Foreign Legion deserves very special attention, since the purpose of hiring for it envisaged obtaining not only social guarantees but also admission to them, as well as civil rights and freedoms , French citizenship. The Legion was created on 9 March 1831 by King Louis-Philippe I in order to further participate in the Algeria colonization . At that time, France had a large number of foreigners who had no citizenship, which is why they became a fertile material for staffing the unit, which was beneficial to the authorities, which would reduce the number of "unwanted" persons. Therefore, a law was issued by the King according to which the Legion could be used only outside France. Officers were recruited from the Napoleonic wars veterans, as well as citizens of Italy, Spain, Switzerland and other countries.

Volunteers who joined the Legion could count not only on further citizenship upon completion of the service, but in fact on a new life. Yes, the identities of those who were hired were not very meticulously scrutinized, or were not checked at all, so the service was very attractive to criminals or wanted. In this way, they simply avoided persecution and after obtaining citizenship, received a new name. Although, this was happening early in the service. Getting new names is a tradition that is still relevant. Only the first letter of the surname was kept (in some cases initials) and all other changes depended on the soldier's origin. A new date of birth was also created, usually with one day, month and year moving forward (for example, the real date of birth is January 1, 2001, modified to February 2, 2002). In addition, a person could even change nationality, which was additional protection for evading liability.

France neighbour, Germany, who has repeatedly found herself as her enemy, has embarked on developing a social security system for combat veterans since the late nineteenth century, focusing her efforts on introducing insurance. Priority was given to returning even the most disabled to work and ,preferably, to those types of occupations that were characteristic of them before. Thus, the principles of the rehabilitation system were laid. The veterans of the fighting began to receive pensions due to disability and the fact of disability. The size of the pension for persons with severe injuries and disabilities has come close to the skilled worker wage . State support also covered widows and orphans. By 1914 at least half of the war's disabled had been consulted or participated in retraining programs. Many employers were required to allocate places for disabled combatants and recruit them.

The emergence and establishment process of state system support for combatants, which is considered to be one of the role models, especially, in the United States of America is of greate importance. Undoubtedly, the Civil War of 1861-1865 was the impetus for the process.

The law implemented in 1862 was the first step in establishing profits and monetary compensation for injuries received during the war fighting. Provision was also made for the spouses and children rights of the military men to receive assistance equal to that paid to the combatants themselves in the event of employment loss and legal capacity of the latter. The US state policy idea of the development and implementation laws to protect the veterans of war interests was discussed by the first persons of the state. In fact the laws legitimizing in public opinion became the agenda of the state development.

In 1865, Abraham Lincoln called for "... to take care of those who suffer the brunt of the battle, about them in.. Take care of those who suffer the burden of fighting, their widows and orphans ..." According to researcher L.F. Lebedev who studied the social policy of the United States after the end of the Civil War, the law on the pre-emption for public service war invalids was adopted [8, p. 187-188].

Injured war participants were protected by the program of financial assistance, housing and medical services. Particular attention was paid to employment arrangements for persons with disabilities. After the end of the war and the stabilization of the situation in the country, war veterans were offered an expanded range of social benefits, which differed somewhat in each US state, explained by the form of government.

As an example, we may mention that in 1871 an "artificial limb program" was created for the people with amputated limbs. Under the law of 1887, any disabled, blind or deaf veteran residenting in Georgia was eligible for an annual pension of $ 20 to $ 100, depending on the degree of disability.

In a similar scenario, assistance to war invalids in the south of the country has devel-

oped. The South Carolina artificial limb program ran from 1866 to 1869 and was then continued in 1877. Its effect was gradually extended, trying to reach as many victims of the war as possible [7]. In Louisiana veterans whose injuries were associated with loss of limb, vision, hearing, voice, or mobility ,in addition to the usual monetary compensation, were offered extra support measures. Under the law of 1884, 160 acres of state-owned land were allotted to disabled persons and widows of servicemen who were in difficult circumstances. Land title certificates were also issued in Texas [5, p. 136-153].

The United States was the first country in the world where veteran activity and self-organization led to the emergence of a civil society institute, which lobbied the interests of this category before government institutions. In 1899 organizations began to protect the rights and support the first foreign war veterans , which the United States led in Cuba (1898) and the Philippines (1899-1902). Already in 1914, they joined the organization "Veterans of the US foreign wars" which had five thousand members. Official status as a non-governmental organization was recognized by the US Congress only in 1936, when there were officially more than 200,000 people in its ranks [9]. Today, it is the oldest veterans organization in the United States of America, with approximately 2 million members and more than 9,000 regional offices in 50 states, the District of Columbia, and 19 countries (Latin America, the Pacific and Europe. The organization has a representative office in Washington, DC for closer contact with US government, Congress and the President [9].

Conclusions. Thus, in the tendencies of the social security system development for hostilities participants we can clearly distinguish a number of laws. The first is that, despite civilizational development and state affiliation, the key social guarantee was the allocation of land, which, on the one hand, bore symbolic meaning – for land and war, and on the other – purely practical: it had great value and was considered as a base for self-sufficiency by a veteran. And the second regularity is the cyclical social and legal guarantees of the state and its dependence development in the state structure and mechanisms of state construction form. For example, the empires that pursued aggressive militaristic or colonial policies, perceiving war not only as a way of governing, but also, first of all, expanding their borders. We would like to emphasize separately the fact that since the Roman Empire more than a successful and reasonable principle of conditional social adaptation was formulated – "Easier to give to earn than to keep". This message is observed in the USA and became in the focus of our analysis. . Other types of state social assistance, the list of which has gradually grown, have also been targeted for its various implementation. Specific prosthetics programs can serve as an example. Due to their revitalization, veteran productivity, social importance and professional fitness have increased many times over, thus reducing the social burden on the budget. In general, we may confirm that at the First World War beginning, the leading world powerfull states, which were, in fact, its main participants, had already formed key approaches to their own state systems of social assistance and support for veterans as well as the normative functioning limits.These approaches have been still valid.

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Summary

This article deals with formation and development history of the social and legal guarantee providing system as to the hostility participants, taking into consideration Great Britain, France, Germany and the United States of America experience up to 1914. These countries were not chosen by chance. The selection criterion was military activity, which was more than high in comparison with other states due to the colonial empire statuses. The USA, however, was taken as a state formed precisely in the fight against colonialism. Clear interdependence of the study subject, above mentioned countries army participation in the hostilities and well-defined state guaranteed socio-economic orientation to veterans were revealed. The explanation of the state structures efforts to reduce their own social burden in the category specified form and, at the same time, little attention to the social and psychological adaptation after war were taken into consideration.

***Keywords**: protection of motherland, veterans, social and legal guarantee, a system of social guarantees, law, war.*

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SOURCE BASE OF LEGISLATIVE REGULATION OF AGRICULTURAL CREDIT ON THE UKRAINIAN LANDS OF THE RUSSIAN EMPIRE (second half of XIX – early XX century)

Дмитро Селіхов. ДЖЕРЕЛЬНА БАЗА ЗАКОНОДАВЧОГО РЕГУЛЮВАННЯ СІЛЬКОГОСПОДАРСЬКОГО КРЕДИТУ НА УКРАЇНСЬКИХ ЗЕМЛЯХ РОСІЙСЬКОЇ ІМПЕРІЇ (друга половина XIX – початок XX ст.) Аграрний сектор сучасної України знаходиться на тому етапі свого реформування, коли процес регулювання суспільних відносин у сфері виробництва і збуту сільськогосподарської продукції на законодавчому рівні близький до свого логічного завершення, адже переважна частина депутатів Верховної Ради України налаштована ухвалити врешті-решт закон про обіг земель сільськогосподарського призначення, який має відкрити нову сторінку розвитку вітчизняного аграрного ринку. З цієї позиції не лише теоретичний, а й практичний інтерес викликають питання, пов'язані вивченням того історичного досвіду законодавчого регулювання іпотечного кредиту, який мав місце у нашій країні після скасування у 1861 році кріпосного права та здійснення інших реформ аграрного сектору економіки України у другій половині XIX і на початку XX ст. Основна увага у даній публікації зосереджена на аналізі кредитного законодавства у його різноманітніших формах, які побутували у період, що

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вивчається. Маємо на увазі різноманітні «Укази», «Положення», «Правила», «Думки», «Інструкції» тощо. Зважаючи на те, що центральною віссю земельного кредиту на рубежі XIX-XX ст. було законодавство щодо діяльності державних банків, природно, що саме вони (Селянський поземельний та Дворянський земельний банк) стали предметом пильної уваги автора. Звідси і характеристика таких правових актів як «Про порядок продажу з торгів земельних ділянок, заставлених у Селянському поземельному банку», «Про дозвіл Селянському поземельному банку на видачу позик для купівлі земель, які не належали до селянського стану землевласниками деяких повітів Херсонської і Подільської губерній», «Про затвердження Державного дворянського земельного банку», «Про розповсюдження на позичальників приватних земельних банків пільг, встановлених Положенням про Державний дворянський земельний банк» тощо. Поряд зі згаданими вище правовими актами, які зосереджені переважно у «Полном собрании законов Российской империи» (видання друге та третє), у статті згадано також такі джерела щодо змісту і форми сільськогосподарського кредиту 1861-1917 років, як газета «Правительственный вестник», та журнали «Вестник финансов, промышленности и торговли», «Вестник мелкого кредита», у яких відображені практичні заходи щодо реалізації тих чи інших законодавчих актів та ролі у цьому процесі місцевих державних адміністрацій і земства.

Ключові слова: *Російська імперія, Україна, законодавство, сільськогосподарський кредит.*

Formulation of the problem. The level of any historical and legal research depends to a great (if not decisively) extent on the presence, completeness and availability of the relevant sources. A researcher of the history of the state and law of the Russian Empire of the nineteenth and twentieth centuries in general and its individual regions, in particular, will not be able to complain about their deficits. On the contrary, the range of such sources is extremely wide, which creates some difficulties at the stage of determining, relatively speaking, the main and secondary, that is, such sources, which can be avoided without damaging the quality of the subject of research.

Analysis of recent research and publications. The abovementioned is directly related to many problems of the domestic history of the era of free entrepreneurship, which, according to some researchers, came after the abolition of serfdom in 1861, including the issues of legislative regulation of agricultural credit. This topic has already received some coverage in the historical and legal literature. In particular, it was analyzed in his thorough monograph on the institutions of long-term credit in the Russian Empire by legal expert V.Y. Kirichenko [29]. The characteristic of legislative regulation of banking activity was carried out in the dissertations of D.A. Pashentsev [33] and O.E. Finogentov [40], publications by O.M.Holovko [25], A.P. Korelin [30], V.S. Dyakin [26] and other researchers of the national history of the late XIX – early XX centuries.

The purpose of the article: to analyze the source of legislative regulation of all major types of agricultural credit in the Ukrainian lands of the abovementioned historical period.

Basic content. For obvious reasons, the main source of research on the topic of interest to us is the "Complete Collection of Laws of the Russian Empire". It consists of three editions. As the first to absorb the legislative of Tsarist of Russia in the period 1649–1825, the second – from 1825 to 1881. The third, in which, in fact, the main legislative acts concerning certain credit issues of the end of the XIX – beginning of the XX century cover the period from March of 1881 to 1915. It is important to note that in the tsarist legislation of the second half of the nineteenth and early twentieth centuries there were various types of legislation, such as: laws (including the Basic Laws), emergency laws, decrees, manifests, regulations, scripts, rules, instructions, clarifications, and some others. In addition, one should distinguish between the concept of law as a general legal category and law as some form of legislative acts. Some legal scholars understand the notion of "law" as a manifestation of the "will of the classes that have won and hold public treason" [31, p. 285]. A similar interpretation of the term in the system of imperial legislation is found in such well-known modern legal scholars as V.E. Kirichenko and O.M. Holovko [24]. No country in the world had as many laws as in tsarist Russia. According to Art. 53 of the Basic Laws, any legal act approved by the king was considered a law [36]. According to Art. 53 of the Basic Laws, any legal act approved by the tsar was considered a law [36]. It turns out that the law was "Credit Charter", as the basis for the operation of any credit institutions [39], as well as various "Decrees", "Regulations", "Rules", "Dumkas", "Instructions", etc., which regulated specific problems with lending to agricultural producers by banks, zemstvos, cooperatives and other institutions or organizations. Thus, in the form of decrees were published such legal acts as "On reducing payments to borrowers of the Peasant Land Bank" [38], "On granting loans to the Peasant Land Bank secured by pledged land" [23], "On facilitating the tasks of the Peasant Land Bank for assistance to expanding the area of land

ownership of small land "[22]," On the reduction of payments to borrowers of the Peasant Land Bank and changing the terms of issuance of state certificates of the overmentioned bank "[21]. However, most legal acts concerning the conditions of crediting of agricultural producers were published in the form of various "Regulations". It is under this concept that legal acts such as "On extending privileges to borrowers of private land banks established by the Regulations on the State Noble Land Bank" [12] came into force; «On Measures for Restoration of Kharkiv Land Bank Activity» [11]; "On the exclusion of hostile subjects from the members of the Mutual Credit Society and City Credit Societies" [1]. There were also legal acts that were published under the original name, such as "Dumka". These included the following documents: "On the procedure for the execution of serfs on the purchase of land purchased with the assistance of a land bank" [4], "On changes and additions to the current rules on the opening of new joint-stock commercial banks", "On the procedure for sale from auctions of land pledged in the Peasant Land Bank "[5]," On allowing the Peasant Land Bank to issue loans for the purchase of land not belonging to the peasant state to the landowners of certain counties of Kherson and Podilsky Regions [10], "On approval of the State Noble Land Bank" [9], "On the publication of rules on peasant land associations that bought land with the assistance of the Peasant Land Bank" [6], "On changing the order of audit of public credit institutions" [8], "On measures for timely payment to the Peasant Land Bank" [3], "On permitting long-term credit institutions to extinguish mortgage letters and bonds through both circulation and purchase at the exchange" [2]. Without defining of the form of a legislative act, legal acts on the statutes of state and joint-stock land banks were published, such as: "Charter of the Land Bank of Kherson Province" [14], "Charter of the Land Credit Society" [18], "Charter of the Mutual Land Credit Society" [17] , Statutes of Kherson Land Bank [14], Kharkiv [6], Poltava [19] and Kyiv [15] joint stock and state – Peasant [16] and Noble [13] land banks. Taking into account the problems that arose during the implementation of the statutes of a bank, the government has made changes necessary to their content. This was also reflected in the relevant legal acts, which were published either in the form of "Regulations" [33], "Dumkas" or "Decrees" (as discussed above), or simply as certain changes to certain paragraphs of the statute [32].

It should be noted that the multivolume editions of the Full Law of the Russian Empire were printed in the Senate printing house. The first edition was designed as a legal memorial and as a guide to legal and executive activity for state chambers and provincial governments, and therefore had an appropriate target inscription at the beginning of each volume, such as «Kharkiv State Chamber».

The second edition was printed in a much larger circulation and had little target inscriptions. These legal acts were obligatory received by the provincial chief courts and offices of governors and governors-general. The second edition was printed in a much larger circulation and had little target inscriptions. These legal acts were obligatory received by the provincial chief courts and offices of governors and governors-general. Although the published legislation did not reflect the whole palette of transient social relations, they did, to a certain extent, reflect the natural course of social development and were conditioned by the subjective factors of those who determined their continued participation in the process of writing. On the whole, there is no doubt that the legislative acts only recorded the results of certain social processes. They do not make it possible to accurately trace the trend of the tsarist power policy, however, serving as a basis for explaining many of its aspects in various fields, including, of course, such as agricultural credit. Legislative preparation and implementation depended on the court environment, its political and economic interests, personal likes and dislikes, informal relationships, including so-called corruption. Legislative preparation and implementation depended on the court environment, its political and economic interests, personal likes and dislikes, informal relationships, including so-called corruption. The main functions related to the implementation of both published and unpublished (were and such) legislative acts were entrusted to regional structures of state power (offices of governors-general, governors), which in their activity were guided not so much by law as by political expediency. tasks assigned to them personally by the emperor. Thus, for the researcher of the history of the state and law of the Russian Empire in the second half of the nineteenth and early twentieth centuries, the legislative acts constitute a historical and legal source for studying the mechanism of public policy implementation in a particular sphere of life of society, but they are not, regardless of their informative saturation, to recreate all its directions and nuances. In order to get the fullest possible picture of the course of events on certain issues of internal policy, the researcher should refer to the records, part of which was published both for internal use and for informing the general public. The

latter include, for example, publications such as the Journals of Provincial Presences. Thus, in the journal of Poltava provincial presence for July-August 1907 published "Rules for granting loans to the Peasant Land Bank to improve land use" [34]. The latter include, for example, publications such as the Journals of Provincial Presences. Thus, in the journal of Poltava provincial presence for July-August 1907 published "Rules for granting loans to the Peasant Land Bank to improve land use" [34]. In particular, they referred to the implementation of the royal decree of November 15, 1906 [28]. These rules, as evidenced by their text, were a kind of annex to item # 3 of article # 7 of the famous decree of November 9, 1906 [28]. The Instruction established a specific procedure for issuing loans for "land improvement": according to it, the peasants could count on the loan provided: b) in the case of community displacement into separate villages or farms; c) in the distribution of allotment land belonging to the community into cutting areas; d) when taken to one place through striped areas of individual households. "

Those who applied for the loan for the local branch of the Peasant Bank. If they were in compliance with the law, the bank had to obtain the consent to issue a loan to the county land management commission. If, for some reason, the county commission did not give its consent to the credit of the Peasant Bank, the client could have appealed its decision to the provincial land management commission, the decision of which was considered final and not appealable. Loans, which should not have exceeded 60% in some cases and 40% of land valuation in other cases, could have been issued for 13.18 or 28 years from the account of 9 rubles 25 kopecks, 7 rubles 50 kopecks or 5 rubles. 80 kopecks per year from every 100 rubles of credit. In addition, the size of the loan under these "Rules" should not be less than 50 rubles for each individual tenure [34, p.46].

In the years following Stolypin's agrarian reform, loans and some financial assistance in the course of land management changed from time to time. Thus, in November 1908, the Ministry of Internal Affairs issued a circular according to which the General Directorate of Land Management and Agriculture had to make adjustments to the existing legal acts of a by-law nature regarding the issuance of loans and the corresponding financial assistance for land management. According to the circular mentioned above, the local administration received the “Summary of the Rules on the Issuance of Loans and Aid for Land Management, approved by the Land Management Committee on March 17, 1907, and supplemented and amended by the Decree No. 153 of October 17, 1908” [37, p. 16-18]. In this "Consolidated Rules" it was emphasized that the corresponding loan or assistance could be satisfied, on the one hand, only "in the case of the usefulness of the proposed costs" and, on the other, "when these costs would be deemed unbearable for the peasants". Some changes also concerned the size of the loan, which, however, should not have exceeded 150 ruble in this case. On all loans issued, the county land management commission undertook to notify the local treasury every three months in order to count the loan as a debt to a particular householder. The loan (which was interest free) was to be repaid in equal installments after 5 granted years over the next ten years. With regard to the grant, it could be provided under the following circumstances: 1) when the land management of these peasants has an exemplary, indicative value for the surrounding residents; 2) if the peasants are in particularly unfavorable conditions and are unable to recover the money received.

In the midst of Stolypin's agrarian changes, the Committee on Land Management Affairs at its meeting on February 20, 1909 approved the so-called "Guidelines", according to which the land purchased by the Peasant Bank in Samara and Saratov provinces, should make its colonial settlement . In addition, the above guidelines recommended that this fund be used exclusively for displaced persons from Volyn, Kyiv, Podolsk and Poltava provinces, as reported to the local state administration and leadership of the Peasant Land Bank [35, p.4–6].

In addition to publications of local state administrations, many official announcements on the form, content and results of agricultural credit, including a small cooperative, are published on the pages of the newspaper "Governmental Gazette", "Gazette of Finance, Industry and Trade", "Herald of Small Credit" and others. central editions. All of them deserve separate analysis in terms of the characteristics of the numerous by-laws of public authorities and public administration. The above also applies to unpublished sources, widely used by Kharkiv jurist V.E. Kirichenko made it possible to thoroughly cover the organizational and legal aspects of the structure of mortgage banks and the features of law enforcement practice [29, p. 38–41].

Conclusions. All of the above gives grounds for concluding that documents of a legal nature, as included in various collections of laws, and those received by the local administration from central authorities in the form of instructions, orders or circulars, are important for

agricultural loan researchers in the Ukrainian lands of the Russian Empire. Even a cursory analysis of the legislative regulation of agricultural credit in the second half of the nineteenth and early twentieth centuries shows that this trend in the agrarian sphere was not limited to bank credit, because in the years of Stolypin reforms there was a program of crediting direct agricultural producers through management improving the farming conditions of those peasants who created farms and logging, ie consolidated land.

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Summary

The agrarian sector of modern Ukraine is at the stage of its reform, when the process of regulating public relations in the field of production and marketing of agricultural products at the legislative level is close to its logical conclusion, since the overwhelming majority of deputies of the Verkhovna Rada of Ukraine is determined to adopt the law on the circulation of agricultural land in the end, which should open a new page for the development of the domestic agricultural market. From this point of view, not only theoretical but also practical interest are raised by issues related to the study of

the historical experience of legislative regulation of the mortgage loan, which took place in our country after the abolition of serfdom in 1861 and other reforms of the agrarian sector of the Ukrainian economy in the second half of nineteenth and early twentieth centuries. The main focus of this publication is on the analysis of credit law in its various forms, which have occurred in the period under study. We mean the various "Decrees", "Regulations", "Rules", "Dumkas", "Instructions", etc. Paying attention to the fact that the central axis of the land loan at the turn of the nineteenth and twentieth centuries was legislation on the activity of state banks, of course, that they (Peasant Land and Noble Land Bank) became the subject of the author's close attention. Hence the characterization of such legal acts as "On the procedure for sale by auction of land pledged in the Peasant Land Bank", "On permitting the Peasant Land Bank to issue loans for the purchase of land not belonging to the peasant state by landowners of some Kherson and Podilsky districts" , "On approval of the State Noble Land Bank", "On the extension to the borrowers of private land banks of privileges established by the Regulations on the State Noble Land Bank", etc. In addition to the above-mentioned legal acts, which are concentrated mainly in the "Full Assembly of Laws of the Russian Empire" (second and third editions), the article also mentions such sources on the content and form of agricultural credit of 1861-1917, as the newspaper "Government Gazette", and the journals "Gazette of Finance, Industry and Trade", "Bulletin of the Small Credit", which reflect practical measures for the implementation of certain legislative acts and the role in this process of local state administrations and zemstvos.

Keywords: *Russian Empire, Ukraine, legislation, agricultural credit.*

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THE VOIVODSHIP SYSTEM IN THE 17th CENTURY ON THE LANDS OF UKRAINE

Олександр Талдикін. ВОЄВОДСЬКІ ВІДДІЛИ У 17 СТОЛІТТІ НА ЗЕМЛЯХ УКРАЇНИ. Розглянуто появу воєвод та території земель України. Першими адміністративно-поліцейськими органами російської держави на території України були канцелярії російських воєводських управлінь.

Поява воєвод на землях України відбувається протягом другої половини XVII ст. Поліцейські функції воєводи, разом із військовими, судовими та фінансовими, були основними напрямками їх діяльності. Наскільки інтенсивно воєводи діяли з питань адміністративно-поліцейських, сказати однозначно не можна. З одного боку, їм належали поліція, суд і розправа над підлеглими стрільцями, великоросійськими робочими людьми, з іншого, їх втручання в поліцію і суд серед місцевого населення, хоч воно й було обмежено, але не було епізодичним.

Воєводсько-наказова система управління була чітко централізованою. Це означало не тільки суворе підпорядкування воєводи Москві, але і обмеження його повноважень виконанням розпоряджень, інструкцій і наказів центральної влади, а також, передбачало наявність необхідності багато в чому узгоджувати свою діяльність з Розрядним і іншими Приказами. Зміна воєвод була частою, через два, два з половиною роки, що, як вважалося, що не дозволяло їм "засиджуватися" і зловживати своєю владою з корисливих мотивів.

Загальна поліцейська діяльність воєвод Слобідської України регламентувалася чинними законодавчими актами Російської держави, а також інструкціями і указами, різноманітними і багато в чому суперечливими. Відсутність чіткого нормативного оформлення поліцейських функцій часто призводило до управління за принципом "як бог надоумить". Воєводи були зобов'язані стежити за порядком, організовувати його охорону, пропускний режим в містах, що виключає можливість, як проникнення шпигунів, так і осідання в них селян-кріпаків, які підлягають розшуку і відсиланню володарям. Крім того, воєводи контролювали стан продовольства і будов, вживали заходів проти поширення епідемій і пожеж

Нормативне регулювання діяльності поліції воєводи визначалося: діючими законодавчими актами Російської держави, договорами гетьмана і Росії, а також прямими указами царя та Приказів.

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Поліцейські дії воєвод та їх канцелярій на землях України дублювали існуючу діяльність місцевої адміністрації полкової та сотеної канцелярії козацьких полків.

Ключові слова: *адміністративні та поліцейські органи, відомство, Приказ, Слобожанщина, стрільці, воєвода, воєвод-приказна система, воєводство.*

Problem statement. The formation of a domestic scientific concept of the history of state and law of Ukraine, which would be maximally rid of ideological and political commitment, will always remain one of the constant urgent tasks of domestic historical and legal research. At different stages of the evolution of Ukrainian statehood, there were periods of active creation and formation of the main state institutions, and periods of their destruction, when the independence of the Ukrainian lands in their political, economic and legal situation was under pressure from neighboring states, most of the northern neighbor – the Russian Empire. One of the urgent problems in the state and law of Ukraine are issues related to the emergence of its territory, during the late 17th century, of the first organs, the administrative and police apparatus of the Russian state.

Analysis of publications that started solving this issue: The scientific development of this issue is represented by works that can be divided into several groups. The first group includes works by Russian authors of the period of the eighteenth and beginning of the twentieth century's. This event is the first step in the historiography of the problem that was carried out by contemporaries and the first generation of researchers: S. Adrianov, I. Andrievsky, O. Vitsin, K. Golovin, Y. Gauthier, V.F. Deryuzhinsky, O.O. Lopukhin, A. Lokhvitsky and the like. Another group of works devoted to the development of the administrative and police apparatus of the Russian Empire includes the research of the authors of the Soviet period. These are the works of P. Zayonchkovsky, N. Eroshkin, M. Sizikov, A. Borisov, O. Skripilev. The last group is the work of modern Ukrainian researchers – the work of O. Yarmysh, A. Tchaikovsky, V. Chisnikov, O. Taldykin, O. Samoilenko, V. Shandra etc. Work on the presented study revealed the need to attract a fairly wide range of sources. The most complete and numerous group of sources, representing documents from the funds of the Central State Historical Archive of Ukraine.

The methodological basis of the article is the laws of dialectics and the logic of social development. The specifics of the topic led to the application of various research methods. Priorities are given to the problematic method in combination with chronological, comparative legal and statistical methods.

The **article's objective** is to study the emergence and development of the first administrative and police bodies of the Russian state on the lands of Ukraine at the end of the 17th century.

The object of this study is the bodies of the state mechanism of the Russian Empire on the lands of Ukraine at the end of the XVII century.

The subject of the study is the organization and activities of the voivods departments of the Russian state on the lands of Ukraine at the end of the 17th century.

Basic content. The first bodies of the Russian state that appeared on Ukrainian lands and had police functions in their competence were the voivodship offices – the prikaz huts.

The voivodship and prikaz system in Ukraine appeared in the XVII century on the territory of Slobozhanshchina, where it began to form simultaneously with the settlement of this region by Moscow servicemen in the first quarter of the XVII century. The voivode's huts were formed here simultaneously with the national reorganization of the local administration of the Russian state.

The appearance of the voivod on the territory of Hetmanshchina in the middle of the 50s of the XVII century is connected with their appointment by Moscow at the head of the tsarist troops sent to strengthen the defense of the southern borders against external aggression by the Rzeczpospolita and the Crimean Khanate. Simultaneously with the implementation of defense functions, their activities can be regarded as the first attempts to limit the power of the hetman and the transformation of the administrative and regimental system of management of the Hetmanshchyna established during the liberation war of 1648-1654.

The active policy of development of the southern outskirts of the Russian state leads to the formation of a number of fortifications, outlying towns on the "Wild Field" – the northeastern and eastern lands of the left bank. Here, for the first time in Ukraine, Russian voivodships appeared, and a voivod administrative and police system was established. So, on the territory of the Slobozhanshchina, voivods departments were formed in Belgorod [1], Zmiev [2], Izyumsk [3], Karpov [4], Nizhegolsk [5], Ostrozhsk [6], Chuguev [7].

The voivods of Sloboda Ukraine were subordinated to the Razriadny Prikaz, and special powers were given to the voivod of Belgorod, who controlled the activity of the rest. Being the bodies created to assist the voivodeship, prikaz huts were in charge of administrative, military, financial, police and judicial matters.

The voivod had full authority over the entire Russian population in police matters. It should be noted that it also affects migrants from other regions of Ukraine.

The documents of investigative and investigative nature testify to the presence of police functions in the competence of the voivod. These are cases of beatings, robberies, escape of peasants from landowners, escape of working people, as well as "interrogation speeches", most of which take place in 1670-1671 – the years of the peasant war led by S. Razin and the spread of the rebellion of the rebellious Ostrog colonel Ivan Dzikovsky (Zenkovsky) to the territory of the East Ukrainian lands. Being a native of Chernihiv and one of the founders of Sloboda Cossacks, I. Dzikovskiy supported the calls of S. Razin's "charming letteries". After the execution of the Ostrozhsky voivode, this uprising covered almost all the outlying towns : Ostrogozhsk, Tor, Mayatsk, Tsareborisov, Bohodukhov, Kharkov, Chuguev and others.

The voivods of Sloboda Ukraine, relying on the Streltsys, Reitars, together with the remaining loyal Cossacks of Sumy and Kharkov regiments, as well as with the sent hetman D. Mnogogreshny cossacks of Hetmanshchina, managed to suppress this uprising. The voivod following were especially active in detecting and punitive expeditions: Oznobishyn (Korotoyak), Pasynkov (Valuysk), Romodanovsky (Belgorod). On January 30, 1671 the voivode Prince Grigory Romodanovsky informs the Razriadny Prikaz about the execution of 186 "thieves' Cossacks", who were found and caught in the towns of Ostrozhsk, Korotoyak, Olshansk and Mayatsk [8, p. 102-103].

The voivodship system was clearly centralized. This meant not only strict subordination of the voivod to Moscow, but also limitation of his authority to the execution of orders, instructions and decrees of the central authority, as well as the need to coordinate his activities with the discharge and other Prikazes. The change of the voivod was frequent, two, two and a half years later, which, as it was believed, did not allow them to "sit back" and abuse their power for selfish purposes. However, despite such rotation, the voivodes often violated the law themselves, encroaching on the rights and property of the inhabitants and oppressing them in something [9, p. 81-83].

The general police activity of the voivods of Sloboda Ukraine was regulated by the current legislative acts of the Russian State, as well as instructions and decrees, which were diverse and largely contradictory. The lack of clear regulation of police functions often led to "how God understands" governance. Voivods were obliged to monitor the order, organize its security and access regime in the cities, which excluded the possibility of spies' infiltration as well as the possibility of the settling of fugitive serfs to be searched and sent to their owners. In addition, voivodeships controlled the condition of food and buildings, took measures against the spread of epidemics and fires [9, p. 80].

In court, the voivods were investigating and investigating. Thus, in the review of the above-mentioned "thieves'" cases of the participants of the Colonel's uprising И. Dzikowskiy, voivods and their subordinates widely used such means of search as a general search, testimony of witnesses, denunciation, questioning, using torture, and torture was often applied not only to the accused, but also to witnesses.

An apparatus subordinate to the voivod did not have an established staff at the time. Sometimes the voivod was in control of one, sometimes together with his assistant, a comrade of the voivod, or two. In addition, the real force on which he relied in his activities, were subordinate to him military units and garrisons, consisting of streltsys and Dragoons. Cossacks of Sloboda Cossack regiments were also widely used for general protection of borders and order.

By the end of the XVII century, the activities of Sloboda Ukraine voivods and prikaz huts began to be largely duplicated by the regimental chancellery of the Sloboda Cossack regiments formed in the second half of the XVII century: the Akhtyrsky, Izyumsky, Ostrozhsky, Sumy Kharkovsky, as well as the Bakaleysky (1670-1677) and Zmievsky (1666-1671) regiments. Sloboda Cossack regiments at the beginning of their formation were subordinate to the voivod of Belgorod, and then – since 1688 – were transferred to the competence of the Embassy order. In the beginning of the XVIII century their regimental chancellery became the main part of the local administration of Sloboda Ukraine.

With the beginning of the regimental bureaucracy's activity, there is a separation of powers, under which the voivods and their prikaz huts have no power over the Cossacks of the regimental service. General management, police and court among the Cossacks of Slo-

bozhanshchina are carried out by the Chancellery. The latter, in their turn, have no power over the "Moscow people" of Slobozhanshchina.

The Voivodeship and prikaz-system system on the lands of Sloboda Ukraine was abolished in 1719 as a result of the establishment of provinces where the activities and competence of the voivodeship are significantly changed [10].

The appearance of the voivods in the Hetman region was different. As a result of the liberation war of 1648-1654, an independent system of state authorities was formed there, whose competence included police functions. Such bodies were regimental hundreds of offices, such as the main bodies of administration, police and local courts. In addition, most of the major cities had self-government on the basis of Magdeburg law, according to the privileges they received from the Polish kings. Thus, the spread of the voivodship and order administration system in the Hetman region, as well as the activities of voivodships and orderlies, including the police, were significantly limited. In Moscow they understood that Ukraine's incorporation into the Russian state would take a long time and would be a complicated process. According to the treaty of 1654, which regulated the relations of the Hetmanshchyna with Russia and partly its legal status, the introduction of the voivodship system and the establishment of posts of voivod were not envisaged, except for Kiev. During the discussion of the "March articles" in Moscow, the Russians hinted at the desirability of planting their voivodeship in other cities as well. This decision was made by the boyars O.Trubetsky, V.Buturlin, prince P.Golovkin and *dumnym deacon* A.Ivanov besides the basic resolutions, however, was not carried out [11, p.6].

The voivode appears in Kiev: "On the first day of March (1654) the Great Russian troops under the command of boyar and viceroyalty of Rostov, Prince Fyodor Semenovich Kurakin, who was the first in Kiev to take the post of voivod, arrived here as well..." [12; p.116.]. His functions, in addition to military and general administrative duties, included the police and the court among the arriving in the city of streltsys, working people and all sorts of people of different ranks, not subject to the magistrate's office. Thus, in 1682, after the death of the Russian Tsar Fyodor Alekseevich, the indignation of the streltsys regiments in Moscow was supported by part of the streltsys regiments stationed in Kiev. Having come out of obedience, they made numerous robberies and all sorts of riots. This revolt has soon been suppressed by voivod prince Prozorovsky, and rebels after investigation and court are executed [12, p.125].

The situation of the voivods on the territory of the Hetmanshchina changed with the adoption by Hetman Bryukhovetsky on November 22, 1665 of the treaty called "Moscow Articles". Articles 1, 5, 7 of the treaty, in which the autonomy of the Hetmanshchina was so limited that the authorities of the hetman were not subject to the towns and villages with non-Kazak population. In particular, Article 1 defined the parcel of the voivod to all the above-mentioned cities; Article 5 limited the competence of judicial and police authorities by their non-interference in the Cossack courts and investigations; Article 7 directly defined one of the areas of police and judicial activity of the voivods – their supervision, investigation, trial and reprisals against counterfeiters and persons forcing people to engage in counterfeit trade [13, p.131-133].

The active policy of the institution of the voivods in Ukrainian cities caused indignation among the local population, who did not want to accept the new orders. Mass discontent and uprisings in early 1668 against the power of the voivods did not allow ratifying the treaty of 1665, and the spread of the voivodship system in the Hetman region was suspended.

During the election of Hetman D. Mnogogreshny, the distribution of the voivodeship and their competence in the field of court and police were severely limited, and according to the Glukhov articles of April 6, 1669, the voivods remained in Kiev, Pereyaslav, Nizhyn, Chernihiv and Ostra. They were prohibited from interfering with the police and legal proceedings of the local population, moreover, the presence of the latter's representatives was mandatory during the investigation and trial of the "martial people" subordinate to the voivodships, who had committed any crimes against the local residents [13; pp. 137-138, 142]. However, up to the end of the XVII century voivodeships appeared in other cities of the Hetmanshchina: Gadjach, Poltava, Starodub, Baturin.

It is impossible to say how intensively they acted on administrative and police issues. On the one hand, the voivods were owned by the police, the trial and execution of their subordinates, the Great Russian workers, and on the other hand, their interference with the police and the court among the local population, although limited, could not be called episodic. It follows that the history of the provincial administration from Bogdan Khmelnitsky to Skoropadsky represents a continuous struggle between the Kozatsky self-government and the government's desire to establish a provincial administration. The rights of the voivods extended

only to the military administration, but the constant confirmation of these restrictions, constant complaints about the voivod, and finally repeated uprisings show that the de facto power of the voivod often took on a wider scale; and the government itself tried to expand it and extend it to a larger number of cities. [14, с.129-130].

The following conclusions can be drawn from the above:

The first administrative and police bodies of the Russian state on the territory of Ukraine were the Chancellery of Russian Voivodeships – the prikaz huts;

The appearance of the voivods on the lands of Ukraine takes place during the second half of the XVII century.

Police functions of the voivods along with military, judicial and financial functions were the main directions of their activity;

The normative regulation of the police activity of the voivods was determined by: the current legislative acts of the Russian state, treaties of the Hetmanshchina and Russia, as well as direct decrees of the tsar and the Orders;

The police activity of the voivod and their offices on the lands of Ukraine largely duplicated the existing activities of the local administration of regimental and hundreds of offices of the Cossack regiments.

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Summary

The first administrative and police bodies of the Russian state on the territory of Ukraine were the offices of the Russian voivods departments. The appearance of the voivod on the lands of Ukraine takes place during the second half of the XVII century. Police functions of the voivod along with military, judicial and financial were the main areas of their activities.

Keywords: *administrative and police bodies, department, Prikaz, Slobozhanshchina, streltsys, voivod (voivode), voivod-prikaz system, voivodship.*

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TYPOLOGY OF MIGRATION IN THE CONTEXT OF UPDATING HUMAN RIGHTS AND FREEDOMS PROTECTION IN THE PRESENT-DAY WORLD

Світлана Тіщенкова, Ірина Тищенкова. ТИПОЛОГІЗАЦІЯ МІГРАЦІЇ В КОНТЕКСТІ УДОСКОНАЛЕННЯ ЗАХИСТУ ПРАВ І СВОБОД ЛЮДИНИ В СУЧАСНОМУ СВІТІ. У сучасному глобалізованому світі особливої актуальності набувають проблеми, пов'язані з трудовою міграцією населення як одного із визначальних чинників суспільного життя держав, що активно стимулює соціально-економічну та регуляторну діяльність їх громадських систем. Висвітлення питань ефективного управління міграційними процесами є пріоритетним у сучасних наукових дослідженнях у галузі права і суспільствознавства в цілому. Відповідно набуває все більшої актуальності проблема типології міграції, оскільки однозначність в розумінні критеріїв, за якими мігрант буде віднесений до тієї чи іншої категорії, дозволить забезпечити його необхідний правовий захист і реалізацію встановлених законом прав і свобод.

В існуючих підходах практично не інтегровані нові види і форми міграцій, пов'язаних із глобалізацією світової спільноти, із розвитком новітніх інформаційних технологій. Суспільні трансформації останніх десятиліть і технічний прогрес викликають закономірні зміни і в процесах, пов'язаних із переміщенням індивідів в соціальному просторі. Йдеться про віртуальні міграції, облік яких фактично не здійснюється державними службами статистики. Хоча з позицій аналізу змін у соціумі ця категорія міграцій не менш важлива: вона трансформує звичне сприйняття соціального простору, культури і системи цінностей, змінює усталені моделі суспільної взаємодії. Таким чином, сформовані протягом тривалого періоду способи класифікації міграцій, що виражаються у традиційних формах побудови міграційної політики держав, втрачають свою колишню дослідницьку вагу, поступаючись місцем транснаціональним вимірам.

Виходячи з актуальності цієї проблематики, авторами статті зроблено спробу систематизувати існуючий досвід типологізації міграцій і запропонувати уніфікований підхід до використання певної типології для забезпечення правового захисту даної категорії населення.

Ключові слова: *міграція, типологізація, систематизація, критерій, захист, права і свободи.*

Problem statement. In today's globalized world, linked to the challenges of transnationalization of the migration sphere, labor migration, as one of the determining factors in the social life of states, actively stimulates the social and economic and regulatory activities of

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their social systems. In general, the cross lighting of issues related to effective management of migration processes is a priority of present-day scientific researches. In this regard, the problem of the typology of migration is becoming increasingly relevant, since the unambiguous understanding of the criteria by which a migrant will be classified in one or another category will ensure the necessary legal protection and realization of the rights and freedoms established by the law.

Analysis of the publications that started solving this issue. This problem has recently become the subject of scientific analysis of many domestic and foreign researchers, among which, first of all, V. Avliyev, V. Bidak, T. Zaslavskaya, V. Inozemtsev, V. Shvetsov V., M. Kuillin, R Maynes, P. Petsley, R. Lapper, L. Lisogor, Ravenstein, L. Rybakovsky, M. Romaniuk and others. The indicated scientists highlighted the approaches to the development of a theoretical and methodological base for studying labor migration. The essence of the phenomenon of migration, patterns, specificity and features of manifestation in various economic conditions have been properly disclosed. The issues of the formation of the migration policy of individual countries are focused on in the works of such well-known specialists in this sphere as J. Borgas, S. Drinkwater, R. Kauser, G. Crowley, H. Rust and others. Considerable attention in these works is being paid to financial, social, political and cultural aspects of migration. At the same time, insufficient attention has been paid to the typology of migration in the scientific literature, which has determined the line of our study.

Article's objective: to systematize existing experience in typologing migrations, to identify existing problematic aspects, and to offer on this basis a unified approach to the use of a particular typology to ensure the legal protection of migrants.

Basic content. There are a large number of typologies of migrations reflected in the scientific literature. They are usually based on sociological, demographic and economic approaches to the definition of migration and migration behavior. To conduct typologization, several basic criteria are used, such as orientation, time extent, method of involvement in migration behavior, causality, socio-demographic characteristics of migration subjects, and legality of border crossing. Within the framework of each typology, researchers group migration processes on the basis of isolating certain common features, trying to streamline them, create a system that could be used in further study and analysis of this phenomenon. The typologization methods that have been developed over a long period of time are expanding, supplementing, but, unfortunately, a unified approach to using a certain typology to provide legal protection for migrants has not been formed yet. Let us consider in detail the criteria that are used for existing typologies. So, in accordance with the temporary criterion, migration is divided into permanent and temporary. It should be noted that this classification is conditional and is associated with the concept of «temporality» of staying on the strange territory. In the understanding of constancy or inconstancy, one should proceed from the legal consolidation of an individual in the territory chosen by him for migration, which again returns to a legal approach to the interpretation of migration definition. Temporality does not imply «rooting» in new conditions, society. In this regard, temporary migration is considered as migration, mainly from an economic point of view. Temporary migrations are directly related to the functioning of the economic and political system in a particular region. In the framework of the concept of temporary migration, seasonal migration, associated with the seasonality of economic activity, is distinguished. The current state of seasonal migration is associated with the regional division of labor. In particular, regions with a developed tourism business are characterized by an influx of able-bodied people in the most attractive for tourists time periods. And at the same time, there is a significant outflow of labor force from the countries that are considered to be migratory donors. This leads to an imbalance in the economy and other social problems. In addition, constant seasonal migrations erode regional identity, giving it duality traits.

In addition to seasonal migrations, the category of temporary migrations includes the so-called «pendulum» migrations associated with interval flows of migrations from one point to another. Pendulum migrations include temporary labor migrations (from peripheral cities to the capital, and so on), educational migrations, and recreational migrations (treatment, rest, and so on). The migration is considered to be permanent if the individual has made a change of residence and is trying to «gain a foothold» in the new territory, while the length of staying there is a legally determined norm.

Another important criterion for classifying migration is becoming a method of involvement in migration. Here, voluntary migration, involuntary and forced migration are distinguished. Voluntary migrations are triggered by a conscious decision to move an individual

or group of people. The migration is considered involuntary in case the complex of displacing factors acquires strong decisive importance. Such displacing factors can be military operations, environmental or technological disasters, economic and social problems. Forced migration is directly related to the administrative approach to managing migration. As a rule, forced migration is discriminatory and is aimed at a specific ethnic, religious, socio-economic group. Forced migration is directly related to the political and legal transformations of society carried out by the state policy. The most common form of forced migration is deportation.

Migrations related to forced goal-setting are divided into migration of refugees and internally displaced persons (displaced persons). A legal approach is used to highlight these categories, since it is practically impossible to establish fundamental differences from the substantive standpoint. Researchers themselves speak of a «floating» division into refugees and immigrants.

In some legal documents it is related to the category of citizenship. Nevertheless, in the legislative framework of different countries, laws on refugees and internally displaced persons actualize this type of migration. In present-day scientific works, there appear attempts to separate these two types of migrations, but there is no definite research approach so far.

Forced migrations are divided into violent and repressive. In both cases, individuals become migrants not of their own free will, but by virtue of administrative decisions or malicious intent. This, as a rule, is associated with certain discrimination on ethnic, religious, class, and sometimes gender grounds. First of all, one should turn to criminal acts that cause forced migration. What is meant here is human trafficking, slavery and illegal deprivation of freedom of movement, forced restraint of people. At first glance, in the current legal system, it seems to be an obsolete type of migration, but according to the latest UN figures, 63,000 people in more than 106 countries were able to report their situation to those exported for trade from 2014 to 2018. These figures only roughly reflect the scale of this type of forced irregular migration.

It is worth noting that a significant share in trafficking in persons is made up of women and children, who often cannot, due to external circumstances, report their plight. In this connection, UN experts suggest that the proportion of victims of this type of migration is much higher. According to experts, forced migration does not always involve the use of state coercion. A certain policy can also «force» migration, creating unbearable conditions for the life of a social group within a given territory. Forced migrations can be called the movement of large numbers of people traveling not by their own will, but by virtue of coercion by the state, direct or indirect. The first type is defined as deportation; the second is voluntary forced migration. Its fundamental difference is that the state «influences» the circumstances and factors of individual decision-making on resettlement. The type of migration to which the term «deportation» is applied is also found as «repressive migration». Repressive migrations are a direct consequence of the certain mechanisms of a totalitarian or authoritarian regime, the mechanisms of which involve the use of repression as a way of forming the normative behavior of an individual in the given society. In addition, repressive types of migration are directly related to the needs of the state economy. The relocation of a large number of people from one region to another can stimulate the economic development of the host territory with minimal financial costs. A number of characteristic features of deportation as a type of forced migration can be distinguished: they are administrative, extra-judicial; repressions are aimed at a whole group of people, sometimes very numerous; decisions on repressions are usually made by party and government leaders.

Another direction of the classification of the second rate migrations is the allocation of migrations depending on plans for the final destination. Here, the previously mentioned pendulum migrations and vector migrations are distinguished. Pendulum migrations suggest the presence of the so-called «oscillation period», that is the endpoint of migration in this embodiment, in fact, does not exist. There are only time intervals that the individual spends on staying between two spatial points, socially equidistant from him. It is a question of social distance in this case, since pendulum migration is tied not so much to geographical, physical distance, but to the distance between two social positions located in different geographical locations. The individual makes movements, trying to maintain both social positions, returning alternately to one, then to the other. This is the fundamental difference between pendulum migrations and vector migrations. Vector migrations do not imply a constant return from one point to another. The endpoint in this variant of migration exists, but, as the authors of this typology note, it becomes finite for individuals for different periods of time, that is not only the spatial factor is involved, but also the temporal one.

Accordingly, we can single out: constant vector migrations, which suggest a final «gap»

between the starting point of migration and the final; permanent-temporary migrations associated with moving to the final point of migration for a certain period of time, followed by returning to the starting position; temporary (one-time) migrations, these include tourism, travel.

An important criterion for typologizing migration is the criterion of administrative boundaries. Depending on this factor migrations are divided into internal and external. Internal ones are divided into intra-regional and inter-regional. External ones, in their turn, are guided by «entry» and «exit»: emigration and immigration. In the framework of external migration, they distinguish between transit (with double crossing of the state border) and border (frontier, reflecting the depth of penetration into the internal territories – how far it is from the administrative border). According to the authors, this typology becomes relevant when analyzing the concept of national states, when the issue of territorial delimitation is practical and of marking nature. At the moment, typologization of migration on the basis of sociocultural boundaries seems relevant. This typology is based on the theory of sociocultural systems, according to which social and cultural formations are formed in the migrant's mind, which are perceived by the individual as «their own» space, and alien socio-cultural formations. Considering the classifications and typologies of migrations, it should be noted that in the present-day world, migrations can also be divided into individual, group, and mass according to the degree of intensity. In modern society, thanks to the development of mass communications, means of communication, etc. the so-called «global village» is formed, where individuals can make movements, focusing on their beliefs, motives and goals, rather than a group decision. If, until a certain point, an individual could not afford to weaken collective ties, then today, with the intensification of individualization processes, these bonds cease to play a key determining role in choosing the final point of movement.

Conclusions. The above attempt to systematize the previous typological experience of migration processes nevertheless demonstrates some staticity. In existing approaches, new types and forms of migrations related to globalization of the world community and the development of information technologies are not practically integrated. The transformation of the world community and technological progress causes regular changes in the processes associated with the movement of individuals in the social space. We are talking about virtual migrations, the accounting of which is less relevant for government statistics services (this issue is not reflected or considered in any way in the UN recommendations on accounting for migrations), however, from the perspective of analyzing the changes in the entire socium, this category of migrations is no less important – it transforms the vision of its social space, the perception of culture and value systems, changes the usual boundaries of social space.

Thus, the methods of classifying migration that have been developed over a long period of time, expressed in traditional terms of the policies of national states, lose their former research power, giving way to transnational dimensions. There appear new migration criteria – legal / illegal, seasonal / pendulum, voluntarily compelled (refugees and immigrants), indicating the danger to a person of losing his national identity.

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Summary

Methods of classifying migration, expressed in the traditional forms of migration policy of states, have been formed over a long period and are losing their former research weight, giving way to transnational dimensions.

Given the urgency of this issue, the authors of the article attempt to systematize the existing experience of typing migration and to offer a unified approach to the use of a specific typology to provide legal protection for this category of population.

***Keywords**: migration, typology, systematization, criterion, protection, rights and freedoms.*

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STATE MIGRATION SERVICE OF UKRAINE AS AN ACTOR OF ANTI-ILLEGAL MIGRATION

Світлана Рижкова. ДЕРЖАВНА МІГРАЦІЙНА СЛУЖБА ЯК СУБ'ЄКТ ПРОТИДІЇ НЕЛЕГАЛЬНІЙ МІГРАЦІЇ. У статті розглянуто організаційно-правові аспекти діяльності Державної міграційної служби як суб'єкта протидії нелегальній міграції, та визначено основні чинники, які гальмують даний напрям. Також надані пропозиції щодо удосконалення такої діяльності.

Наголошується, що незаконна (нелегальна) міграція є одним з явищ, що сформувалася за часів розбудови незалежної України та становить загрозу суспільній і національній безпеці, економічній стабільності, спричинює ускладнення криміногенної ситуації на території України і серйозно впливає на стан економіки та законності. Чинником, що завжди супроводжує нелегальну міграцію, є вчинення іноземцями та особами без громадянства адміністративних правопорушень на території держави їх перебування.

Приділяється увага питанням протидії нелегальної міграції, вивченням правового регулювання суспільних відносин у сфері міграції, визначенням причин і наслідків, та способів запобігання нелегальній міграції. Також означені сучасні аспекти протидії нелегальній міграції органами державної міграційної служби в контексті міграційних ризиків, законодавчих та організаційно-правових змін в Державної міграційної служби.

Вказується, що Державна міграційна служба відповідно до покладених на неї завдань здійснює заходи щодо запобігання та протидії нелегальній (незаконній) міграції, іншим порушенням міграційного законодавства, виконує в межах повноважень, передбачених законом, правозастосовні і правоохоронні функції.

В процесі дослідження аргументується твердження про те, що незаконне перебування іноземців в Україні перетворилося на вагомий дестабілізуючий фактор у сфері забезпечення публічного порядку та безпеки. Саме з незаконною міграцією пов'язується зростання окремих видів правопорушень на території України.

Констатується, що відсутність інформаційної бази даних про іноземців, визнаних нелегальними мігрантами, збільшує терміни їх ідентифікації і унеможливлює оперативне здійснення працівникам територіальних органів і установ Державної міграційної служби перевірки затриманих осіб щодо повторності вчинення ними правопорушень, застосування підвищених розмірів адміністративних штрафів або інших заходів міграційного впливу.

***Ключові слова**: державна міграційна служба, нелегальна міграція, мігрант, іноземець, особа без громадянства.*

Problem statement. Ukraine is a full member of the international community on the international stage. At the same time, with the years of independence, processes related to the establishment of good neighborly relations with neighboring states, integration and strategic partnership have become increasingly important. Thus, one of the key vectors in the foreign policy of our country is the direction for the integration of Ukraine into the European Union, other interna-

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tional organizations and alliances uniting the leading democratic states of the world.

One of the conditions for the development of Ukraine as a legal state at the present stage is to identify the key directions of its migration policy and to improve the system of state regulation in the field of migration, which should be in accordance with international standards for the full protection and promotion of human rights and freedoms.

According to the Strategy of development of the system of the Ministry of Internal Affairs of Ukraine until 2020, in addition to other tasks for ensuring the formulation of state policy, it is to solve problems related to migration and citizenship [1].

The main challenges identified by the Strategy are the threat to Ukraine's territorial integrity and sovereignty, the terrorist threat, the rise of transnational and organized crime and illegal migration, the smuggling of weapons, explosives and drugs, in the context of the existence of a military conflict. Illegal (illegal) migration is one of the phenomena that has emerged since the establishment of an independent Ukraine, which threatens public and national security, economic stability, complicates the crime situation in Ukraine and seriously affects the state of the economy and the rule of law. The phenomenon that always accompanies illegal migration is the committing of administrative offenses by foreigners and stateless persons in the territory of their country of residence.

Analysis of publications that started solving this problem. The problem of counteracting illegal migration, studying the legal regulation of social relations in the sphere of migration, determining the causes and consequences, and ways of preventing illegal migration at different times were explored in their works by domestic scientists – O. Bandurka, O. Malinovskaya, T. Minka, N. Tyndyk, T. Prudnikova, V. Zavoloka, M. Kuts, A. Mozol, T. Zvyozdna, O. Nagyon, V. Novik, A. Chernyak, V. Shakun, M. Shulga. However, the contemporary aspects of counteracting illegal migration by the State Migration Service bodies in the context of migration risks, legislative and organizational changes in the State Migration Service remain unexplored.

The article's objective is to study the organizational and legal aspects of the State Migration Service's activity as an actor of combating illegal migration, and to identify the main factors that hinder this area and to provide suggestions for improvement of such activity.

Basic content. According to the Regulations on the State Migration Service (hereinafter – SMS), among the main tasks of SMS is the implementation of state policy in the areas of migration (immigration and emigration), including combating illegal migration, citizenship, registration of individuals, refugees and refugees legislation of categories of migrants, takes measures to prevent and counter illegal migration, other violations of migration legislation; performs law enforcement functions within the powers provided for by law; provides for the functioning of the refugee temporary accommodation centers (hereinafter – RTAC) and the temporary accommodation centers for foreigners and stateless persons who are illegally staying in Ukraine (hereinafter – TACF); provides administrative services in accordance with the law; exercise other powers defined by law [2].

The SMS exercises its powers directly and through established territorial bodies and territorial units, including interregional organizations. The SMS is composed of the apparatus of the Service and territorial bodies (Central interregional directorates of the SMS, 24 main departments of the SMS in the regions) it includes administrations, departments (sectors) of the migration service in districts, districts in cities, cities of regional importance (total 583 territorial divisions). The management of the SMS is the Volyn and Chernihiv TACF, the State Institution "Mykolaiv TACF ", the RTAC in the Transcarpathian region, the TACF in the city of Yahotyn of the Kyiv region, the State Enterprise "the TACF in the city of Odessa" (a total of 7 institutions) and the State Enterprise "Document" (hereinafter – SE "Document") [3].

The areas of development of SMS are also covered in other strategic planning documents. In particular, the National Security Strategy of Ukraine, approved by Presidential Decree No 287 of May 26, 2015, stipulates that the development of SMS should be aimed at ensuring the rights and freedoms of citizens, providing quality administrative services, effective control over migration processes, combating illegal migration, protecting national labor market, promoting the introduction of a visa-free regime with the European Union [4].

The Decree of the Cabinet of Ministers of Ukraine No. 482-p of 12.07.2017 approved the Strategy of the state migration policy of Ukraine for the period up to 2025 (hereinafter – the Strategy). The aim of the Strategy is to direct the efforts of the state and society to formulate and implement the state migration policy, which would positively influence the consolidation of the Ukrainian nation and the security of the state, accelerate the socio-economic development, contribute to slowing down the rate of depopulation, stabilization of the quantitative and qualitative composition of the population, labor force, in line with the international standards

and international obligations of Ukraine [5].

In accordance with its tasks, the SMS carries out measures to prevent and counter illegal (illegal) migration, other violations of migration legislation, performs law enforcement and law enforcement functions (subparagraphs 31, 38 of paragraph 4 of Regulation # 360) [subparagraphs 31, 38] .

The Department for Foreigners and Stateless Persons is the structural unit of the SMS which implements and coordinates measures to prevent and combat illegal (illegal) migration, another violation of migration law.

According to paragraph 2 of the Regulation on the Department for Foreigners and Stateless Persons, approved by the Decree of the SMS No. 90 of 10.05.2016, its main tasks are, in particular, to: develop and take measures to implement state policy in the field of migration (immigration), the counteraction to illegal (illegal) migration, refugees and other categories of migrants defined by law; ensuring the organization, coordination and control of the activities of the RTAC, the TACF; organization and analysis of proceedings conducted in territorial bodies and SJC units in cases of administrative offenses committed by foreigners and stateless persons and, according to the requirements of the legislation, are within the competence of the SJC; control within the competence of the territorial bodies and divisions of the SMS on the powers exercised in cases of administrative offenses committed by foreigners and stateless persons, and in accordance with the requirements of the legislation, are within the competence of the SMS.

The task of preventing and combating illegal migration is entrusted to the Department for Foreigners and Stateless Persons of the SMS, departments and sectors of the organization of preventing illegal migration, readmission and expulsion of main departments (departments) of the SMS in the regions (total 30 structural subdivisions6 units). In the same field, RTACs and TACFs are also involved, with a total staffing of 417 units [2].

In view of the above, there is a multilevel migration management system in the LCA, which, in particular, counteracts illegal migration by taking appropriate measures.

In 2018 – the first six months of 2019, among 16984 illegal migrants, only 1096 persons (6.5%) entered the territory of Ukraine illegally (without identity documents or outside checkpoints), 15888 persons (93.5%).) entered Ukraine legally (through checkpoints), and then went on to an illegal position [6].

The illegal stay of foreigners in Ukraine has become a significant destabilizing factor in the area of public order and security. It is illegal migration that is associated with the growth of certain types of offenses, the spread of dangerous diseases, the development of an underground labor market throughout Ukraine. Thus, according to the statistics of the SMS of Ukraine, for 2018 according to Art. 200-206 of the Code of Ukraine on Administrative Offenses in the Field of Violation of Migration Legislation of Ukraine 32 930 persons were brought to administrative responsibility. (Among these indicators, the most prosecuted in part 1 of Article 203 of the Code of Administrative Offenses – 26 154 persons). During 2018, the SMS of Ukraine jointly with the bodies of the State Border Guard Service, the National Police and the Security Service of Ukraine organized and carried out targeted preventive measures "Migrant", during which 5,554 illegal migrants were identified, a decision was made on forced return against 5 114 persons, and forced forcibly 420, 347 foreigners were placed in TACF, 1358 foreigners were forbidden to enter Ukraine [7]. In summarizing the results and results of the preventive testing of Migrants for 2018, it was emphasized that the mass influx of illegal migrants is critical for our country and will soon pose a threat to national security [8].

The Director of the Department for Foreigners and Stateless Persons of the SMS says that the trend of illegal migration to Ukraine has no predictable decrease [8].

It should be noted that as of January 1, 2019, the number of foreigners and stateless persons recognized as refugees in Ukraine is 1,799. The number of foreigners and stateless persons in need of additional protection in Ukraine is 768 [9]. In addition, there is a negative trend of committing criminal and administrative offenses of a general nature committed by foreigners in the territory of Ukraine, namely, in the first nine months of 2018, foreign nationals committed more than 2000 criminal offenses and over 50 thousand administrative offenses in our country, more than 1.3 Thousands of materials from this number of administrative offenses have been compiled for driving intoxicated vehicles [10]. The negative impact of the situation on illegal migration may in the near future complicate Europe's desire to strengthen its migration policy. There is a tendency towards the desire of illegal migrants to enter the EU through Ukraine, which in turn will lead to a real influx of illegal migrants and the corresponding negative consequences. Those illegals who do not reach Europe (most will be) may remain in Ukraine. In this case, the situation in the country will only get worse – the problem of illegal

migrants may be added to the spread of crime, unemployment and total poverty [11]. These migration risks in the country require a comprehensive and well-defined organizational and legal approach, which is envisaged by the Strategy of development of the system of the Ministry of Internal Affairs of Ukraine until 2020. The leading role in this issue belongs to the State Migration Service of the Ministry of Internal Affairs of Ukraine (hereinafter – the SMS), as a subject of combating illegal migration. After all, the implementation of the proper legislative consolidation of the directions of state migration policy of Ukraine, the principles of activity of authorized entities in the field of migration largely depends on the effectiveness of counteracting the phenomena that threaten the national security of Ukraine, in particular illegal migration.

However, in spite of the positive dynamics of anti-illegal migration by the SMS, issues related to the identification of a person and the documentation of identified illegal migrants to ensure their forced expulsion outside Ukraine are an urgent problem.

Thus, in 2018, 1281 persons were placed in the TACF, of which 600 were identified (SMSs – 386, State Border Guard Bodies – 214). In the first half of 2019, 320 out of 900 people placed in TACF were identified (by the SMS – 207, by the State Border Guard – 113), or almost a third. The lowest in the Chernihiv TACF, where as of 01/01/2019 out of 182 people identified were 47, or every fourth person.

The main factors that adversely affect the above processes are the absence of an accredited diplomatic mission or consular post in the country of origin of the foreigner in Ukraine, long waiting times for replies from the competent authorities of the foreign country of origin or consular service of the Ministry of Foreign Affairs, etc., as well as inconsistencies of the SMS territorial authorities which forced expulsion of illegal migrants (sending individual requests to the foreigner's country of origin, obtaining additional information on contacting the MFA or consular offices in other countries).

In turn, a negative trend is being created that, due to untimely identification, foreigners are not expelled from Ukraine. Long-term detention of foreigners and stateless persons in TACF not only results in unproductive spending of budgetary funds, but in some cases leads to violation of the rights and freedoms of detained persons.

In total, in 2018 – the first half of 2019, 1405 foreigners and stateless persons were released from the TACF, of which 737 were forcibly expelled from the Ukraine, 79 were forcibly remitted or transferred in readmission, 276 were released on the basis of court decisions, 282 – on termination of detention, 23 – on termination of administrative detention, and 8 on other grounds (custody, death, and unauthorized leaving of the territory).

Thus, among 1405 persons dismissed from the TACF, only 816 (58.1 percent) left Ukraine, and 589 (almost 40 percent) were released due to the expiration of their term of detention or based on court decisions. . This, in turn, creates a vicious circle that destabilizes the situation in the country and increases its risks.

Accelerated identification of illegal migrants should have been facilitated by the proper functioning of the Unified Information and Analytical System of Migration Management (hereinafter – UIASMM), namely the building of an automated database in the subsystem "Aliens. Refugees", to which the employees of the territorial bodies and institutions of the SMS were to be granted access.

However, the procedure for filling out the UIASMM with data on foreigners and stateless persons, placed in the TACF, has not been developed, and the employees of the SMS do not have access to the database of the subsystem "Aliens. Refugees".

Thus, the Chernihiv PTPI has introduced an internal electronic record of foreigners and stateless persons, to which the employees of territorial bodies of LCA do not have access. Information about foreigners in electronic form by other PTPI was not collected at all [6].

According to paragraph 2.10 of the Regulations on the Department of Organization for Prevention of Illegal Migration, Readmission and Elimination of the Department, one of the main tasks of the Department is to create, administrate and maintain a database of foreigners and stateless persons who are recognized as illegal migrants and forbidden to enter Ukraine, Ukrainian individuals who contributed to their violation of migration law. However, in the absence of the necessary software, the department does not accomplish this task.

Absence of information database on aliens recognized as illegal migrants increases the terms of their identification and makes it impossible for the SMS employees of territorial bodies to check detainees on a repeated basis for repeated offenses, use of increased amounts of administrative fines or other penalties or other measures forced expulsion, transfer in readmission, etc.).

Conclusion. Therefore, it should be noted that the organizational and legal support of the State Migration Service of Ukraine as a whole allows it to perform its basic functions.

However, in order to counteract illegal migration, it must develop and implement additional tools, first of all algorithmic and information-technical ones, in order to overcome the main factors that hinder this area of work.

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Summary

The article deals with the organizational and legal aspects of the activity of the State Migration Service as a subject of combating illegal migration, and identifies the main factors that hinder this area. Suggestions for improving such activities were also provided.

***Keywords**: state migration service, illegal migration, migrant, foreigner, stateless person.*

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EUROPEAN INTEGRATION DIRECTIONS TO IMPROVE THE SYSTEM OF PROVIDING ADMINISTRATIVE SERVICES

Лілія Тимченко. ЄВРОІНТЕГРАЦІЙНІ НАПРЯМИ УДОСКОНАЛЕННЯ СИСТЕМИ НАДАННЯ АДМІНІСТРАТИВНИХ ПОСЛУГ. Стаття присвячено аналізу законодавства Європейського Союзу щодо забезпечення якісних, доступних, професійних послуг органів влади населенню цих країн. Автор зазначає, що сектор послуг є настільки важливим в Європейському Союзі, що їх належне забезпечення регулюється первинним і вторинним законодавством, зокрема статями Договору про заснування Європейського Союзу та Договору про функціонування Європейського Союзу, окремого Протоколу до нього, а також кількома Директивами, прецедентним правом, Хартією засадничих прав Європейського Союзу.

Значну роль у регулюванні сфери послуг відіграв Суд ЄС, який кілька разів виносив рішення по послугах загальноекономічного інтересу. Рішення Суду ЄС забезпечують основу для визначення загальноекономічного інтересу на національному рівні. Однак кожне рішення досягається на індивідуальній основі, з урахуванням умов і національних особливостей держав-членів. Автор звертає увагу, що 6 вересня 2001 р. Європейський Парламент схвалив резолюцію про затвердження Європейського кодексу належної адміністративної поведінки. Зазначений документ, ухвалений з певними змінами на основі проекту Омбудсмана ЄС, хоча і не є формально обов'язковим, проте користується значною повагою і авторитетом. Він справив значний вплив на законодавство і практику публічної служби в країнах ЄС, а також став основою прийняття етичних кодексів поведінки службовців окремих інституцій Союзу.

Основні принципи надання адміністративних послуг у країнах ЄС лягли у основу законодавчого каркасу взаємодії органів місцевої влади та населення й забезпечили вектори відносин у сфері надання таких послуг, які мають специфічні правові форми діяльності місцевої влади. Автор робить висновок, що у значній кількості країн ЄС та у Великій Британії адміністративні послуги надаються в основному органами місцевого самоврядування. У той же час ключовим механізмом стимулювання підвищення якості надання адміністративних послуг населенню виступає диверсифікована система незалежної оцінки якості таких послуг, що необхідно впровадити й в Україні.

***Ключові слова:** публічні, адміністративні, муніципальні та державні послуги; державне управління; органи державної влади; органи місцевого самоврядування.*

Problem statement. The social policy of the state is based on the communication of the state authorities and the population in order to ensure decent social standards in the country. This policy is quite diverse, but the key role in public administration is played by the provision

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of administrative services by state executive administrations, which at the territorial level provide communication between the state and the population.

With the final approval in Ukraine of the course on European integration, a necessary task of the Ukrainian authorities is to attract effective models of administrative services in the public administration system, such as the European Union countries.

Analisys of publications that started solving this problem. The following national scientists have made an active contribution to the development of the theory of standards of administrative services: V.Tymoschuk, Yu. Danshina, O. Babinova, I. Dragan, O. Zagorulya, V.A. Zanfirov, A.V. Kirmach, O. Skorokhod, O. Vlasenko, T. Burenko, and L. Sheremetyeva.

The article's objective is the analysis of European models of administrative services.

Basic content. The service sector is so important in the European Union that its proper provision is governed by primary and secondary legislation, in particular the articles of the Treaty establishing the European Union and the Treaty on the Functioning of the European Union, a separate Protocol thereto, as well as several Directives, case law, The Union.

In particular, the Treaty on the Functioning of the European Union underlines the importance of services that meet the common human needs. In Art. 14 of the Treaty clearly states that the Council and Parliament establish legal principles for the provision of public services. These principles should be determined by the ordinary legislative procedure, which in the European Union means the submission of a proposal by the European Commission, its adoption by the Council and Parliament [Treaty] [10].

Protocol 26 to the Treaty creates a transparent, reliable and sound basis for the provision of a wide range of services of general public interest, including economic and non-economic services. Protocol 26 states that the Treaty on European Union and the Treaty on the Functioning of the European Union in no way infringe the competence of the Member States to authorize third parties to provide and organize non-economic services providing general needs [11].

Art. 50 (1) of the Treaty defines the concepts of services which are usually provided for remuneration to the extent that they are not covered by the provisions on the free movement of goods, capital and persons. In Art. 50 (2) of the Contract shall specify the types of activities related to services, in particular: industrial, commercial, craft and professional activities. Services are usually provided on a fee basis, but in some cases may be provided free of charge.

Basically providing a service means an activity that is profitable or otherwise beneficial, and is paid, as a rule, from private sources, although not necessarily by the person requesting the service. For example, education in state-funded educational institutions is not a service under the provisions of the Treaty on the Functioning of the European Union, but health insurance under the law of the country in which the service was provided is considered a service [11].

A prerequisite for the exchange of services to fall under the jurisdiction of the Union is the existence of a border crossing of a Member State of the European Union. A common policy on the legal regulation of certain sectors of the service sector is based on separate regulations.

These include: six Directives (2002/77 / EC, 2002/58 / EC, 2002/22 / EU, 2002/21 / EU, 2002/20 / EU, 2002/19 / EU) and one telecommunications decision; Electricity Directive (2003/54 / EC), Gas Directive (2003/55 / EC), Postal Directive (97/67 / EC), White Paper on services of general economic interest (COM (2004) 374), Commission Notice on State -Private partnership [16].

The Court of Justice has played a significant role in regulating the services sector, which has ruled on services of general economic interest several times. The decisions of the Court of Justice provide the basis for determining national economic interest at national level. However, each decision is reached on an individual basis, taking into account the conditions and national characteristics of the Member States.

A significant role in the area of services of common interest was played by the judgment of the Court of Justice of 24 July 2003 in Case C-280/00 Altmark Trans, which lays down four cumulative conditions governing the granting of state compensation for services as non-State aid [12]. The researchers note that there are several legal instruments of the European Union in the field of public services provision and regulation: the Treaty on the Functioning of the EU through ordinary legislative procedures, the Protocols setting out the principles and mechanisms for ensuring the use of services, directives, decisions of the Court of Justice, and the Charter of Fundamental Rights , which sets out clear legal principles that guarantee access to services of general economic interest as a fundamental right.

Art. 14 of the Treaty on the Functioning of the EU and Protocol No. 26 "Services" of the Treaty puts forward three basic requirements for supranational authorities and Member

States: ensuring a high level of quality of services, their security and accessibility, equal treatment and promotion of universal access and consumer rights [11].

According to Art. 41 of the Charter of Fundamental Rights of the European Union [13], every person has the right to good administration, that is to say, that the institutions, bodies, services and agencies of the Union consider their case impartially, fairly and within a reasonable time. This right includes, first, the right to be heard before any individual measures are taken, and secondly, the right of everyone to have access to his or her personal affairs with due regard for the legitimate interests of confidentiality, professional and commercial secrecy, thirdly, it is the duty of the administration to substantiate its decisions.

In addition, according to Art. 43 of the Charter, every citizen of the Union, any natural or legal person residing or having its legal address in the territory of a Member State, has the right to apply to the European Ombudsman in cases of maladministration in the activities of Union institutions, bodies, services or agencies, with the exception of the Court of Justice of the European Union. while performing their judicial functions [3].

For the most effective implementation of the said provisions, on 6 September 2001 the European Parliament approved a resolution approving the European Code of Good Administrative Behavior (the Code) [17]. This document, approved with some modifications on the basis of the EU Ombudsman's draft, although not formally binding, is highly respected and respected. It has had a significant impact on the law and practice of public service in EU countries [7] and has become the basis for the adoption of codes of conduct for officials of individual Union institutions, in particular the European Commission [14, p. 37]. In addition, a violation of any of its provisions by an employee or agency under Art. 43 of the Charter and Art. 26 of the Code may be the subject of a complaint to the EU Ombudsman. In turn, the Ombudsman's finding in accordance with para. 2 h. 1 tbsp. 228 of the Treaty on the Functioning of the European Union [15] of unsatisfactory governance entails further consideration of the issue by EU institutions, services, bodies or agencies, as well as by the European Parliament and may have significant adverse effects for both Union institutions and specific employees.

As stated by V.M. Zavgorodnya, the Code, laying down principles and standards of conduct, is a benchmark for European institutions and officials in relations with citizens and legal entities. On the other hand, the provisions it provides are an important tool for the Ombudsman in the exercise of his human rights functions. In addition, the Code also matters to citizens and legal entities, since it reveals, in more detail than the Charter of Fundamental Rights of the European Union, the right to good administration [3].

Based on regulatory certainty, the classification of the basic European principles of administrative law in the sphere of relations between public administration bodies and citizens developed by the Council of Europe experts (hereinafter – the Council of Europe), presented in the Council of Europe Handbook "Administration and You" (1996).), which provides for the separation of two main groups of principles of relations between public administration bodies and citizens:

1) substantive principles, among which there are 7 basic principles: legality, equality before the law, compliance with statutory goals, proportionality, objectivity and impartiality; protection of trust in law and statutory rights and responsibilities;

2) procedural principles, which are divided into 6 basic ones: the principle of access to state (public) services, the right to be heard, the right to representation and assistance, a reasonable term (deadline), notification, explanation of the reasons and determination of remedies and appeals, execution of administrative solutions[11].

According to the researchers, the criterion for ensuring the realization of human rights and freedoms is based on the selection of these groups, for which groups of principles are allocated, which respectively ensure: 1) legal certainty and the rule of law; 2) accessibility and openness of public authorities to citizens; 3) liability of the legal entities; 4) control and supervision over the activities of the designated entities in order to ensure the most effective realization of citizens' rights and freedoms.

Objectively, it is advisable to allocate substantive and procedural principles to regulate relations between public administration bodies and citizens, which allows them to more clearly understand their content and application features. At the same time, it should be noted that today the latest classification should be refined and expanded in the light of recent studies conducted under the auspices of the CoE and the EU aimed at creating a Model Code of Good Administration [2].

On the basis of the principles that determine the principles of activity of public authori-

ties in European countries, the general scope of European principles of administrative law distinguishes the principles of good administration, which in national literature are mistakenly referred to as the principles of "good governance".

Discussions on the subject available in the national literature are resolved by analyzing the list and content of the principles belonging to this classification attribute to the European principles of administrative law, namely: the content of the mentioned principles mainly relates to the activities of public administration bodies in relations with citizens, so we can speak of " procedural nature of the principles of good administration.

Regarding the list of principles of good administration, according to the results of the CoE study, the principles of good administration in the Member States include: legality, non-discrimination, proportionality, prohibition of abuse of power, impartiality and objectivity, respect for legitimate expectations, advice and information, respect for justice, use of plain, intelligible, language-friendly, notification of receipt and appointment of an authorized officer, obligation to hand over to competent authority of authorized institution, right to be heard and make statements, reasonable time for making administrative decisions, obligation to state reasons for administrative decisions, indicate ways of protection, notice of decision, protection of information (information) – privacy, requests information retrieval – confidentiality, request for public access to documents, storage of necessary information (records), legal certainty and protection of violated rights, right of access give to appeal an administrative decision, accessibility of administrative bodies and public services, e-government, flexibility in practical work of administrative bodies, efficiency (continuity of providing administrative services, performing administrative work in an efficient way), transparency of administrative actions, access to information (right of personal access to files (information), general right access to documents, right to written materials), understandability (simplicity) (understandable (simple) organization of administration, understandable (simple) coordination of procedures, with simplification of administrative procedures and documents, principle of reducing the number of documents required), principle to act properly, care, improvement of internal rules of administration, support, protection and preservation of public property, training (training) of civil servants, fulfillment of budgetary requirements, rationalization of organization of administration [4, p. 27].

It is necessary to distinguish from the principles of good administration the principles of good governance [6], which are the generic category of principles of good administration, more precisely the latter are one of the standards of good governance.

In general, the basic standards of good governance include: good legislation; legality; participation; transparency of the decision-making process; access to information; proper administration; proper staff; sound financial and budgetary management; efficiency; responsibility and oversight [6].

Thus, the basic principles of administrative services in EU countries formed the basis of the legislative framework of interaction between local authorities and the population and provided vectors of relations in the field of providing such services that have specific legal forms of local government activity.

One of the legal forms of activity of local authorities [2] is their cooperation in providing administrative services to the local population. The fact is that the application of the concept of cooperation of local authorities in other countries takes into account one of the common principles of public policy, namely: the orientation of the authorities to the needs of the local community through the provision of quality services [8, p. 43].

The state, for its part, becomes a partner and guarantor of a favorable environment for the cooperation of local authorities: creates a stable legal framework, allocates funds for partnership and cooperation programs, provides tax benefits and technical assistance for the creation of cooperation projects, etc.

For example, in France, following the adoption of a law by Parliament that gave local governments greater autonomy – as a result, government cooperation arrangements were adopted and the frequency of such cooperation increased to improve the service delivery process for local populations [15].

In order to create effective conditions for cooperation between local authorities, cooperation agreements are concluded, the main elements of which are: the purpose, responsibilities and responsibilities of partners, rules of operation of governing bodies, financial procedures, conditions for accepting new partners (through voluntary membership), arbitration, supervision , procedure for changes to the agreement, etc.

Under the terms of such an agreement, local authorities have the legal right to make

their own decisions regarding the content of the co-operation agreement and are also responsible for the administrative, operational and financial aspects of providing services to the local population.

Also, the key provisions contained in the cooperation agreement must include a monitoring and evaluation mechanism. It is a matter of legal and financial control over the content of the agreement, which is carried out by both state bodies and associations of local authorities [4, p. 50]. In terms of the financial aspect, services may be charged directly to citizens for permits, licenses and other documents, as well as through contributions from the budgets of local communities participating in the cooperation agreements [9, p. 44].

In different EU countries, the peculiarities of the functioning of representative bodies in the field of providing services to the population largely determine the level of democracy in the country, the creation of real conditions to ensure a decent life of the individual, protect his social and economic rights, the ability of the political system to respond adequately to changes in society.

In Germany, there is a law on administrative procedure governing the external activities of public authorities aimed at verifying the prerequisites, preparing and adopting an administrative act or concluding a public law contract [16]. At the same time, in Finland there is a clear legal basis for the provision of administrative services and their payment: the constitution, the normative documents of the parliament and the ministries. The Parliamentary Act "On Collection of Payments from Public Service Users" gives the government the power to charge for services in accordance with general principles. Paid services are provided by a private organization on a commercial basis when the provision of the service facilitates the commercial activities of the recipient of the service. Compulsory services – free of charge, provided at cost [17].

In Poland [9, p. 45] relations in public administration bodies are regulated by the Code of Administrative Proceedings on matters within the competence of the respective state bodies; in matters of resolution of competence disputes between bodies of territorial self-government units and bodies of government administration; on matters of issue.

The Law on Public Benefits and Volunteering provides for the possibility of outsourcing certain public tasks (together with appropriate funding) to NGOs on a competitive basis [9, p. 49].

Analyzing the experience of European countries on legislative regulation of the process of providing administrative services to the population by local self-government bodies, O.P. Skorokhod notes that in most of these countries, codified acts are effectively in place, dedicated to the detailed regulation of procedures for the activities of local authorities in relation to their relationships with individuals and legal entities.

In particular, there are laws on administrative procedure in Estonia, in Austria – the General Law on Administrative Procedure, in Poland – the Code of Administrative Procedure [8, p. 43].

A characteristic feature of the new EU member states such as Latvia, Poland, Czech Republic, Hungary is the provision of the Laws on Local Authorities, which stipulates that local self-government bodies are able to independently resolve issues of local importance, in particular – to meet the needs of the population by organizing and financing municipal services.

The role of councils in ensuring the quality of public service delivery is key. The basis here will be local public service agreements that aim to strengthen councils for the provision of services to local communities.

To this end, national indicators for evaluating the work of councils have been created, which include: setting priorities and standards, agreeing with the local executive authority; the criteria for evaluating the performance of the councils of their functions (the councils are divided into 4 groups on quality of service delivery): highly effective, higher than average, lower than average, low effective; clear and concise public information that enables citizens to evaluate their activities; smoothness and validity of prices for services that will help them to improve; control by the audit committee in order to prevent deterioration in the activities of the service board, etc [1, p. 158].

Openness in the provision of administrative services, which is also a feature of other countries with their transparency of administrative procedures for the realization of citizens' rights [1, p. 137], is manifested in the availability of information necessary for obtaining administrative services, as well as in the possibility of obtaining consultative assistance from representatives of local authorities.

Conclusions. In a large number of EU countries and in the UK, administrative services are mainly provided by local governments. At the same time, a diversified system of independent evaluation of the quality of such services, which should be implemented in Ukraine, is a

key mechanism for stimulating the improvement of the quality of administrative services. The need to introduce public control over the quality of administrative services provision in Ukraine is due, first of all, to the representation of the executive authorities on the needs of the population, as well as the need to control the quality of work of the entities providing administrative services to taxpayers as the main consumers of such services. Changing the paradigm of power-to-population relations in the context of European integration causes constant monitoring of the quality of administrative services provision as the main impetus for the modernization of this important mechanism of public administration in the current conditions of state formation in Ukraine.

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Summary

The article deals with the analysis of European Union legislation on the provision of quality, accessible, professional services of the authorities to the population of these countries. The author notes that the services sector is so important in the European Union that its proper provision is governed by primary and secondary legislation, in particular the articles of the Treaty establishing the European Union and the Treaty on the Functioning of the European Union, a separate Protocol thereto, as well as several Directives, precedent, Charter of Fundamental Rights of the European Union. The Court of Justice has played a significant role in regulating the services sector, which has ruled on services of general economic interest several times. The decisions of the Court of Justice provide the basis for determining national economic interest at national level. However, each decision is reached on an individual basis, taking into account the conditions and national characteristics of the Member States. The author notes that on 6 September 2001 the European Parliament approved a resolution approving the European Code of Good Administrative Behavior. This document, approved with some modifications on the basis of the EU Ombudsman's draft, although not formally binding, is highly respected and respected. It has had a significant impact on the law and practice of public service in EU countries and has become the basis for the adoption of codes of conduct for officials of individual Union institutions. The basic principles for the provision of administrative services in EU countries formed the basis of the legislative framework for the interaction between local authorities and the population and provided vectors of relations in the area of providing such services that have specific legal forms of local government activity. The author concludes that in a large number of EU countries and in the UK, administrative services are mainly provided by local governments. At the same time, a diversified system of independent evaluation of the quality of such services, which should be implemented in Ukraine, is a key mechanism for stimulating the improvement of the quality of administrative services.

Keywords: *public, administrative, municipal, public services; public administration; public authorities; local self-government.*

ISSUES OF PRIVATE LEGAL REGULATION OF SOCIAL RELATIONS

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ISSUES OF LEGAL REGULATION OF THE APPLICATION OF CIVIL LIABILITY FOR DAMAGES CAUSED BY CORRUPTION

Ігор Алексеєнко, Олексій Стасюк. ПИТАННЯ ПРАВОВОГО РЕГУЛЮВАННЯ ЗАСТОСУВАННЯ ЦИВІЛЬНОЇ ВІДПОВІДАЛЬНОСТІ ЗА ШКОДУ, ЗАПОДІЯНУ КОРУПЦІЙНИМИ ПРАВОПОРУШЕННЯМИ. У статті, аналізуючи положення національного законодавства про подолання корупції, досліджуються особливості притягнення до цивільно-правової відповідальності за порушення корупційного характеру. Як свідчить практика, від проявів корупції потерпають не лише держава та суб'єкти приватного права, але і інші публічно правові утворення також зазнають майнових втрат від проявів корупції і потребують захисту своїх прав. Отже, захисту інтересів цих суб'єктів також слід приділити увагу. Крім того, за час, що минув, істотно оновилося законодавство про запобігання корупції та напрацьовано певну судову практику щодо застосування його положень, яка потребує вивчення.

Одним із найбільш дієвих способів захисту цивільних прав є відшкодування шкоди. Отже. відшкодування шкоди є лише одним із цивільно-правових наслідків вчинення діянь корупційного характеру. Стаття 65 Закону «Про запобігання корупції» передбачає притягнення особи за вчинення корупційних або пов'язаних з корупцією правопорушень до цивільно-правової відповідальності у встановленому законом порядку. Специфічні властивості цивільно-правової відповідальності з об'єктивного боку забезпечують більш глибоку можливість індивідуалізації наслідків корупційної поведінки та усунення її негативних наслідків не тільки для суспільства в цілому, а, головним чином, для окремих учасників суспільних відносин, потерпілих від цих правопорушень. Особливості цього роду державно-примусових заходів обумовлені двома обставинами: по-перше, цивільно-правові санкції, спрямовані на відновлення майнового становища особи, яке існувало до порушення її права, а отже, мають бути виявлені негативні наслідки корупційних явищ у сфері економічних відносин за участю потерпілого. По-друге, вони спрямовані на захист приватних інтересів конкретних учасників цивільних відносин, порушених корупційним діянням. Відповідно, ініціатива подолання наслідків корупційного діяння виходить не від публічно-правових інститутів, а безпосередньо від потерпілого. Приватна ініціатива потерпілого у подоланні наслідків корупційних явищ може мати місце у формах звернень до компетентних органів з повідомленнями про порушення корупційного законодавства та вчинення позову про захист порушеного права у порядку цивільного судочинства. Тому у дослідженні, робиться висновок, що застосування відшкодування шкоди та інших засобів цивільно-правового впливу, у зв'язку із вчиненням таких правопорушень, може мати прояв самостійних наслідків корупційної поведінки

***Ключові слова**: цивільно-правова відповідальність за шкоду заподіяну проявами корупції, корупційні діяння та правопорушення пов'язані з корупцією, судова практика*.

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Problem statement. The task of overcoming corruption in Ukraine in recent years at all levels of government has been recognized on the record as a key problem that hinders the development of our state and society. This negative phenomenon of social life in various aspects has been widely studied in the domestic scientific literature, and the number of scientific works devoted to its study is measured by hundreds. At the same time, the civil-law aspect of corruption in public relations has been fragmented. Compensation for damages is only one of the civil consequences of corruption.

Accurate familiarization with the practice of applying in the courts the provisions of the law on compensation for corruption in relation to the manifestations of corruption indicates that there are certain problems with the application of the civil legal consequences of these negative phenomena, which necessitates a more detailed study of these issues and making proposals for improvement of the legislation damage caused by corruption and corruption-related offenses.

Analysis of publications that started solving this problem. The main part of the scientific publications, where the legal side of corruption, is devoted to improving relations in the field of public administration, as well as to improving the legislation on administrative and criminal liability for offenses in this area was investigated.

A number of dissertations and monographs of such scientists as D. Zabroda, S. Ivasenko, O. Klok, O. Litvinov, E. Nevmerzhitsky, D. Mashlyakevich, M. Melnik, O. Prokhorenko, Ya. Filip, S. Rogulsky, O. Tkachenko, R. Tuchac, O. Banchuk, T. Grek, I. Griniova, I. Koliushko, O. Onishuk, G. Malyar, V. Tymoschuk, I. Yatskiv and others were used in this research.

In our opinion, scientific research, that had been conducted by the above-mentioned scientists, still does not pay enough attention to the analysis of the civil legal consequences of corruption phenomena. In this direction, the results of scientific research were presented by V. Gvozdetsky and S. Bratkov, who drew attention to "the lack of clarity on the legal relationship for compensation for damage caused by corruption and other corruption-related offenses." [1] They raised such issues as the absence in the Central Committee of Ukraine of a norm that would regulate the peculiarities of compensation for damages for this type of offense and made an appropriate proposal to supplement Chapter 82 of the Civil Code of Ukraine (hereinafter – the Central Committee of Ukraine) with a special article on liability for damage caused by corruption offenses. Our experience in studying jurisprudence in this direction gives reason to agree with the mentioned scientists, who noted the existence of difficulties in identifying the elements of civil relations, and the presence of complications in the mechanism of compensation [1]. In the work of V. Gopanchuk and S. Nizhensky [2] the issue of supplementing Article 82 of the Civil Code of Ukraine with the provisions raised within the norms of which the authors proposed to provide special provisions to restore the violated rights of a legal entity or an individual as a result of corruption offenses. The issues of civil liability for corruption offenses were investigated in the PhD dissertation written by S. Nijinsky [3] who identified the features inherent in the civil liability of this species

However, in our opinion, a number of issues in this area of scientific researches require further studying. Not only private law entities and the state are affected by corruption. Other public law entities also suffer property losses from corruption and the need of their rights being protect. Therefore, the protection of the interests of these entities should also be given consideration. In addition, the legislation on the prevention of corruption has been substantially updated in the past and some case law on the application of its provisions has been developed, though needs further studying.

The article's objective is to systematically analyze the provisions of national legislation on combating corruption and substantiate the theoretical foundations of the application of compensation for harm and other means of civil and legal influence, in relation to committing such offenses as independent consequences of corrupt behavior.

Basic content. Recent national anti-corruption legislation pays close attention to the use of preventative means of preventing corruption in public life. The mere fact of non-compliance with such measures constitutes an offense which entails liability of the individual. Part one of Article 65 of the Law of Ukraine "On Prevention of Corruption" of 14.10.2014 No. 1700-VII (hereinafter – Law No. 1700-VII) [4] provides that for committing corruption or corruption-related offenses, the persons mentioned in Part 1 of Article 3 of this Law shall be prosecuted administrative, civil and disciplinary responsibility in accordance with the procedure established by law. As we can see, all types of legal liability can be applied in connection with the

commission of corruption or corruption-related offenses. And so, naturally, the issue of the possibility to combine cross-sectoral sanctions in determining a person's responsibility arises.

Law 1700-VII provides for two types of offenses: corruption and corruption-related offenses. Since no specific term has been created by the legislator to refer to these two types of offenses, further, in this article, we will define them as "acts of corruption". Corruption and corruption-related acts are offenses in the area of public-law regulation of public relations.

A corruption offense is defined by Law No. 1700-VII as an act that contains signs of corruption committed by a person referred to in paragraph 1 of Article 3 of this Law, for which the law establishes criminal, disciplinary and / or civil liability [4]. A similar approach was applied by a legislator in the construction of the concept of the notion "corruption offense". The difference between the latter is only in the absence of signs of corruption, in an act that violates the requirements established by Law No. 1700-VII.

Both types of offenses are more differentiated in the relevant provisions of the Criminal Code of Ukraine and the Code of Administrative Offenses of Ukraine. These legislative acts exhaust the list of acts of corruption. Outside these legislative acts, there are no types of corruption offenses that would constitute a purely civil tort or a disciplinary offense of a corrupt nature.

Therefore, civil liability can only be applied as a result of criminal or administrative offenses. Detection of a criminal offense, its fixation and bringing a guilty person to criminal responsibility for having commited a crime is the exclusive authority of the state government. Accordingly, only after the state has fixed the fact of committing corruption by a person, can raise the issue of civil legal consequences driven by its commiting.

According to Part 1 and Art. 7 of the Code of Ukraine on Administrative Offenses, no one can be subjected to a measure of influence in connection with an administrative offense except on the grounds and in the manner established by law. The use of measures of administrative influence by authorized bodies and officials shall be carried out within the scope of their competence, in accordance with the law. Therefore, similar conclusions can be drawn regarding the establishment of facts of corruption offenses. Criminal justice and administrative sanctions can only affect the cessation of unlawful activity and have a negative impact on the perpetrator. The private interests of a person whose rights have been violated by corruption require protection by civil means.

The cumulation of multi-sectoral sanctions provides a versatile impact on the perpetrator and is driven by the need to influence the consequences of corrupt behavior in various areas of public life.

Disciplinary responsibility extends to the sphere of private law regulation.

The powers to establish the fact of disciplinary misconduct fall within the competence of the other party to the employment contract, the employer. The subject of corruption is often the person who is in the public service or in the service of local self-government bodies. Civil servants and officials of local self-government are subject to the legislation of Ukraine on labor, taking into account the peculiarities stipulated by special laws.

So. in accordance with Part 3 of Art. 7 of the Law of Ukraine "On Service in Local Self-Government Bodies" N 2493-III of 07.06.2001, the provisions of Chapter 9 of the Labor Code of Ukraine (hereinafter referred to as the Labor Code of Ukraine) on guarantees for imposing material liability on employees are subject to for the damage caused to the enterprise, institution, organization. The same provision existed for civil servants (Part 3 of Article 4 of Law No. 4050-III "On Civil Service" of 17.11.2011). Law of Ukraine "On Civil Service" No. 889-VIII of December 10, 2015 (new version) the relations of material liability of civil servants received a special legal regulation in Chapter 3 of Section 8 of the Law. According to part 4 of Art. 81 of this law in determining the amount of compensation shall take into account the state of the civil servant, the ratio of the amount of damage caused to his salary, the risk of harm, experience of public service given to the civil servant orders , as well as other circumstances in which the full compensation of the civil servant for the damage will be unjustified. Therefore, a legislator proceeds from the necessity of full compensation of the damage and determines the grounds for reduction of this amount under the influence of certain factors. An important legal guarantee of the status of a civil servant is financial liability only for intentional acts (Part 3 of Article 80 of Law No. 889-VIII). At the same time, special law No. 1700-VII "On Prevention of Corruption", in Part 2 of Art. 68 limits the types of non-recoverable damages in recourse and determines that no recoverable amount of compensation related to labor relations and non-pecuniary damage is recoverable. Thus, the provisions of a special law that determine the lia-

bility of public servants for offenses of a corrupt nature establish additional limits of liability for public servants, such as prohibiting the recovery of sums incurred from them for compensation for work-related benefits and non-pecuniary damage.

It should be noted that Law No. 1700-VII, in accordance with the provisions of the Civil Convention for the Suppression of Corruption [6] Articles 66-68, provide for the use of a number of civil remedies to counteract the effects of acts of corruption. Means of this kind are contained in the relevant provisions of the Civil Code of Ukraine. The following remedies include: restoration of violated rights (Clause 4, Part 2, Article 16 of the Civil Code of Ukraine); compensation for material and non-pecuniary damage (Chapter 82 of the Civil Code of Ukraine); the invalidation of transactions concluded in violation of the requirements of Law No. 1700-VII (Chapter 16 of the Civil Code of Ukraine); recognition of illegal legal acts, decisions issued (adopted) in violation of the requirements of Law 1700-VII (Article 21 of the Civil Code of Ukraine). As practice shows, compensation for harm is one of the most effective ways to protect civil rights. Therefore. damages are only one of the civil consequences of committing acts of corruption. Article 65 of Law No. 1700-VII provides for the prosecution of a person for committing corruption or corruption-related offenses in civil liability in accordance with the procedure established by law.

Application by the legislator in Art. 1 of Law No. 1700-VII in defining acts of a corrupt nature, the combination of prepositions "and / or" before the words "Civil liability" gives reason to return to the issue of the possibility of independent application of civil sanctions as a consequence of a corruption offense. As we know, civil liability is a form of state coercion that involves the application of civil penalties to a person for committing an offense in the field of legal regulation of civil relations.

Civil rights and legitimate interests that have been violated as a result of acts of a corrupt nature require their being restored and protected through civil sanctions, since the penalties provided by the relevant law do not ensure the restoring of the violated civil law. The peculiar features of civil liability on the objective side provide a deeper opportunity to individualize the consequences of corrupt behavior and eliminate its negative consequences not only for the society as a whole, but mainly for individual participants in the social relations affected by these offenses.

The peculiarities of this kind of state-coercive measures are conditioned by two circumstances: first, civil sanctions aimed at restoring the property status of a person that had existed before the violation of his right, and therefore, the negative consequences of corruption phenomena in the sphere of economic relations with participation of the victim should be revealed. Secondly, they are aimed at protecting the private interests of specific participants in civil relations that had been violated by corruption. Accordingly, the initiative to overcome the effects of corruption comes not directly from the public-law institutions, but directly from the victim.

The victim's private initiative in overcoming the consequences of corruption can take the form of appeals to the competent authorities with reports of violations of the corruption legislation and of bringing a claim for protection of the violated right in the civil procedure. As already noted, it is only in the case of bringing a person to commit a criminal act of criminal or administrative responsibility, can be a question of applying the civil legal consequences of such an act.

With regard to the possibility of applying civil penalties independently for such offenses, it should be noted that this is possible only in cases where the closure of relevant court cases occurred on non-rehabilitative grounds, but the fact of committing acts of corruption was established by the court. Therefore, the use of compensation for harm and other means of civil influence in connection with the committing of such offenses may manifest itself as an independent consequence of corrupt behavior. The general conditions for the occurrence of obligations arising from causing harm are set out in Part 1, Art. 1166 of the Civil Code of Ukraine, according to which property damage caused by wrongful decisions, acts or omissions of personal non-property rights of a natural or legal person, as well as damage caused to property of a natural or legal person, is fully compensated by the person who caused it.

The historical experience of the legal regulation of relations for the compensation of harm indicates that it is not possible to be satisfied with one rule for the full compensation of the harm by the person who caused it. Evidence of this is the current state of development of the civil law institute of liability for compensation, the norms of which are systematized in Chapter 82 of the Civil Code of Ukraine. Seeking to improve the efficiency of protection of the rights of participants in property relations, the legislator in the norms of this institute provided a considerable number of cases where the direct infliction of damage is brought to civil liability

only in the manner of recourse or at all absolved from liability.

As a result, a system of general and special torts was formed at the Tort Institute. Fixing in the current Civil Code of Ukraine the legal bases for the occurrence of obligations to compensate for damage provides a sufficiently wide opportunity to protect the rights of victims of material and non-pecuniary damage. However, anti-corruption legislation in force in Ukraine contains special rules on compensation for damage caused by acts of corruption.

Norms of Art. 66 and 68 of Law No. 1700-VII respectively enshrine the right of the state, as well as of individuals and legal entities, to recover damages caused by corruption or corruption-related offenses. These rules set out the specific legal bases for justifying claims for damages. According to the classification criteria for special torts given by T.S. Kivalov [7], it can be affirmed that Law No. 1700-VII defines special torts, which are characterized by peculiarities of the subject composition and peculiarities of the unlawful behavior of the persons who caused the harm.

It should be noted that the adoption of the Law on Prevention of Corruption was preceded by considerable experience of legislative regulation of relations in the sphere of combating corruption. Law No. 1700-VII changed the system of anti-corruption legislation of the state for the fourth time. All four pieces of legislation regulating anti-corruption relations at different time intervals set out the peculiarities of damages to the state and individuals and legal entities. However, in all anti-corruption laws, these provisions have undergone some changes. Despite the legislator's attention to improving the legal regulation of relations for compensation for damage caused by acts of corruption, these norms are not without shortcomings that would be desirable. Law No. 1700-VII, as well as the laws that have previously been in force, enshrines in various legal norms the right of the state to compensate for damage and the similar right of legal entities and individuals (Articles 66 and 68 of Law No. 1700-VII).

However, the range of civil law entities is not restricted by these persons. Part two of Art. 2 of the Civil Code of Ukraine determines that the participants in civil relations are: the State of Ukraine, the Autonomous Republic of Crimea, territorial communities, foreign states and other subjects of public law. These social and legal entities, if they suffer a violation of civil rights as a result of corruption, also need protection. For example, in the context of decentralization of power and reform of law enforcement, the territorial community can most acutely feel the impact of corruption. However, its right to compensation for damages due to the deficiencies of the current legislation requires complicated legal justification. Given the imperative nature of the norms of the institution of damages, to use such remedies as an analogy of the law, without violating the constitutional guarantees of the rights of participants in public relations, is extremely dangerous. In the "passion of the fight against corruption" it is easy to forget about proclaiming Ukraine being a country of the rule of law. And, therefore, legislation on the rights and obligations of persons arising from harm requires clarity and detail. Undoubtedly, while suffering from a corruption offense, the territorial community, like any other subject of civil law, can demand damages to be compensated. There is no direct norm as in Art. Art. 66, 68. Law No. 1700-VII, and in Chapter 82 of the Civil Code of Ukraine. Legal justification of the claim on behalf of the territorial community requires complex legal justification with reference to the provisions of Art. Art. 142, 143 Of the Constitution of Ukraine, Art. 16 of the Law of Ukraine "On Local Self-Government", and references to the guarantees of property rights, enshrined in part four of Art. 13 of the Constitution of Ukraine, according to which "the State provides protection of the rights of all subjects of property and economic rights, ... All subjects of property rights are equal before the law." In view of the need to protect the rights of territorial communities, we draw attention to the problem of the separation of responsibilities before the territorial community and its representative body – the relevant council.

Case study shows. that almost all the cases we have studied. claims for damages were justified by the reference to causing harm to the state. However, the issue of correctly identifying a creditor in a tort obligation is extremely important. Cash. recovered for damages. must be provided either to the needs of the village council, or to the needs of the relevant territorial community, or for the benefit of the state or public-law entity, into the appropriate budget. The decision of the Petrovsky District Court of the Kirovograd region of July 27, 2015 in civil case no .: 400/809/15-c) [8] upheld the claim of the Prosecutor of the Petrovsky district in the interests of the representative body of the territorial community, Iskra village council of the Petrovsky district of the Kirovograd region Iskra Village Council on Compensation for Damage Caused by Administrative Corruption Offenses, envisaged by Art. On March 3, 2015, he personally made the decision № 16 on the remuneration of his wife, the head of the Iskra Rural

Library, in March 2015, for conscientious performance of official duties and active participation in the public life of the village in the amount of 1678 UAH salary. , which was accrued and paid last March 2015. contrary to Art. 14 of the Law of Ukraine "On Principles of Prevention and Combating Corruption", did not inform the session of the Iskra Village Council of Petrovsky District about the conflict of interests when deciding to pay a monetary premium to his wife, in the amount of 1678 UAH.

The application of civil sanctions in this case was preceded by the prosecution of the guilty official to administrative responsibility for the alleged corruption act. In this case, there was a refund for future use according to the needs of the village council. However, it is worth paying attention to another side of this case. The essence of the administrative offense is that the decision of the village council session was not informed of a conflict of interest.

It is possible that the librarian deservedly received the award, but failure to take a precautionary measure when deciding on her award turned the decision of the chairman of the village council into an administrative offense, which resulted in the spending of the village council funds. On the other hand, if one does not look at the details of a particular case, it is impossible miss the fact that the person who has received such illicit goods remains beyond legal regulation and beyond the attention of law enforcement agencies. It turns out that material goods illegally obtained by one person are obliged to return by another person who created the conditions for their illegal receipt.

As you know, the subject of corruption is often the person who is in the public service or in the service of local self-government bodies. Civil servants and officials of local self-government are subject to the legislation of Ukraine on labor, taking into account the peculiarities stipulated by special laws (Part 3, Article 7 of the Law of Ukraine “On Service in Local Self-Government Bodies” N 2493-III of 07.06.2001. Accordingly, local government officials are subject to the provisions of Chapter 9 of the Labor Code of Ukraine on guarantees in the case of liability to employees for the damage caused to the enterprise, institution or organization. The same provision existed for civil servants (Part 3 of Article 4 of Law No. 4050-III “On Civil Service” of 17.11.2011). The Law of Ukraine “On Civil Service” No. 889-VIII of December 10, 2015, the relations of material liability of civil servants received a special legal regulation in Chapter 3 of Section 8 of the Law. According to part 4 of Art. 81 of this Law, in determining the amount of compensation, account is taken of the financial position of the civil servant, the ratio of the amount of damage caused to his salary, the risk of harm, experience of the civil service given to the civil servant orders, as well as other circumstances in connection with which would make the total compensation of the civil servant unjustified. Therefore, the legislator proceeds from the necessity of full compensation of the damage and determines the grounds for reduction of this amount under the influence of certain factors. An important legal guarantee of the status of a civil servant is financial liability only for intentional acts (Part 3 of Article 80 of Law No. 889-VIII). At the same time, special Law No. 1700-VII in Part 2 of Art. 68 limits the types of non-recoverable damages in recourse and determines that no recoverable amount of compensation related to labor relations and non-pecuniary damage is recoverable. Therefore, if the defendant in the above case no: 400/809/15-c) [8] were a civil servant, the amount of the bonus paid in connection with the employment relations would not be chargeable. Such differences in the responsibilities of civil servants and local government officials can only be explained by the shortcomings of the legislation. In our opinion, the Law of Ukraine “On Service in Local Self-Government Bodies” generally requires improvement and, in particular, regulation of the responsibilities of this category of officials. With regard to officials of local self-government bodies, the provisions of the Law of Ukraine “On Service in Local Self-Government Bodies” should be supplemented with norms analogous to the provisions of Chapter 3 of Section 8 of the current Law “On Civil Service”. Article 1174 of the Civil Code of Ukraine sets out the legal grounds for compensation for damage caused by officials or officials of public authorities and local self-government. It is in the sphere of activity of these entities that corruption offenses are manifested. Article 1174 of the Civil Code of Ukraine defines the special conditions and sources of compensation for damage caused by an official or official of a governmental authority, an authority of the Autonomous Republic of Crimea or a local government body. those responsible for causing harm to private law entities by unlawful decisions, acts or omissions of their officials and servants.

Part 4. Art. 1191 of the Civil Code of Ukraine established that the state, the Autonomous Republic of Crimea, territorial communities, having compensated the damage caused by an official, as a result of illegally made decisions, actions or omissions according to state au-

thorities, bodies of the Autonomous Republic of Crimea, bodies of local self-government, have the right to request to the guilty person in the amount of compensation paid (except for compensation related to labor relations and non-pecuniary damage). As shown above, recourse to a civil servant can only be asserted if his guilt is established in the form of intent.

The right to compensation for damage to individuals and legal entities by acts of a corrupt nature is enshrined in Part 1 of Art. 68 of Law No. 1700-VII. Individuals and legal entities whose rights have been violated as a result of committing a corruption or corruption-related offense and who have suffered moral or pecuniary damage, losses, are entitled to the restoration of rights, damages and damage in accordance with the procedure established by law. These provisions define the subjective composition of the legal action for damages and its content. The second part of this article contains provisions on the grounds and limits of filing recourse claims against the guilty person.

Thus, it can be said that compensation for harm. caused by corruption and corruption-related offenses form a special tort. In essence, these rules are self-sufficient and do not require additional recourse to the provisions of Art. 1174 and Part 4 of Art.191 of the Civil Code of Ukraine, which determine the content of legal relations for causing harm by officials of the executive power and local self-government and contain identical prescriptions. Since acts of a corrupt nature form a group of special torts, the norms of Art. 1174 of the Civil Code of Ukraine as general grounds of liability are not subject to application. At the same time, the norms of Chapter 82 of the Civil Code of Ukraine, in large numbers, retain their significance in the settlement of other parties to special tortious relations that arise as a result of causing harm by acts of corruption. Utilized in Art. 68 of Law No. 1700-VII, the concept of "statutory procedure" for compensation for damage caused by officials of state authorities and local self-government covers a set of norms of different branches of law that determine the legal mechanism for the exercise of the right to compensation for damage. As we can see, the special rules of the current anti-corruption law do not establish the obligation of the subject of corruption to directly compensate for the damage caused. However, the jurisprudence goes the other way.

Thus, the decision of the Dvorychansky district court of Kharkiv region of 23.07.2009 in civil case No. 2-214 / 09 [9] upheld the claim of the Prosecutor of the Dvorychanysky district for damages to an individual caused by a corruption administrative violation in such circumstances. Defendant in the case, working as the director of the center of services for family and youth of Dvorychansky district state administration of Kharkiv region, being a civil servant of the 12th rank of 6 category, in January and February 2009 gave her subordinates, employees of the center, including the plaintiff, an oral instruction to hand over her money in the amount of 50 UAH. 00 kopecks. from each, explaining that these funds are needed to travel to Kharkiv. As the employees voluntarily gave the money, the official intimidated them into dismissal and forced them to donate money.

In total, in January and February of 2009, the defendant, illegally using his official position, illegally received money from his subordinates 100 UAH. 00 kopecks. from each for a total amount of 300 UAH. The civil case was preceded by a person being brought to administrative responsibility. By a resolution of the Dvorychansky District Court of Kharkiv region, she was found guilty of of committing the corruptive act provided for in Article "a" of Art. 1 of the Law of Ukraine "On Combating Corruption" and imposed a fine of UAH 425 on it.

As the defendant did not voluntarily compensate for the benefit of one of the victims, illegally received funds in the amount of 100 UAH, the prosecutor brought a claim in his interests for compensation for the damage caused by administrative corruption in the amount of 100 UAH. The legal basis for claims for damages was determined by Art. 15 of then law in affect which is the Law of Ukraine "On Combating Corruption" of 05.10.1995, the provisions of which defined the subject and the content of the right to compensation for corruption through acts and referred to the "Order. established by law ", and in essence to Art. 1174 and Part 4 of Art. 191 of the Central Committee of Ukraine.

According to Article 1174 of the Civil Code of Ukraine, damage caused to an individual or a legal person by unlawful decisions, actions or omissions of an official or official body of a governmental authority, an authority of the Autonomous Republic of Crimea or a local government body in the exercise of its authority, by the State, Crimea local self-government, regardless of this person's fault. The above judgment is typical. As we have shown, it does not contain the proper legal justification for imposing a civil liability on a corruption subject.

In cases of damage caused by acts of corruption of the state, the subject of the relevant duty is defined in Article 66 of Law No. 1700-VII as the direct cause of harm. According to the

rules of this article, damage caused to the state as a result of corruption or corruption-related offenses shall be compensated by the person who committed the respective offense in accordance with the procedure established by law [4]. Comparing the provisions of Art. 66 of Law No. 1700-VII with the rules contained in the anti-corruption legislation, which was in force earlier, we would like to draw attention to the following points: The state's right to compensation for damages in this area of public relations was enshrined in every legislative act. This way, Art. 13 of the Law of Ukraine "On Combating Corruption" N 356/95-BP dated 05.10.1995, provided for the right to compensation for losses caused to the state, enterprise, institution, organization. The disadvantages of this article can be attributed to inaccuracies in determining the range of victims, as well as unnecessary detail of the actions that entitle the state to claim damages. The following two pieces of legislation on preventing and combating corruption: No. 1506-VI of June 11, 2009 and No. 3206-VI of April 7, 2011, were limited to the general observation that "damage caused to the state as a result of a corruption offense is subject to compensation in the manner prescribed by law". Fully rational legislative improvement contains Art. 66 of the Law of Ukraine "On Prevention of Corruption", defining the basis of liability. The legislator limited himself to pointing to the task of harming a corruption or corruption-related offense as a special ground of civil liability of the person who committed the offense. In Art. 66 of Law No. 1700-VII we have norms that are suitable for practical application with a certain number of subjects of the relevant protective legal relationship. These rules have been applied in the jurisprudence. Thus, in case № 300/648/15-c, considered by the Volovets district court of Zakarpattya region on the claim of the Prosecutor of the Volovets district in the interests of the state in the person of the Central Election Commission on recovering the damage caused by a criminal offense. By the court decision of 21.08.2015 [10], the head of the polling station election commission No. 2101052 and the secretary of this commission were jointly and severally charged in favor of the Central Election Commission for UAH 2100 in damages caused by a criminal offense. The civil case was preceded by criminal proceedings. By the verdict of the Volovetsky district court of Zakarpattya region of April 23, 2015, these persons were found guilty of drafting a polling station election commission No. 210152 on a petition to the district election commission No. 70 to award them. These persons were found guilty of misrepresentation in the document, which by its content should have given the members of PEC No. 210152 the right to a one-time monetary remuneration. The defendants provided the above-mentioned PEC decision to the territorial election commission for further directing and approval by the constituency election commission of the single-mandate constituency No. 70, illegally deciding for themselves a monetary remuneration. Following the approval of a deliberately false document by the district election commission, the accused were charged and paid a lump sum cash payment of UAH 1,050 each. For these actions the chairman and secretary of PEC No. 2101052 were found guilty of committing the crimes provided for in Part 3 of Article 141 of the Criminal Code of Ukraine (hereinafter – the Criminal Code of Ukraine) and Part 1 of Article. 366 of the Criminal Code of Ukraine. As a result of the misconduct of the defendants, the state in the person of the Central Election Commission, was caused 2100 UAH damage. On the grounds provided for in Art. 1166 of the Civil Code of Ukraine, Art. 66 of Law No. 1700-VII, the claim was satisfied and in accordance with Art. 1190 of the Central Committee of Ukraine jointly and severally inflicted damage to the state. The rules of the Central Committee of Ukraine do not enshrine the state's right to compensation for the damage caused. Therefore, it can be argued that the provisions of Article 66 of Law No. 1700-VII constitute a special tort that has a specific subjective composition – in the person of the subject of law – the State and the subject of the obligation – of the person guilty of corruption. The content of the rights and obligations of these entities will also have their own characteristics, depending on the size of the liability of the claimant. As shown above, the amount of liability of local government officials, civil servants, and other persons defined in paragraph 2 of part one of Article 3 of Law No. 1700-VII has significant differences, which cannot help affecting the amount of liability of a person before the state for the damage caused. Undoubtedly, a government party, a territorial community, or other public-law entity that is recognized as a subject of civil law may act as a managed party in a tortious obligation arising out of corruption. Recognizing these entities as participants in civil relations, the legislator in the Civil Code of Ukraine in no way regulated the relations in compensation of damage caused to them. Even in the most general norms of Art. 1166 of the Civil Code of Ukraine, defining the right to compensation for damage, the legislator identified the subjects of such rights of individuals and legal persons, without mentioning other subjects of civil law, referred to in Part 2 of Art. 2 of

the Central Committee of Ukraine. It is clear that these entities can be harmed not only by corruption, their right to compensation for damages should be enshrined in the rules of Art. 1166 of the Central Committee of Ukraine. Considering this, as Art. 1166 of the Civil Code of Ukraine, and Art. 66 of Law No. 1700-VII are subject to amendment, which should eliminate a significant gap in the system of rules governing relations for damages. As Art. 1174 of the Civil Code of Ukraine, and Art. 68 of Law No. 1700-VII, defines the debtor in tort, the state, as well as the local self-government bodies, which, having compensated for the damage, are entitled to bring a recourse action against the persons whose wrongful acts caused the damage.

However, in cases where these persons caused damage directly to the local self-government body in which they served, the liability in the recourse procedure cannot be realized due to the coincidence in the person of the local self-government of the debtor and creditor in accordance with Article 1174 of the Civil Code of Ukraine. Therefore, these relations are necessary and could be settled as in Art. 1174 of the Civil Code of Ukraine and in the current Law on Prevention of Corruption, accordingly, identifying and extending the cases of direct liability of the corruption offender in order to regulate property relations between officials and public entities, and creating a common approach to determining the right of both the state and other public entities to seek redress.

Article 66 of Law No. 1700-VII would be desirable to supplement, by enshrining alongside the law of the state, the right of territorial communities and other entities of public law, granting them the right to seek compensation from officials who, while on duty, have caused acts of corruption . Given the difference in the design of the proposed novella, Art. 66 of the said Law should be supplemented by a separate part. When discussing the issues of delimitation of cases of harm to the state and individual legal entities, it should be noted that district state administrations and the absolute majority of state authorities are endowed with the status of a legal entity. And despite the fact that these persons carry out the operative management of state property, it is necessary to distinguish between cases where losses are directly suffered by the state and cases of harm to specific legal entities. This is important for recovering assets under specific budget items. Thus, in Case No. 2-652 / 2007, the legal entity that made payments from the funds allocated to its wages was incurred. The decision of the Zvenigorod District Court of Cherkasy region of 07.11.2007 [11-12] satisfied the claim of the Zvenigorod inter-district prosecutor in the interests of the state in the person of the Zvenigorod district state administration to the head of the material support department of the Agroindustrial Development Department of the Zvenigorod Regional State Administration of the Cherkasy region, in compensation action in the amount of 363 UAH.74 cop. He, having the status of a civil servant of the 11th rank of 7th category, illegally received material benefits in the form of payment for a sick leave and salary in connection with the performance of official functions during his time spent abroad in Turkey.

As a result, the state suffered pecuniary damage in the amount of UAH 363.74. By a decree of the Zvenigorod District Court of February 16, 2007, the said official was found guilty of committing an administrative corruption offense – unlawful obtaining by a person authorized to perform the functions of the state in connection with the performance of such functions, material goods, for which responsibility was provided. n "a" Part 2 of Art. 1 and Part 1 of Art. 7 of the Law of Ukraine "On Combating Corruption" and is subject to administrative penalties.

In this case, the court referred to the rules of Art. 15 of the Law of Ukraine "On Corruption" in force at that time, it is reasonable to consider that the damage was caused to the district state administration, which is a legal entity, not the state.

We have repeatedly approached the discussion of the issue of legal support of claims for the recovery of illegally obtained material goods (their value) from the perpetrators. This case, on the other hand, reveals another legal problem. The behavior of a person who knowingly participated in the misappropriation of budget funds remained without legal consequences. Above were also cases in which the misconduct of persons indirectly involved in the offenses and taking advantage of the unlawful rewards of corrupt behavior did not respond to the offenses.

Taking into account this, it would be worthwhile to solve the issue of expanding the scope of subjects of civil liability, which, while not being special entities of administrative or criminal responsibility for acts of corruption, involved in causing harm. As civil liability is functionally aimed at restoring the state of economic equilibrium in society, illegally obtained material goods are subject to return by the person who illegally received them. Based on this, we believe that for this purpose in Art. 66 and Part 1 of Art. 68 of Law No. 1700-VII, the main subject of civil liability should be to identify the person who illegally acquired material bene-

fits as a result of committing acts of corruption, stating that "property (its value) was obtained as a result of committing corruption or corruption-related offenses shall be liable to recovery from the persons who received it "and to establish subsidiary liability for the subject of a corruption offense by virtue of which the property was acquired by third parties.

Such an approach would have a comprehensive impact on property relations in society and would increase the civil liability of every person directly or indirectly involved in acts of corrupt behavior. In our opinion, this provision will not contradict Art. 3 of Law No 1700-VII, which defines special entities responsible for corruption and corruption-related offenses, because it is a matter of normalizing property relations. It is unlikely that the fact that the person who illegally received the property benefits should return them to the one who lost them.

The practice of applying anti-corruption legislation has shown that there are difficulties in identifying a victim in the sphere of corruption encroachments on the illegal use of state and communal property. This way, in civil case No. 2 291/09 [13] by the decision of the Zvenigorod District Court of Cherkasy region of 04.06.2009 the claim of the Zvenigorod inter-district prosecutor in the interests of the territorial community of the village was satisfied. Stetsivka to the Head of the Stetsivska Village Council for compensation of losses in the amount of 500 UAH, inflicted on the state as a result of corruption.

As the court proceeded on the grounds that the damage was caused to the state, a representative of the State Treasury was involved in the case. According to the lawsuit, the prosecutor asked to recover from the defendant for the benefit of the local community. Stetsivka Zvenigorod district of Cherkasy region losses in the amount of 500 UAH. The same question arises as to who is the victim: the state or the territorial community?

The claim of the prosecutor was based on the fact that Spetsivsky village chairman, using his position, instructed the secretary of the village council Moshenets V.M. to prepare the decision of the village council № 21-2 / U of 24.01.2009 "On the norms of funds for payment of compensation for the use of a passenger car for business trips and the procedure of their spending", on the basis of which he should pay compensation for the use of his private car for business trips in January 2009. On the basis of the said decision, the lease agreement of the vehicle dated 24.01.2009 and the act of renting the car No. 1 dated 28.01.2009 the defendant was paid compensation for the use of his car for business trips in the amount of 500 UAH. (payment order № 10 of 28.01.2009), as a result, according to the prosecutor, the state sustained pecuniary damage in the amount of 500 UAH. By a resolution of the Zvenigorod District Court of February 9, 2009, the defendant was found guilty of committing an administrative corruption offense under Article 2 (a) (a). 1 of the Law of Ukraine "On Combating Corruption" and is subject to administrative penalties. In satisfying the claim of the prosecutor, the court referred to the rules of Art. 15 of the said Law, which at that time determined the grounds for damages to individuals and legal entities. Such a rationale for the decision should create significant difficulties in its implementation, since it is not clear from the court's judgment what the property should be recovered from and at what expense should the state treasury be credited?

Also, considering the practice of applying anti-corruption legislation, it is worth discussing the types of damages that are subject to compensation for corruption offenses. Thus, according to the Decision of the Lyubeshiv District Court of Volyn region of 05.02.2009 [14] in civil case No. 2-32 / 09, the subject of the claim was not received due to the administrative offense of the village head, the receipt of the local budget of the Bykhiv village council in the form fee for special use of forest resources in the amount of 370 UAH. and personal income tax in the amount of 1425 UAH, and the total amount of 1795 UAH. The findings of the court in a civil case were based on the facts established by the Resolution of the Kovel City District Court of 22.09.2008 on finding the defendant guilty of committing the corruption offense provided for in p. 3 (d). 5 of the Law of Ukraine "On Combating Corruption", causing damage to the Bykhiv Village Council.

Bykhiv village head in violation of the requirements of paragraph "g" part. 3 Art. 5 of the Law of Ukraine "On Combating Corruption", gave the illegal advantages to the citizen, without a corresponding decision of the session, giving consent to the location and functioning of the reception point of berries in the territory of the Bykhiv Village Council, without having the relevant permits provided for in p. 1.9 of the Procedure for issuing special permits and setting limits for the procurement of secondary forest materials and the implementation of by-products of forestry, approved by the decision of Volyn Regional Council № 19/13 of 21.05.2008.

As a result, in the period from 01.07 to 07.07.2008 the government purchasing agent created in the village Bykhiv of Lyubeshiv district, the point of receiving berries and for six days bought blueberries from the population at the price of UAH 9.50. per 1 kg, thus preparing 1000 kg of blueberries. In violation of the requirements of the Decree of the Cabinet of Ministers of Ukraine No. 174 of February 21, 2006 "On payment for the use of forest resources", the latter failed to pay UAH 370 to the local budget revenue. fee for special use of forest resources, in violation of the requirements of the Law of Ukraine " On Individual Income Tax" did not pay to the local budget 1425 UAH. tax.

In satisfying the claim of the prosecutor, the court referred to the rules of Art. 15 of the Law "On Combating Corruption" and Article 116 of the Civil Code of Ukraine, which defines the procedure for compensation of damage caused to individuals and legal persons. In this case, also the behavior of the government purchasing agent identified by the payer to the local budget. remained without proper legal evaluation. In addition, no income, no matter what they are received, can be considered as direct actual harm. After all, there is no damage or loss of property in this case. From a civilistic point of view, such losses could be regarded as a lost advantage.

However, offenses in the field of taxation are sanctioned by special rules of tax legislation and in accordance with Part 2 of Art. 1 of the Civil Code of Ukraine to these relations, the rules of civil law are not applied in the absence of direct instructions of the law. The issue of tax evasion is beyond the scope of civil law. The person must pay the taxes and be liable for their non-payment. determined by tax law. The prosecution of another person in civil liability for failure to comply with tax obligations is governed by tax law, not civil law, and the described case is not provided for by special tax law. The above case prompts us to discuss the types of property claims that may be claimed in this area. The current Law No. 1700-VII in Art. 66 and Part 1 of Art. 68. By defining the consequences of acts of corrupt behavior, it establishes the right to compensation for harm and damages by using these terms through comma. These civilistic concepts, in their logical content, partially intersect and reflect different sides of the same phenomenon of social life. As you know, damage is the monetary equivalent of property damage. Therefore, the word "losses" in Art. Art. 66 and 68 of the said Law should be bracketed or excluded altogether. The concept of "losses" in Art. 22 of the Central Committee of Ukraine is regarded as a fairly wide range of monetary losses in monetary terms. Contents of Art. 66 and 68 of Law No. 1700-VII give grounds for claiming claims in the form of both actual loss and loss of profit inflicted on the business entities. The state is also actively involved in economic relations with public procurement, public-private partnerships, lending and more.

Therefore, it can be an issue of compensating the lost profit as a result of acts of corruption in the economic relations with the participation of the state.

Insufficient tax revenues or contributions to special trust funds cannot be considered as a lost benefit as a result of committing acts of corruption, since such relationships are publicly legal and governed by special legislation.

Conclusions. The gaps identified in the legislation do not contribute to the strengthening of the rule of law in the state and do not provide sufficient legal guarantees for the protection of property rights of persons who are held to civil liability in connection with committing acts of corruption. Outside the attention of the law enforcement system are persons who have benefited from the effects of corrupt behavior by others, which requires the assistance of the legislature in improving anti-corruption legislation. In all the cases analyzed, the defendants acknowledged the claims made and all judgments were based on the findings of other court acts for bringing those responsible to administrative liability for corruption offenses. However, despite the lack of litigation in civil cases, we believe that the provisions on compensation for damage caused by corruption and corruption-related offenses require refinement in the light of the offered proposals.

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Summary

In the article, analyzing the provisions of the national legislation on combating corruption, the peculiarities of bringing civil liability for corruption offenses are investigated. It is concluded that the use of compensation for harm and other means of civil influence, in connection with the perpetration of such offenses, may have an independent effect of corrupt behavior.

***Keywords**: civil liability for corruption-related harm, corruption and corruption-related offenses, case law.*

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PROBLEMATIC ISSUES OF NORMATIVE SETTLEMENT OF CERTAIN TYPES OF SALES CONTRACTS

Інна Болокан, Дмитро Санакоєв. ПРОБЛЕМНІ ПИТАННЯ НОРМАТИВНОГО ВРЕГУЛЮВАННЯ ОКРЕМИХ РІЗНОВИДІВ ДОГОВОРУ КУПІВЛІ-ПРОДАЖУ. Значну частку цивільного і господарського права становлять договірні відносини. При врегулюванні тих чи інших їх аспектів законодавець доволі часто залишає на розсуд сторін вирішення тих чи інших питань, натомість базові моменти, як правило, законодавець доволі чітко врегульовує, або, принаймні, пропонує певне регулювання, надаючи сторонам право у своїх конкретних договорах змінити ці положення. Нормативне врегулювання лише тоді може бути визнане ефективним, коли норми не потребують зусиль щодо свого тлумачення, коли вони однозначні у сприйнятті, що значно покращує процес їх реалізації. Одним із недоліків норм договірного права є «подвійне» врегулювання одних і тих самих договірних конструкцій.

У статті аналізуються позитивні та негативні аспекти «подвійного» нормативного врегулювання таких різновидів договору купівлі-продажу, як міна, контрактація сільськогосподарської продукції, постачання енергетичними та іншими ресурсами через приєднану мережу у Цивільному та Господарському кодексах України. Зазначається на наявності дублювання, акцентується на потребі приведення до уніфікованого вигляду дефініцій цих договорів, які наразі суттєво відрізняються, що ускладнює процес тлумачення, а, відтак, і реалізації нормативних положень. Пропонуються можливі варіанти вдосконалення нормативного врегулювання, натомість аргументується доцільність закріплення дефінітивної норми в одному кодифікованому акті та бланкетної норми з посиланням на інший кодифікований акт, або закріплення в одному з актів лише бланкетної норми та концентрація загальних норм в іншому кодифікованому акті. Зважаючи на дещо звужений, порівняно з цивільними відносинами, суб'єктний склад господарських відносин, обґрунтовується доцільність такої концентрації саме у Цивільному кодексі України. Як на істотний недолік нормативного врегулювання вказується на відсутність нормативного визначення (дефініції) предметів більшості з договорів, аналіз яких проводиться у публікації.

***Ключові слова**: договір міни, договір контрактації сільськогосподарської продукції, договір постачання енергетичними ресурсами, сільськогосподарська продукція.*

Problem statement. A significant part of both civil and commercial law are contractual relations. When regulating certain aspects of the law, the legislator often leaves the parties to decide on certain issues, but instead the bases, as a rule, the legislator quite clearly regulates, or at least proposes some regulation, giving the parties the right in their specific contracts to

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change these provisions. Normative regulation only then can be recognized as effective when norms need no effort to interpret, when they are unambiguous in perception, which greatly improves the process of their implementation. One of the drawbacks of contract law is the "double" regulation of the same contractual structures.

Analysis of publications that started solving this problem. The problematic issues of normative regulation of contractual relations although the attention of scientists, instead research mainly focus on the shortcomings of normative regulation of specific types of contracts. Thus, T. Tillayev (1990) devoted his dissertation to the features of the contract. Stanislavsky (2006), Yu.Yu. Buckeye (2010), E.O. Samsonova (2010), M.E. Krivko (2015), A.O. Gutorov (2017); Peculiarities of legal regulation of contracts for the supply of energy resources Guivan (2000), V.V. Sergienko (2001), S.S. Nemchenko (2010), G.V. Brain (2012), S.V. Kurchenko (2013), R.V. Pozhojuk (2016), D.P. Guyvan (2017); the peculiarities of legal regulation of the exchange agreement – VV Lysenko (2012), OS Prostibozhenko (2005), V.V. Halyasyuk (2017) and many other legal scholars who are specialists in civil, commercial, agricultural, environmental and other fields of law. Instead, there are questions about the regulatory issues of any contractual structure, that is, common to many contracts, and this issue is not given enough scientific attention. In addition, in the writings of these and other scholars, too little attention is paid to the analysis of problematic issues of "double" normative regulation in different legal acts of the same contract. A striking example of this situation is the settlement of certain agreements by the Civil and Economic Codes of Ukraine (hereinafter – the Central Committee of Ukraine and the Civil Code of Ukraine, respectively). First of all, we will mention the long-held discussion of the expediency of coexistence of two codified regulatory sources with simultaneous existence in the legal set of national legal acts (the discussion boils down to the expediency of the existence of the Civil Code of Ukraine, when some scientists are convinced of the inappropriateness of such a solution because two codified acts, which regulate a large part of similar relations, while others justify the specifics of economic and legal relations and insist on the expediency of the Civil Code of Ukraine. – IB, DS). Without going into this discussion, it should be noted that the fact that there is a dual regulatory framework for individual issues should not create difficulties in interpreting the relevant rules and applying them.

The article's objective. Substantiation on the basis of the analysis of the norms of the Civil Code and Civil Code of Ukraine, which regulates certain varieties of sales contracts, the need for unification of such regulation, which is one of the ways of its improvement; identification of positive and negative aspects of the normative regulation of these contracts by the specific rules of these codified acts; formulating proposals to remedy the identified shortcomings.

Basic content. Even when superficially reviewing the content of contract law, it firstly draws attention to the application of different variations of titles in the Civil Code and the Civil Code of Ukraine regarding the same contracts (ex., energy supply in the Civil Code of Ukraine, and supply of energy resources through an affiliated network in the Central Committee of Ukraine; construction contract in the Central Committee of Ukraine and the contract for capital construction in the Civil Code of Ukraine); second, differences in the formulation of the definition of the contracts themselves; thirdly, the legislator's consistent approach to the "selection" of those agreements that are regulated in the Civil Code of Ukraine; fourth, the degree of detail of the regulatory settlement is different, where a detailed settlement is fixed for one of the contracts in one of these two codified acts, and there is no detail in the other; or – there is no detailed regulation in both of these codified acts, or – there is identical detail in both legislative acts. And if there is nothing to add to the first remark, only the statement of the use of different names by the legislator, which does not facilitate the process of interpretation and application of such rules in practical contractual activity, then in the case of other comments, we will explain our opinion about the desirability of appropriate regulation.

First of all, let us define the contracts that will be considered within the scope of this publication, which are both regulated in the Central Committee and in the Civil Code of Ukraine, and since there are many such agreements, let us dwell only on the group of contracts that are attributed to the varieties of purchase and sale in the Central Committee of Ukraine: exchange contracts, contracting and supply of energy resources.

1. One of the variants of the contract of sale, which is regulated by both Codes, is a exchange agreement, which is referred to in them as "exchanhe (barter)", although such designation is somewhat different in the Central Committee and the Civil Code of Ukraine. If in Art. 293 of the Civil Code of Ukraine already in the name there is a certain duality – "Exchange

(barter) in the sphere of management", then in the Central Committee of Ukraine in the name §6 and in the name of Art. 715 is only an exchange, and in the very text of Part 1 of Art. 715 is formulated "exchange (barter)". It should be noted that the mentioned version of the contract of sale (under the Central Committee of Ukraine) and the contract mediating economic and trading activities (under the Civil Code of Ukraine), is insignificantly (in terms of volume) normatively regulated, since the Central Committee of Ukraine enshrines only two articles (Art. 715, 716), and in the Civil Code of Ukraine – only one article (Article 293).

2. An analysis of the content of these articles has led to the following conclusions: 1) unlike many other treaties, which are simultaneously regulated by these Codes, the construction of both normative definitions of a exchange agreement is quite similar, whereas in other treaties the codified acts mentioned often differently formulate the definitions of treaties; 2) the provisions of both codified acts contain similar norms, which differ only in the wording (the text), not the content (for example, the provisions on the status of the parties to the contract, each of which acts both as a seller and as a buyer – Part 2 of Art. Article 715 of the Civil Code of Ukraine, Part 2 of Article 293 of the Civil Code of Ukraine; Provisions on the possibility of additional payment for goods of lower value – Part 3 of Article 715 of the Civil Code of Ukraine, Part 3 of Article 293 of the Civil Code of Ukraine. (an indication of the "monetary" co-payment, as well as clarification that such co-payment is only possible for me that this "does not contravene the law"); the thesis on the application of the provisions of other agreements to the contract – Article 716 of the Civil Code of Ukraine, part 5 of Article 293 of the Civil Code of Ukraine, where the list of relevant contracts in the Civil Code and Civil Code of Ukraine coincides (purchase and sale, delivery , contracting, etc.), and the differences relate only to the imperative norm set out in the Civil Code of Ukraine on the possibility of applying the provisions of these contracts not only when it corresponds to the essence of the obligation (both in the Central Committee and in the Civil Code), but also in cases where it is does not contradict the legislation (only in the Civil Code of Ukraine); 3) the differences in the legal regulation of a exchange agreement relate to only a few aspects, one of which is related to the subject of the exchange agreement. Thus, in particular, the Civil Code of Ukraine: a) lists certain objects that cannot be exchanged – fixed assets with respect to two forms of ownership – state or public utility, if one of the parties is not an appropriate (state or public utility) type of enterprise; b) provides for the possibility of fixing by other legislative acts the peculiarities of exchange transactions in respect of certain types of property (Part. 294). The Civil Code of Ukraine establishes an exception to the general rule on exchange – "property for property", when parties to a specific contract are given the opportunity to exchange "property for service" or "property for work" (Part 4 of Article 715).

3. Another aspect, which is regulated differently in the Central Committee and the Civil Code of Ukraine with regard to exchange transactions, concerns the jurisdiction of the acquirer. In the Civil Code of Ukraine, unlike the Central Committee of Ukraine, it is not only about the transfer of ownership of the goods from one party under the contract to the other, but also about the possibility of transferring the goods, which is one of the subjects of the exchange agreement, into full economic management or operational management of the other parties. In addition, the Central Committee of Ukraine regulates separately in a dispositive way the issue of the moment of transfer of ownership of the exchanged goods – at the same time after fulfillment of obligations to transfer property to both parties, and the dispositive is to give the parties the right to change this general rule in the terms of their contract. In addition to this possibility, another legislative (by the rules of other special laws) regulation of this issue is envisaged.

Therefore, normative regulation of the exchange agreement can be significantly improved by eliminating a number of shortcomings, in particular:

1. Dual regulation of certain provisions of this contract (duplication), which is an undesirable phenomenon, especially considering that these codified acts provide for the possibility of regulating the contractual relations of the exchange by other laws, and, therefore, the need for simplification of regulation at least with respect to the general provisions becomes clear. . The Civil Code of Ukraine establishes this possibility by separating the part of the article which deals with the possibility of foreseeing in the other laws (the so-called "special rules") the peculiarities of concluding and executing a exchange agreement (Part 6 of Article 715 of the Civil Code of Ukraine), while Part 4 Art. 293 of the Civil Code of Ukraine refers to "legislation", which is also ambiguous for the term, since there is still no unified approach to the question of whether the content of "legislation" is only laws (narrow understanding), or it in-

cludes by-laws (broad understanding of the concept) "legislation"). Note also that in the above provision of Part 6 of Art. 715 of the Civil Code of Ukraine does not refer to the possibility of foreseeing in other laws the peculiarities of the termination of the contract of exchange, and, therefore, the question arises whether the relevant norms on peculiarities, for example, termination of the contract, if they will be enshrined in special legislation.

2. The inconsistency of the legislator to formulate the provisions of the relevant norms (on the example of the Civil Code of Ukraine, when in the title of the paragraph, the relevant articles (Articles 715, 716) about the contract referred to as a exchange, and only in the definition of this contract is formulated "exchange (barter)". In some legislative acts, for example, in the Law of Ukraine "On Regulation of Commodity Exchange (Barter) Transactions in the Field of Foreign Economic Activity", the wording "Commodity Exchange (Barter) Operation", "Barter Agreement" etc. is used. If we were to choose one normative act in which we would settle the general provisions of the treaty, preference would be given to the Civil Code of Ukraine.

The next contract, designated by the Central Committee of Ukraine as a type of contract of sale, is the contract of agricultural production. It is separated into a separate paragraph of Chapter 54, which consists of only one article, consisting of three parts. It should be noted that the Central Committee of Ukraine has a direct indication that the contracts of supply, contracting, supply of energy resources are varieties of sales and purchase agreements. This instruction is carried out directly not only in text formatting, but also in structural construction, since the listed contracts are placed though in different paragraphs, but within one chapter of the Central Committee of Ukraine. At the same time, there is a specific formulation of this provision in the Civil Code of Ukraine (Part 4, Art. 263), which states that economic and trading activities are mediated by a number of contracts, including delivery, contracting of agricultural products, energy supply, purchase and sale, exchange, as well as specific such as renting and leasing. We emphasize on the formulation of "economic and trading" activity, because the trade usually means transactions, which result in the transfer of ownership of goods.

In addition to the fact that the normative regulation of the contract of agricultural products in the Codes is rather small in volume (three articles in the Civil Code of Ukraine), neither of them defines the subject of this agreement ("agricultural products"), and its definitions are contained in others regulations, including those who have lost their validity.

At present, the current legislative acts do not define the concept, which is a disadvantage, because they are special legislative acts, which refer specifically to this subject (an example is the Law of Ukraine "On State Regulation of Imports of Agricultural Products", which deals with the import of agricultural products the law does not explain). In our view, special laws should, if not specified, at least refer to another act in which such a definition is provided. Another group of legislation generically defines the concept of "agricultural products" by referring to other regulations. An example is paragraph 2.15 h. 1 Article. 2 of the Law of Ukraine of 24.06.2004 No. 1877-IV, part 1 of Art. 1 of the Law of Ukraine dated 25.06.2009 No. 1561-VI, Art. 1 of the Law of Ukraine of November 6, 2012 No. 5479-VI, part 1 of Art. 1 of the Law of Ukraine dated 10.07.2018 No. 2496-VIII. All the above laws, defining "agricultural products", refer to certain groups of the Ukrainian Classification of Goods of Foreign Economic Activity. 14.1.234 PC of Ukraine, which defines "agricultural products (agricultural goods)" and which "sends" to groups 1-24 of the Ukrainian Classification of Foreign Economic Activities, specifying a number of requirements for these goods, is constructed on a similar principle relevant to taxation issues (subject to the regulation of this codified act). Among the by-laws are those that provided definitions of the term, but have now lost their validity. An example is the NBU Resolution of 15.12.2004 No. 637, and those that do not allow to form an idea of the subject, because they are highly specialized and focus not on the concept but on the issues of accounting for the relevant goods (for example, the Order of the Ministry of Finance of Ukraine from 18.11.2005, No. 790 and from 15.11.2017, No. 943).

Important, which in some way facilitates the interpretation of the rules of the Civil Code and the Civil Code of Ukraine regarding the subjective composition of the contract of agricultural production, has also item 14.1.235 of the PC of Ukraine, which defines the agricultural producer. However, this paragraph clearly states that this definition is relevant only for the purposes of Chapter 1, Section XIV, of the PC of Ukraine. More meaningful and understandable to the parties to the agricultural contract, we consider the definition given in the Draft Treaty establishing a Constitution for Europe, where "agricultural" refers to products grown on land, livestock and fishery products, as well as primary processing products. due to these products.

Continuing on the topic of normative regulationof contractual relations on agricultural

contracting, we note that even in the definition of the contract, which is provided in Art. 713 of the Civil Code of Ukraine (part 1) and in Art. 272 of the Civil Code of Ukraine (Part 2), one can notice the differences that are related to: a) the emphasis on the transfer of agricultural produce produced by the producer to the Central Committee of Ukraine; b) with a certain, albeit insignificant difference in the characteristics of one of the parties to the contract (in the Central Committee of Ukraine – the procurer (contractor) or designated by the recipient; in the Civil Code of Ukraine – the procurement (purchasing) or processing enterprise or organization (contractor); c) in the definition the two main obligations of the contractor – to accept the products and pay for them – in the Central Committee of Ukraine, and adding to this one more of his duty – to promote the manufacturer in the production of the said products by the standards of the Civil Code of Ukraine. In addition, the Civil Code of Ukraine emphasizes separately on such terms of this agreement as the terms of production, its quantity and assortment. The differences in regulation can be enumerated further, but the ones we have mentioned were chosen precisely because they were defined in the contract, which, as a rule, should only reflect the most essential features.

Therefore, we emphasize the inappropriateness of the definitions of the same concepts in different acts, which are also different (definitions), and express the opinion that only one of the definitions should be left, or that the double definition of the present definition be left, but aligning with already existing regulatory definitions. At the moment we can state that the Central Committee of Ukraine almost does not regulate this agreement, but instead indicates its existence, points to it as a kind of a sales contract, indicates the possibility of its regulation in terms of peculiarities of concluding and executing other legislative acts, one of which we refer to the Civil Code of Ukraine. In its turn, the Civil Code of Ukraine has a much narrowed sphere of regulation, since the article, in which this contract is defined, begins with the fact that public procurement is carried out under these contracts, and the reason for their conclusion is a state order for delivery (Part 1 of Article 272). At present, in the regulation of this contract, we will note both positive and negative economic and legal standards. The first is the existence of a list of essential terms of this contract, and the second is a non-exhaustive list of these conditions and a reference to a standard contract approved by a by-law, which does not yet exist. Therefore, in the current realities of the absence of a standard contract, the existence of a list of essential conditions is positive. Instead, the appearance of this model treaty will again create a duality in the settlement, as it will probably have all the conditions listed in Part 3 of Art. 272 of the Civil Code of Ukraine. On the whole, positively assessing the existence of normative regulationof the peculiarities of performance of contracting contracts in Art. 273 of the Civil Code of Ukraine, among the shortcomings we note the presence in it of a blanket rule (Part 5), which "sends" to a non-existent by-law. Positive is the existence of a separate rule on liability for non-compliance or improper performance of the contract with specific sanctions, which is not often the case in the settlement of contractual relations under the Civil Code and the Civil Code of Ukraine.

Just like all the contracts mentioned above, the contract of supply of energy and other resources through an affiliated network is regulated by the Central Committee of Ukraine, which designates it as a kind of a contract of sale, and the Civil Code of Ukraine, with almost the same volume (Article – Article 714 of the Central Committee of Ukraine and two articles – Articles 275-276 of the Civil Code of Ukraine). Similarly, there is a lack of a unified approach of the legislator to the definition of this contract, the differences in the formulation of which, among other things, are somewhat different in the degree of detail the formulation of the name of the contract (in Part 1 of Article 714 of the Civil Code of Ukraine refers to the contract of supply of energy and other resources through acceptance Article 275 of the Civil Code of Ukraine – energy supply contract).

A common drawback of both codified acts is the lack of definition of the object of the contract – energy resources, which (a drawback) in the Central Committee of Ukraine is supplemented by the wording "and others" (meaning other than energy resources). What it is – the legislator leaves the discretion of the parties. In the Civil Code of Ukraine the relevant contract is narrowed on the subject. The same applies to the indication in the CC of the "connected network" and "power equipment" as mandatory features of this contract, and only to "power equipment" in the Civil Code of Ukraine. Since the Civil Code of Ukraine is about energy resources, the legislator accordingly provides an exhaustive list of these resources – electricity, steam, hot and overheated water. There is no such detail in the Central Committee of Ukraine, because the subject of this agreement is wider here than at the expense of designating in it "other (except energy) resources". In other aspects, the definitions of the relevant contract are similar. The same as in the contracts under consideration, the Central Committee of Ukraine provides for the possibility of

extending the relevant contract of sale and delivery, provided that otherwise it will not be regulated in any other (as seen – in a special) law or will not follow from essence of the relations of the parties (Part 2 of Art. 714), and also fixes the possibility of regulating by other laws the peculiarities of concluding and executing the contract of supply of energy and other resources. As the Civil Code of Ukraine regulates the energy supply relations in more detail, it enshrines more rules governing the respective supply relations, formulated mainly in an imperative way (for example, fixing in part 2 of Article 275 requirements for the impossibility of supplying energy without a contract), or by fixing blanket norms. Instead, the Central Committee of Ukraine regulates a wider range of contractual relations in this area (not only energy, but also other resources), so it is difficult to determine unequivocally the most optimal placement of the relevant norms in the Central Committee or in the Civil Code of Ukraine.

Regarding the method of formulating the references, the legislator in the Civil Code of Ukraine is inconsistent, since in some cases such a link is clear (indicates a specific law), while in others it is a generalized reference to certain standards or specifications. Both ways have both positive and negative aspects. On the one hand, the instruction of a specific law facilitates the further search for the necessary norms, on the other – in case of changing the name or adopting a new law, it becomes necessary to change the corresponding blanket norm in the Civil Code of Ukraine. Abstract and unspecified references make it much more difficult for the parties to find the required regulatory framework governing certain aspects of their contractual relationship. In general, most of the provisions set out in the Civil Code of Ukraine on the energy supply contract (in terms of quantity, quality, terms) only indicate the need to agree certain terms in the contract.

Conclusions. Therefore, the analysis of the norms governing the contractual relations of the exchange, the contracting of agricultural products and the supply of energy and other resources, as well as the authors' suggestions and suggestions regarding possible improvement of national legislation on these issues, may be the subject of further discussion, since the formulation of a single scientific subject understanding the rules of contract law is the key to its adoption by the legislator, which will result in changes in regulatory framework and simplification of the process of interpretation and implementation of relevant rules.

Applying different variations of titles to the same contracts; differences in wording of contract definition; different degree of detail of normative regulation; the presence of completely duplicate rules, which differ only in textual presentation, but not in content; absence of normative definitions of concepts that make up the subject of the contract; the use of ambiguous wording and definitions in contract law due to the lack of normative fixing require regulation, in particular the ways we have proposed in our work, which will help to improve normative regulation and application of exchange agreements, contracting, supply of energy and other resources.

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Summary

The article analyzes the positive and negative aspects of "double" regulatory settlement of such types of sales contract as exchange, contracting of agricultural products, supply of energy and other resources through the affiliated network in the Civil and Economic Codes of Ukraine. It points to the existence of duplication, emphasizes the need to bring to a unified view the definitions of these treaties, which are currently significantly different, which complicates the process of interpretation and, consequently, the implementation of regulations. Possible options for improving normative regulation are proposed, instead of arguing for the appropriateness of fixing a definitive norm in one codified act and a blanket norm with reference to another codified act, or securing in one of the acts only a blanket norm and another code and other normative codes. Given the somewhat narrowed-down, in comparison with civil relations, subjective composition of economic relations, the expediency of such concentration in the Civil Code of Ukraine is substantiated. A significant drawback of normative regulation is the lack of a normative definition (definition) of the majority of contracts that are analyzed in the publication.

Keywords: *exchange agreement, agricultural products contract, contract of supply of energy resources, agricultural products.*

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PROBLEM ISSUES ON THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS IN THE PHARMACEUTICAL INDUSTRY OF UKRAINE

Володимир Криволапчук, Руслан Филь. ПРОБЛЕМНІ ПИТАННЯ ОХОРОНИ ПРАВ ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ У ФАРМАЦЕВТИЧНІЙ ГАЛУЗІ УКРАЇНИ. У статті висвітлено актуальні проблеми охорони прав інтелектуальної власності у вітчизняній фармацевтичній галузі. Розкрито ефективність використання інноваційних лікарських засобів у сфері охорони здоров'я. Проаналізувавши норми міжнародного та національних законодавства, розкрито зміст фармацевтичної продукції як об'єкта прав інтелектуальної власності в Україні та визначено стан національного правового механізму захисту прав інтелектуальної діяльності у сфері фармації. Використовуючи системний та формально-логічний методи, охарактеризовано процедуру примусового ліцензування запатентованих винаходів (корисних моделей) та сформовано основні проблеми її реалізації.

З'ясовано, що основними проблемами охорони прав інтелектуальної власності у вітчизняній фармацевтичній галузі є, зокрема: неефективність державної політики стосовно розвитку інноваційних лікарських засобів; відсутність прозорого та зрозумілого механізму видачі примусової ліцензії запатентованих винаходів; суспільна необізнаність про ефективність застосування інновацій в охороні здоров'я як для держави, так і пацієнта; обмеженість у доступі українських пацієнтів до інноваційних ліків та методів лікування. Для подолання окреслених проблем та з урахуванням євроінтеграції України, наша держава зобов'язалась гармонізувати національну систему охорони та захисту прав інтелектуальної власності відповідно до гл. 9 «Інтелектуальна власність» Угоди про асоціацію між Україною та ЄС. Встановлення дієвого механізму охорони прав інтелектуальної власності на лікарські засоби, стимулюватиме розвиток інноваційної фармацевтичної продукції. Адже, розроблення сучасних медичних препаратів потребує залучення колосальних коштів, для виділення яких, як для вітчизняних, так й іноземних виробників фармацевтичної продукції необхідні гарантії захисту їх інвестицій та прав інтелектуальних результатів.

***Ключові слова**: лікарські засоби, права інтелектуальної власності, охорона прав, фармацевтична галузь.*

Problem statement. The pharmaceutical industry is one of the most important components of healthcare for which the patient's best interests always come first. Pharmacy also plays a significant role in Ukraine's economy, as it is an important segment of the domestic market and national security of the country. Providing Ukrainians with high-quality and affordable medicines is a paramount state and social task that cannot be solved without stable and progressive development of pharmaceutical activity.

Since independence, the domestic pharmaceutical industry has undergone significant positive changes in the production and development of the newest medicines, the accessibility of which to the population, according to research by the Organization for Economic Co-

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operation and Development, the European Federation of Associations of Pharmaceutical Manufacturers and the European Statistical Organization, directly affects the quality and life expectancy [1]. Thus, according to the study by Professor F. Lichtenberg Columbia University, the use of innovative medicines and the latest treatments for cardiovascular disease and cancer in 52 countries has extended life expectancy by 40-59% [16].

The availability of innovative medicines and cutting-edge therapeutic solutions is critical to the successful delivery of healthcare. After all, thanks to timely and effective treatment, a person can return to a normal full life.

In Ukraine, the cost of developing innovative medicines is extremely low compared to European countries. The imperfection of national pharmaceutical activity is also evidenced by the fact that currently only 5% of medicines in Ukraine are original. The lack of understanding of the importance of innovation for the pharmaceutical industry and the lack of legal protection of intellectual property rights create barriers not only to the development of new innovative medicines, but also to the entry of foreign manufacturers of innovative drugs into the Ukrainian market.

The purpose of the article is to highlight the main problems of legal protection of intellectual property rights in the field of pharmacy.

Analysis of the publications that started solving this problem. **The article's objective.** Issues of legal protection of intellectual property rights are at the center of attention of domestic lawyers. Thus, the outlined topics became the subject of knowledge of the following scientists: V. Gordienko, Y. Kapitsa, O. Kashintseva, O. Orlyuk, T. Lyaskovsky, O. Mamun, O. Svitlychny, I. Soroka, P. Tsibulev, I. Shatov, and other scientists.

Basic content. According to Art. 2 of the Law of Ukraine "On Medicines" the term "medicines" means any substance or combination of substances (one or more active pharmaceutical ingredients and excipients) having properties and intended for the treatment or prevention of diseases in humans, or any substance or combination of substances (one or more active pharmaceutical ingredients and excipients) that may be intended to prevent pregnancy, restore, correct or alter physiological functions in humans by implementation of pharmacological, immunological or metabolic action or to establish a medical diagnosis [7, Art. 2].

Therefore, for the purposes of defining that definition, the formulation of drugs is an invention or utility, since their legal protection includes products (device, substance, strain of a microorganism, cell culture of plants and animals, etc.), process (method) and their new use. The difference between these two intellectual property rights lies in their patentability. It is true, that the invention must be new, have an inventive step and be industrially applicable, and the utility model must be new and industrially applicable [15, p. 459 and 460].

Priority, authorship and property and non-property rights to these objects are certified by a patent with a validity of 20 years for the invention and 10 years for the utility model. However, Part 4 of Art. 6 of the Law of Ukraine "On Protection of Rights to Inventions and Utility Models" the term of validity of a patent for an invention the object of which is a medicinal product, the use of which requires the permission of the relevant competent authority, may be extended at the request of the holder of this patent for a period equal to the period between the date of application and the date of receipt of such authorization, but not more than 5 years [8]. The patent grants their owners exclusive property rights to allow the use of a patented invention (utility model) or to prevent the misuse of such an object, including prohibiting such use [15, Art. 424].

The use of the invention (utility model) is recognized, first, the manufacture of a product using a patented invention (utility model), the use of such a product, offering for sale, including through the Internet, sale, import (importation) and other introduction into civil circulation or storage for such purposes; secondly, the use of the patent protected process or the offering of it for use in Ukraine, if the person offering the process knows that its use is prohibited without the consent of the patent owner or, in the circumstances, it is obvious [8, Part 2 of Art. 28].In addition, a product or process is recognized as being produced or made using a patented of the invention (utility model) if each feature included in an independent formula of the invention (utility model), or equivalent feature was used. However, the legislator also provides for cases where the exclusive property rights of the patent holder of medicines may be forcibly alienated. Thus, in order to ensure public health, defense of the state, environmental security and other interests of society, the Cabinet of Ministers of Ukraine, according to Art. 30 of the Law of Ukraine "On Protection of Rights to Inventions and Utility Models" may allow the use of a patented invention (utility model) to a designated person without the consent of the patent owner in the case of his unjustified refusal to issue a license to use the invention (utility model).

Forced alienation of intellectual property rights for medicinal products is provided not

only by the rules of national law, but also by international provisions. In accordance with the basic agreement of the World Trade Organization (of which Ukraine has been a member since 2008) – the Agreement on Trade-Related Aspects of Intellectual Property Rights of April 15, 1994 (hereinafter referred to as the TRIPS Agreement), our country has committed itself to abide by the provisions of the TRIPS Agreement, in which (art. 31) provides for the right to use a patent without the permission of the patentee by the government of the Member State of the agreement or by a third party with the permission of the government in case of emergency in the country or in other circumstances of extreme necessity [12; 14; 9].

Since 2016, Ukraine has been able to use the compulsory licensing mechanism for patented medicines to address health problems, taking into account specific circumstances, its own capabilities and needs [14]. This licensing of drugs, as O. Kashintsev notes, helps to increase the availability of pharmaceutical products to consumers as a result of the entry into circulation of innovative drugs at a more affordable price, to enhance the exchange of modern technologies with other members of the World Trade Organization, to increase the capacity of the domestic pharmaceutical sector 2 . 8].

The use of compulsory alienation of rights to the patented invention (utility model) is provided by Art. 5 of the Paris Convention for the Protection of Industrial Property, which Ukraine ratified on December 25, 1991. In accordance with the provision of that article, each country of the Union has the right to take legislative measures providing for compulsory licenses to prevent abuses that may result from the exercise of exclusive rights conferred by an exclusive right, providef by a patent. [3].

The legal basis and the possibilities for granting a compulsory license are also defined in the health legislation. Thus, by making changes in 2011 to Art. 9 of the Law of Ukraine "On Medicines", the legislator, in order to ensure public health, authorized the Cabinet of Ministers of Ukraine to authorize the use of a patented invention relating to such preparation to a person without the consent of the patent owner [6].

To accomplish this task, the Government approved in 2004 the Procedure for granting the Cabinet of Ministers of Ukraine permission to use the patented invention (utility model) or the registered topography of the integrated circuit, and 2013 – the Procedure for granting the Cabinet of Ministers of Ukraine permission to use the patented invention (utility model) with regard to a medicinal product [4; 5]. The Order of 2004 defines the procedure for considering a request for the Cabinet of Ministers of Ukraine to authorize the use of a patented invention (utility model) or registered topography of the integrated circuit without the consent of the holder of the respective patent, but with the payment of compensation to him, authorizing the use of a patented invention (utility model) relating to a medicinal product without the consent of the patent owner and the payment of compensation.

Compulsory alienation of property rights to intellectual property are based on problems related to health care, combating HIV infection, AIDS and other socially dangerous diseases, if they are documented, namely the presence of the following circumstances: the patent owner cannot satisfy the need for appropriate a medicinal product by the forces and capacities commonly used to produce such a medicinal product; the patent owner unreasonably denied the applicant in obtaining a license to use the invention (utility model) [5]. The formulation of the grounds for "public health" for the compulsory licensing of a patented invention, according to I. Soroka, may in the future become an instrument of pressure on pharmaceutical market participants during tendering, since any purchase of medicines for public funds will certainly be carried out for the purpose of ensuring the health of the population [1]. World practice notes the use of compulsory alienation of intellectual property rights subject to medicinal products only in extreme cases, in particular: the threat of an epidemic (as envisaged in the United States), antiretroviral drugs (Malaysia), for the treatment of AIDS and cardio- vascular diseases (Thailand) [1]. Abuse of compulsory licensing of medicines creates economic constraints, for example in Thailand – blacklisting countries that violate intellectual property rights.

However, in case of compulsory licensing of a patented intellectual property object, the Government shall pay the patentee compensation at the expense of the person to whom such authorization is granted. Its size is calculated depending on the economic value of the invention (utility model) [5]. In order to overcome the problems identified and to implement the European experience in the legal protection of intellectual property rights, the object of which is pharmaceutical products, Ukraine has undertaken to harmonize the national system of protection and protection of intellectual property rights in accordance with Ch. 9 "Intellectual property" of the Ukraine-EU Association Agreement [13]. According to Art. 230 of the said Agree-

ment, Ukraine and the EU should provide the fair and equitable measures, procedures and remedies necessary to ensure the protection of intellectual property rights.

In doing so, these measures and safeguards must be effective and dissuasive and applied in such a way as to avoid obstruction of legitimate trade and ensure that they are protected against abuse.

In order to implement European standards of living in Ukraine and to step up Ukraine to the leading positions in the world in 2015, the President of Ukraine approved the Sustainable Development Strategy "Ukraine 2020" [10], according to which intellectual property protection reform is envisaged.

In order to fulfill the objectives of this Strategy, the Cabinet of Ministers of Ukraine in 2016 approved the Concept of reforming the state system of legal protection of intellectual property in Ukraine [11]. It should be noted that the main prerequisites for the implementation of this reform were the imperfect system of public administration in the field of intellectual property, which is not able to make significant progress in the adaptation of the legislation in the field of intellectual property to the current political and economic conditions.

This Concept also points to the need to improve the national regulatory framework and harmonize it with EU norms by amending legislation on: the legal protection of intellectual property rights in the light of the experience of EU countries; the order of allocation of the rights to these objects, including those created by the budget; protection of intellectual property rights; strengthening criminal and administrative liability for violation of these rights.

In order to establish an effective mechanism for combating counterfeit and counterfeit products, including medicines, the Ukrainian government has pledged to create an optimal, effective and high-quality state intellectual property legal system that will create a transparent public model of overcoming existing challenges and risks, and offer tools intellectual property as an incentive for the development of related economic and social factors.

Conclusions. Therefore, summarizing the above said, let us point out that the main problems of protection of intellectual property rights in the domestic pharmaceutical industry are, in particular: inefficiency of the state policy on the development of innovative medicines; lack of a transparent and comprehensible mechanism for issuing compulsory licenses for patented inventions; public awareness of the effectiveness of health care innovations for both the state and the patient; limited access to innovative medicines and treatments for Ukrainian patients. In order to overcome the problems outlined and to take into account Ukraine's European integration, our state has undertaken to harmonize the national system of protection and protection of intellectual property rights in accordance with Sec. 9 "Intellectual Property" of the EU-Ukraine Association Agreement. Establishing an effective mechanism for the protection of intellectual property rights for medicinal products will stimulate the development of innovative pharmaceutical products. After all, the development of modern medicines requires the enormous funds involved, which require guarantees for the protection of their investments and intellectual property rights for both domestic and foreign pharmaceutical manufacturers. Therefore, the introduction of an effective national system of legal protection of intellectual property rights will have a positive impact on the innovative attractiveness of Ukraine.

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Summary

The article highlights topical problems of protection of intellectual property rights in the domestic pharmaceutical industry. The effectiveness of the use of innovative medicines in the field of health is revealed. Having analyzed the norms of international and national legislation, the content of pharmaceutical products as an object of intellectual property rights in Ukraine is revealed and the state of the national legal mechanism of protection of intellectual rights in the field of pharmacy is determined. Using systemic and formal-logical methods, the procedure of compulsory licensing of patented inventions (utility models) is characterized and the main problems of its realization are formed. It has been identified that the main problems in the protection of intellectual property rights in the pharmaceutical sector include: public awareness of the effectiveness of health care innovations for the state and the patient; limited access of Ukrainian patients to innovative pharmaceutical products. inefficiency of the state policy on the development of innovative medicines; the lack of a transparent and understandable mechanism for the compulsory licensing of patented inventions to all interested parties.

In order to overcome these problems, it is proposed to harmonize the national system of protection and protection of intellectual property rights in accordance with the Association Agreement between Ukraine and the EU.

***Keywords**: medicines, intellectual property rights, protection of rights, pharmaceutical industry.*

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LEGAL STATUS OF TRANSNATIONAL CORPORATIONS IN PRIVATE INTERNATIONAL LAW

Кристина Резворович. ПРАВОВИЙ СТАТУС ТРАНСНАЦІОНАЛЬНИХ КОРПОРАЦІЙ В МІЖНАРОДНОМУ ПРИВАТНОМУ ПРАВІ. Ключовою тенденцією сучасних міжнародних відносин є глобалізація світового господарства, лібералізація торгівлі і, як наслідок, інтернаціоналізація капіталу та розвиток міжнародного підприємництва, чому активно сприяє науково-технічний прогрес і новітні технології.

Стаття присвячена проблематиці правового статусу транснаціональних корпорацій у міжнародному приватному праві. Зокрема, з урахуванням сучасної доктрини, національного законодавства і міжнародних документів. В статті досліджується поняття транснаціональної корпорації з урахуванням її якісних і кількісних характеристик. Аналізуються положення документів ООН – Проект Кодексу поведінки транснаціональних корпорацій 1983 року і Проект норм, що стосуються обов'язків транснаціональних корпорацій та інших підприємств в області прав людини 2003 р.; СНД – Конвенція про транснаціональні корпорації 1998 року, а також акти Європейського Союзу.

Розкрито особливості правового регулювання статусу транснаціональних корпорацій, зокрема права, обов'язки, відповідальність, порядку створення і припинення діяльності. Специфіка правового статусу ТНК зумовлена тим, що правове регулювання їхньої діяльності здійснюється на основі норм національного законодавства кількох держав (держави реєстрації, держави розташування), двосторонніх угод, багатосторонніх договорів та міжнародних рекомендаційних актів. На сьогодні, на міжнародному рівні не вдалося прийняти юридично обов'язковий акт, в якому наводяться вичерпні ознаки ТНК, їхні права та обов'язки. У зв'язку з цим, кваліфікація утворення як ТНК залишається складним теоретичним і практичним завданням. Відсутність такого акта пояснюється неспроможністю держав віднайти компромісний підхід щодо ключових положень, що стосуються їхнього правового статусу. Це слід розглядати як негативне явище, оскільки підходи держав щодо статусу ТНК можуть бути суттєво відмінними і створювати бар'єри для руху іноземного інвестування

В умовах відсутності єдності регулювання статусу транснаціональних корпорацій в законодавстві держави наголошується на необхідності прийняття універсального міжнародного договору.

***Ключові слова:** транснаціональна корпорація, ТНК, транснаціональна група, багатонаціональна корпорація, мультинаціональна корпорація, права і обов'язки транснаціональних корпорацій, статус транснаціональних корпорацій, міжнародне приватне право.*

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Problem statement. The key trend of modern international relations is the globalization of the world economy, trade liberalization and, as a consequence, internationalization of capital and the development of international entrepreneurship, which is actively contributed by scientific and technological progress and the latest technologies. Under these conditions, the role and value of transnational corporations (hereinafter referred to as the "TNCs") is increasing, and their number is growing. According to the Organization for Economic Co-operation and Development, there were about 38,000 TNCs with more than 206,000 branches worldwide in 2000, while there were about 60,000 TNCs with more than 500,000 foreign affiliates in 2006 [1].

According to the researchers, the functioning of TNCs is the basis of economic growth and technological progress both globally and nationally. Taxes paid by TNCs are a significant source of replenishment of the state budget. They also create jobs and thereby stabilize national labour markets. For example, in 2015, General Motors employed about 708,000 people; Siemens – 486,000; Ford Motor – 464,000 [2, p. 152], etc.

Over the last decades, TNCs have controlled "over 50% of international trade in manufactured goods, about 80% of patents and licenses for new machinery and technologies. TNCs control 90% of the world market for wheat, corn, coffee, tobacco, 75% of crude oil and natural rubber" [3, p. 106-107]. The largest corporations have turned into powerful profit entities with their annual budget exceeding that of many countries. Under these conditions, the activities of corporations can be a challenge for the functioning of states, since, because of their economic power, TNCs have the real capacity and resources to significantly influence national domestic and foreign policy, the economy and even the development of legislation.

Thus, transnational corporations are one of the most important actors in the modern international relations, and the problem of legal regulation of their status is one of the most relevant in private international law.

Analysis of publications that started solving this problem. It should be noted that the issue of TNCs functioning in the doctrine has traditionally been of considerable academic interest. In particular, the following Ukrainian scholars are worth noting: Ye.M. Bilousova, I.I. Dakhno, A.S. Dovhert, I.M. Zhukov, Yu.F. Ivanov, V.V. Komarov, T.V. Kurman, O.O. Merezhko, O.P. Radchuk, and I.A. Shumilo. Among the Russian scholars, the following are worth noting: M.M. Boguslavsky, E.A. Gorlov, A.E. Korolev, R.A. Kulikov, D.L. Lysenko, L.A. Lunts, A.A. Mironov, S.Yu. Pechekina. In American and European science, the topic of TNC legal capacity has also been the subject of research by many scholars, including D. Ashtrom, P. Gray, J.H. Dunning, R. Jenkis, A. de Lond, B. McKern, and E. Ochionebo, K. Sauwant, D. Chudnovsky, O. de Schutter. However, given the complexity and diversification of international relations, the emergence of new legal instruments and mechanisms, the study of the status of TNCs remains an important scientific task.

The article's objective is to determine the features of TNCs' status in private international law at the present stage.

Basic content. Research into the legal status of TNCs in private international law should begin with the concept of a transnational corporation.

First of all, we should pay attention to the terminology used to refer to TNCs. Most post-Soviet researchers use the term "transnational corporation". It is this term ("transnational corporation") that has been widely used in the UN documents (such as the 1983 Code of Conduct for Transnational Corporations [4]), its bodies, in particular the United Nations Conference on Trade and Development (UNCTAD) (International Investment Report 2019 [5]) and specialized agencies – the United Nations Industrial Development Conference (UNIDO) (Transnational Corporations and the Internationalization of R&D: 2005 World Investment Report [6]) and the EU (Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer [7]). At the same time, doctrines and international practices also include synonymous equivalents, namely multinational (international) corporations (companies, enterprises). In particular, such terminology is used by the Organization for Economic Co-operation and Development (OECD) in the 1976 Declaration on International Investment and Multinational Enterprises and Guidelines for Multinational Enterprises, as amended in 2011 [8]. The lack of terminological unity in the doctrine can also be explained by the different variants of translation from the authentic language of the document, as well as the use of different terminology in national law.

It should be noted that the term "multinational corporation" is not used in Ukrainian law. Art. 119(2) of the Economic Code of Ukraine, 2003 [9] (hereinafter referred to as the "EC of Ukraine") contains a more general concept – "economic association", which means "associ-

ation of enterprises formed at the initiative of enterprises, regardless of their type, which voluntarily combined their economic activities." According to Art. 120(1) of the EC of Ukraine, economic associations may be formed as associations, corporations, consortia, concerns or other associations of enterprises provided by law. According Art. 120(3) of the EC of Ukraine, the corporation shall be "a contractual association established on the basis of a combination of production, scientific and commercial interests of the merged companies, with the delegation of separate powers of centralized regulation of the activity of each of the participants to the governing bodies of the corporation." Therefore, the corporation is regarded by the legislator as one of the legal forms of business associations.

Noteworthy is the position of the Russian scholar D.L. Lysenko, who, in his thesis "The Problem of the Legal Status of Transnational Corporations: International Legal Aspects" (Moscow, 2003), indicates that the term "transnational corporation" is unsuccessful, as in most cases it brings together quite different corporations or other legal entities, as well as organizations that do not have the status of the legal entity. In this regard, he proposes to use the term "transnational group", which may be appropriate in the context of the different nature of such entities [10, p. 16].

The study of specialized literature on private international law leads to the conclusion that today there is no complete accord among scholars regarding the definition of TNCs and their characteristic features. According to J.H. Dunning, TNCs are "a structure that owns and controls production assets in two or more foreign countries" [11, p. 23]. Shkurat I. considers transnational corporation to be a group of enterprises operating in different countries (host countries) but controlled by a headquarters located in one particular country, with the main feature of TNCs being foreign direct investment from the host country [12, p. 436]. Dakhno I.I. argues that TNCs are an economically unified system formed by a group of independent, mutually segregated enterprises, which have structural subdivisions and operate in the territories of several states, with their activity regulated by the national legislation of these states [13, p. 81]. A rather abstract definition is offered by V.I. Smagin, who points out that TNCs are a "complex that uses an international approach in its activities, which involves the formation of a transnational industrial, financial, and trade complex with a single decision-making center" [14, p. 66].

There were also attempts to define the concept of TNCs in international instruments. In particular, in paragraph 1(a) of the 1983 Draft United Nations Code of Conduct for Transnational Corporations [4], the term "transnational corporation" is defined as an enterprise consisting of subdivisions in two or more countries that have coherent policies and a common strategy, and are interconnected by a joint decision-making systems from one or more centers that have a significant impact on the activities of other components, in particular, sharing of knowledge, resources and responsibility. At the same time, the draft states that its provisions apply to enterprises regardless of their country of origin and ownership – private, public (state) or mixed. Paragraph 20 of the 2003 Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights [15] provides a close definition with the only clarification that TNCs can act in any legal form, and act individually or collectively.

A broader definition of TNCs is provided in the 2005 Report of the United Nations Industrial Development Organization (UNIDO) Conference on Global Investments, Transnational Corporations and Internationalization of R&D. In particular, transnational corporations are regarded as incorporated or unincorporated enterprises, including a parent company and its foreign affiliates. A parent company is defined as an enterprise that controls the assets of other entities in countries other than its home country, typically owning a certain share of its equity. A share of equity is 10% or more of ordinary shares or voting rights for registered enterprises, or its equivalent for an unincorporated enterprise, is generally considered as an asset control threshold. A foreign affiliate is an incorporated or unincorporated enterprise in which an investor resident in another country owns a share that allows for long-term management of the enterprise (the shareholding is up to 10% for the incorporated enterprise or its equivalent for an unincorporated enterprise). The affiliate is wholly or jointly owned by the unincorporated enterprise in the host country, which may include (i) a permanent representative office or office of a foreign investor; (ii) an unincorporated partnership or joint venture between a direct foreign investor and one or more third parties; (iii) land plots, structures (except for government-owned structures) and/or real property and facilities directly owned by a foreign resident; or (iv) movable property (such as ships, aircrafts, gas drilling rigs) operating in a country other than a foreign investor's country for at least one year [16, p. 297].

In our opinion, the definition of TNCs should be given by systematically interpreting its

essential features. The approach that distinguishes qualitative and quantitative criteria (B.M. Ashavsky, N. Valko, D.L. Lysenko, L.I. Lialikova), which reveal the nature of TNCs and allow distinguishing them from other entities, is quite widely used in the science. Qualitative criteria reflect the nature of TNCs, and quantitative criteria reflect their variable characteristics.

Qualitative characteristics include the form of ownership, the procedure for creation and registration, the structure of the corporation, the distribution of assets and liabilities, management and control. Baad H. defines TNC as an enterprise with headquarters located in the country of origin, which controls the activities of subsidiaries in the countries of location. Vernon R. adds that all the enterprises (companies) of the group united in TNCs have a single source of finance and personnel. The organizational structure of TNCs can be both centralized and decentralized. However, in any structure all elements of this structure are interconnected. Despite economic unity, TNCs are characterized by the independence of legal entities that are part thereof, which may have different state affiliations [17, p. 12].

Quantitative characteristics include the ratio of foreign assets to the total assets of the corporation; the ratio of the number of foreign workers to the general staff of the corporation; the ratio of the share of profit earned abroad to the total profit; the ratio of imports to total sales. At the same time, scholars provide significantly different indicators of the quantitative characteristics of TNCs or do not provide sufficient arguments for specific numerical indicators. Thus, scholars distinguish at least two (J.H. Dunning, I.I. Dakhno, I.M. Zhukov) to six countries (R. Vernon), where TNCs should operate or have affiliates. According to V. Rugman, the ratio of imports to total sales should be at least 30%. Vernon R. states that TNCs' overseas sales should be at least $ 100 million per year [See: 18, p. 21].

The specifics of TNCs status is due to the fact that the legal regulation of their activities is carried out on the basis of the provisions of national legislation, bilateral agreements, multilateral treaties and international advisory acts.

The provisions of national law apply to the activities of enterprises and their affiliates forming a group of TNCs located in the territory of the respective state. However, the peculiarities of legal regulation of TNCs is that a corporation, having offices in several countries, does not fall under the jurisdiction of an individual state, and its activities as a single entity cannot be regulated by the national law of one state. The extraterritorial effect of national legislation is possible only with the consent of other countries, which is enshrined in the relevant international treaties.

In some countries, attempts have been made to unilaterally extend the provisions of their legislation to regulate the activities of TNC subdivisions in the territory of other countries. An example would be the US practice reflected in the 1979 Export Administration Act [19]. In this connection, a number of the UN recommendations stated the principle that the rules of the country of location apply to foreign affiliates and enterprises of TNCs.

The next level of regulation is bilateral agreements concluded between countries on foreign investment and related legal relations. According to the official information of the Ministry of Foreign Affairs of Ukraine, today Ukraine is a party to about 70 such agreements [20]. The provisions of such agreements provide for investment protection and impose obligations on countries to create favourable, transparent and non-discriminatory conditions for investors from another country. Thus, in the territory of Ukraine the national regime of investment activity is applied to foreign investors, i.e. equal conditions of activity with domestic investors are provided. Foreign investments in Ukraine are not subject to nationalization. In case of termination of the investment activity, the foreign investor is guaranteed the return of his/its investment in kind or in the currency of investment without payment of duties, as well as income from investments in cash or commodity form. The State also guarantees the unimpeded and immediate transfer abroad of foreign currency profits and other funds legally obtained as a result of foreign investments.

The third level of regulation of TNCs is international multilateral acts, which are mainly advisory in nature.

It should be noted that attempts have been made within the UN and its specialized agencies to adopt a universal international treaty on the status of TNCs. A significant contribution was made by the United Nations Conference on Trade and Development (UNCTAD) and the Center for Transnational Corporations, which since 1993 has been replaced by the Investment, Enterprise and Development Commission. In 1975, they introduced the United Nations Code of Conduct for Transnational Corporations [4], which was repeatedly submitted by the UN General Assembly for consideration by Member States in order to make it a legally binding act in the form of an international treaty. The Code provides for mutual commitments between the

States and TNCs. In particular, the key principle determined therein is the principle of non-discrimination against a foreign partner. Therefore, the state must create equal conditions for the functioning of national and foreign entities. In doing so, TNCs should promote the development of the country's scientific and technical potential, comply with the requirements of national legislation of the country, and report on their activities. It should be noted that as of July 14, 2019, the said act has not yet become legally binding.

Among the documents developed within the UN framework, the 2003 Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights [15] (hereinafter referred to as "the Draft Norms") should also be noted. The preamble to this act recognizes that TNCs, their employees, have their own responsibilities and bear responsibility in the field of human rights, which are not absorbed by the obligations of the State of incorporation or other States where they operate. The Draft Norms contain provisions that impose the same obligations on TNCs as on the states. In particular, to guarantee the right to equal opportunities and to ensure non-discriminatory treatment (paragraph B); to abide by the rules of public international law in the field of human rights and, in particular, not to be involved in the commission of international crimes (paragraph C), not to use forced labor (paragraph D); respect the provisions of national law and the sovereignty of the state (paragraph E); comply with the rules of fair business practice, marketing, advertising, ensure the proper quality of goods and services (paragraph F); in the pursuit of its activities, to anticipate the requirements of the environment, health, bioethics (paragraph G).

The regulation of TNCs through legally binding acts is now carried out at the regional level. Thus, the CIS 1998 Convention on Transnational Corporations [21], which came into force on 14.01.2000, is of great importance. Unlike the above-mentioned UN acts, it regulates the status of TNCs in more detail. Thus, the Convention defines a transnational corporation, contains rules on its composition, procedure for establishment, registration and termination, governing bodies, state support and promotion of activities, responsibility of participants, reporting and control over its activities, ownership of profits and products.

In particular, it is recognized that the members of the corporation may be legal entities in any legal form, as well as state, municipal and unitary enterprises (Article 3). The procedure for registering TNCs is determined by the law of the state – the place of its registration. The registration is confirmed by the issuance of a certificate of the established form, stating the full name and legal form with the obligatory indication that it is a transnational corporation (Article 4). The governance structure, in particular the composition of the supreme, executive and controlling bodies, is determined by the statutory documents of the corporation, based on the legislation of the state of registration (Article 6). According to the obligations of the corporation, participants are responsible under the laws of those states whose legal entities are members of the corporation (Article 9). The corporation is required to report on its activities in the manner specified by the law of the country of incorporation. At the same time, legal entities that are members of the corporation report by location. The competent authority of the State of incorporation may audit activities of the corporation (Article 10). As a general rule, the right of ownership of the corporation and its legal entities of profit and production is determined by the law of the country of location, unless otherwise specified by interstate agreements. Taxation of legal entities belonging to the corporation is carried out at the place of their location according to the legislation of the country of residence (Article 11). Regulation of labour and social relations in a corporation is carried out under the laws of the states in whose territory its members are located, unless otherwise specified by the respective states (Article 12). The corporation may be liquidated on the grounds stipulated by the law of the country of incorporation, as well as under interstate agreements.

TNCs are also regulated within the framework of the European Union. However, to date, it mainly concerns reporting on TNCs' activities in terms of functioning of the EU internal market. In particular, Council Directive 2011/16/EU on mandatory automatic exchange of tax information concerning cross-border arrangements has been in force since 15.02.2011 [22]. At the same time, the Council of the European Union and the European Parliament have failed to adopt a Code of Conduct for European TNCs due to resistance from Member States (see European Code of Conduct: Resolution on EU Standards for European Enterprises Operating in Developing Countries [23]).

Conclusions. Specifics of the legal status of TNCs is due to the fact that the legal regulation of their activities is carried out on the basis of the rules of national legislation of several states (state of incorporation, country of location), bilateral agreements, multilateral agreements and international advisory instruments. They have failed to adopt a legally binding act outlining

TNCs, their rights and obligations so far at the international level. In this regard, qualification of such entities as TNCs remains a difficult theoretical and practical task. The absence of such an act is explained by the inability of states to find a compromise approach on key provisions regarding their legal status. This should be seen as a negative phenomenon, as states' approaches to the status of TNCs can be significantly different and create barriers to foreign investment.

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Summary

The research paper deals with the problems of the legal status of transnational corporations in private international law. In particular, taking into account modern doctrine, national legislation and international documents, the research paper explores the concept of a transnational corporation with regard to its qualitative and quantitative characteristics. The provisions of the UN documents are analyzed – the Draft Code of Conduct for Transnational Corporations, 1983, and Draft Standards on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, 2003; CIS – 1998 Convention on Transnational Corporations, and the European Union Acts. The features of legal regulation of the status of transnational corporations, in particular the rights, obligations, responsibilities, procedures for establishment and termination are covered. In the absence of unity of regulation of the status of transnational corporations, state legislation emphasizes the need for adopting a universal international treaty.

Keywords: *transnational corporation, TNC, transnational group, multinational corporation, rights and obligations of transnational corporations, status of transnational corporations, private international law.*

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THE RIGHT TO A PENSION PROVISION FOR EDUCATION EMPLOYEES OF UKRAINE UNDER PENSION REFORM CONDITIONS

Люся Можечук. ПРАВО НА ПЕНСІЙНЕ ЗАБЕЗПЕЧЕННЯ ПРАЦІВНИКІВ ОСВІТИ УКРАЇНИ В УМОВАХ ПЕНСІЙНОЇ РЕФОРМИ. Розкрито питання реалізації громадянами України конституційного права на пенсійне забезпечення. Зокрема, увагу зосереджено на пенсійному забезпеченні працівників освіти. Проаналізовано етапи пенсійної реформи, охарактеризовано зміни та нововведення. Розкрито зміст поняття «пенсія за вислугу років», визначено умови її призначення. Здійснено аналіз судової практики в частині пенсійного забезпечення працівників освіти України.

Аналізуючи сьогоднішній стан пенсійної системи України, виявлено окремі вади пенсійної реформи, зокрема її екстенсивний розвиток, не всі законодавчі норми різних законів узгоджуються між собою, або виявляються не продуманими механізми реалізації тих, чи інших «нововведень». Про що свідчить рішення Конституційного Суду України від 04 червня 2019 року № 2-р/2019 щодо відповідності Конституції України (конституційності) окремих положень Закону України «Про пенсійне забезпечення». Цим рішенням Конституційний Суд України визнав такими, що не відповідають Конституції України (є неконституційними), деякі положення Закону України «Про пенсійне забезпечення» від 05.11.1991.

Зазначено, що пенсійні системи є невід'ємною частиною складовою національних систем соціального забезпечення – основою інструменту державної політики у сфері надання соціальної підтримки та захисту населення. Пенсійна реформа в Україні внесла багато новацій, змін до законодавства, проте, деякі з них, як показує судова практика, суперечать нормам Конституції України, порушуючи при цьому сутність права на соціальний захист, зокрема, щодо пенсійного забезпечення працівників освіти, а саме можливості виходу на пенсію за вислугу років. Пенсійне забезпечення за вислугу років для науково-педагогічних працівників є вкрай необхідним, адже, педагогічна діяльність часто призводить до втрати професійної працездатності.

Ключові слова: *право на соціальний захист, пенсійне забезпечення, пенсійне реформування, пенсійна система, пенсія за вислугу років, страховий стаж, освітянська діяльність.*

Problem statement. Among the vital socio-economic and political problems that dominate the domestic information space, a special place is given to pension provision [1, p. 4]. Citizens' pension provision is one of the major components of a socially oriented state. The existence of guaranteed Ukrainian pension rights for Ukrainian citizens should be considered as a realization of a certain level of civilization of the state's development and its humane maturity. The constitution of Ukraine contains imperative norms that give every citizen a guaranteed social security. The Basic Law of the country not only confirms the social character, but establishes the primacy of the responsibility of the legitimate authorities in matters of pension provision of citizens [2, p. 7]. The problem of realization of pension rights by the citizens in Ukraine is still acute and urgent as it has been throughout the period of formation of the national pension system and permanent reform of the legislation in this field. This problem has repeatedly generated discussions of scientists in the context of possible improvement of this procedure for the benefit of citizens or, conversely, of the state.

Analysis of publications that started solving this problem. The legal aspects of citizens' realization of the right to retirement pension were, to one extent or another, the object of study of such contemporary Ukrainian scientists as N.B. Bolotina, I.P. Bomberger, V.Ya. Burak, O.I. Kul'chic'ka, S.V. Vishnovec'ka, T.O. Didkovs'ka, M.M. Klempars'ky, N.P. Korobenko, L.M. Knyaz'kov, T.V. Kravchuk, I.Yu. Mikhaylova, S.M. Prilipko, O.M. Yaroshenko, N.M. Khutoryan, Ya.V. Simutina, M.P. Stadnik, A.A. Shirant, O.V. Tyshchenko, M.M. Shumilo and others. At the same time, the pension reform conducted in Ukraine introduced sub-

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stantially new legal conditions for citizens to exercise their pension rights [12, p. 101-102]. Particularly noteworthy is the issue of pension provision for educators in Ukraine.

The article's objective is to analyze the issues of pension provision for educatiors in Ukraine as a result of pension reform.

Basic content. The pension system, by its structure and content, is a complex set of institutions, relationships and mechanisms through which pension funds are formed and appropriate conditions are created for the provision of pensions to the incapacitated population. An integral part of the pension system is pension provision [3, p. 24]. Despite the fact that a number of important changes for the further development of the pension system have been implemented in the country today, the pension system of Ukraine is in a serious crisis. The crisis is manifested in the low level of pensions, the lack of proper differentiation of pensions depending on the length of service, the long-term deficit of the Pension Fund budget, and as a consequence, the strengthening of the dependence of the pension system on transfers from the state budget [2, p. 7]. Under the current conditions of socio-economic development, pension provision is one of the main social security institutions designed to protect citizens from poverty after the retirement age, raise the standard of living of pensioners, establish the dependence of pensions on the size of earnings and seniority, ensure the financial stability of the pension system. [10, p.13].Pension provision is a collection of pension entitlements for persons who are entitled to it by law or contractual relationship. The first way is a distributive system whereby the provision of pensions to the citizens is not related to the contributions paid in advance and is not conditioned by the loss of earnings; the second way is cumulative, by which the pension contributions are accumulated [7, p. 7].

The structure of the national pension system is defined in the Law of Ukraine "On compulsory pension insurance". According to article 2 of the Law of Ukraine "On compulsory pension insurance" the pension system in Ukraine consists of three levels: a solidarity system of compulsory state pension insurance; compulsory system of compulsory state pension insurance; the system of non-state pension provision [8].

The solidarity system is the basis of pension provision of Ukraine, which aims to provide a minimum pension, which is a guaranteed pension of every citizen after retirement. Financing of these payments is made by compulsory deductions from the salaries of citizens to the Pension Fund of Ukraine [9, pp. 5-6].

On October 11, 2017, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Raising Pensions" came into force, which defined the priority directions of reforming the pension system of Ukraine. In particular, the purpose of the reform is to 1) modernize pensions, that is, adjust them according to the increase in the average wage from which contributions are paid; 2) establish requirements for the amount of required length of service; 3) abolish the special conditions for retirement and taxation of pensions [4, p. 1225]. The law provides for the introduction of an automatic provision for annual indexation (recalculation) of pensions to protect against inflation, taking into account the financial capacity of the solidarity system, but not less than 50% increase in average wages over three years and 50% of the consumer price index. In addition, the special legal act abolishes special pensions for civil servants, judges, scientists and others categories [5]. Particular attention should be paid to the pension provision of educators, in particular, the possibility of retirement for years of service.

Analyzing the norms of the current legislation of Ukraine, which directly regulate the legal relations in the sphere of pension insurance; it is possible to state that there is no definition at the legislative level of the concept of "pension for years of service". Article 51 of the Law of Ukraine "On Pension Insurance" states that pensions for years of service are for certain categories of citizens employed in the work, the performance of which leads to loss of professional capacity or age, which entitles to retirement by age [13]. Scientists propose the following definitions of this concept. T.P. Kolesnik-Omelchenko defines years of service pension as a monthly monetary payment from the Pension Fund of Ukraine to be assigned to teaching staff in the amount correlated with past earnings, with a length of service of at least 25 years in positions established by law, regardless of age [11, p. 9]. I.M. Sirota notes that years of service is a special kind of special experience of certain categories of workers, which provides preferential retirement benefits in connection with the loss of a professional pension working capacity and retirement before the age of retirement, which entitles to retirement by age [15, p. 86].

Thus, a lifetime service pension is a monthly cash benefit received by a circle of persons determined by a special legal act in the presence of a special length of service.

Unlike other types of pensions, pensions for years of service are to provide a source of

livelihood, encourage early retirement due to the threat of premature occupational aging and attract labor in certain areas of the national economy. The calculation of age pension on a general basis is carried out according to the formula, the main components of which are the salary (income) of the insured person and the coefficient of insurance length of service, which has rather complex accounting principles [14, p. 12-13].

Thus, analyzing the current state of the pension system of Ukraine, we can talk about some of the disadvantages of the pension reform, including its extensive development, not all legislative provisions of different laws are consistent with each other or the mechanisms of implementation of these or other "innovations" are not considered. The decision of the Constitutional Court of Ukraine of June 4, 2019 No. 2-r / 2019 on compliance of the Constitution of Ukraine (constitutionality) with certain provisions of the Law of Ukraine "On Pension Provision" can be considered as evidence to this. By this decision, the Constitutional Court of Ukraine found some provisions of the Law of Ukraine "On Pension Provision" of 17.11.1991 No. 1788-XII to be inconsistent with the Constitution of Ukraine (which are unconstitutional). The Constitutional Court of Ukraine notes: that changes in the pension sector must be sufficiently substantiated, carried out gradually, carefully and in advance in a reasoned way, based on objective criteria, proportionate to the purpose of changing legal regulation, ensuring a fair balance between the general interests of society and the duty to protect human rights, without violating the essence of the right to social protection [6].

The Decision states that the Law of Ukraine on Pension Insurance establishes as an additional condition for granting a retirement pension of certain age to certain categories of workers, in particular reaching the age of 55 for education, health and social security workers. Article 51 of Law No. 1788 provides retirement pensions for certain categories of citizens employed in work, the performance of which leads to the loss of professional capacity or age, which entitles them to retirement by age. These are jobs that have a direct impact on the health of the employee and may lead to a loss of professional capacity (ability to work in the occupation) before the age of entitlement to retirement age [6]. Thus, the loss of professional capacity or fitness is not related to reaching a certain age, so it cannot be a condition for a retirement pension. The Constitutional Court of Ukraine proceeds from the fact that the establishment as an additional condition for the appointment of a retirement pension of 55 years of age for the persons mentioned in clauses "e", "w" of Article 55 of the Law of Ukraine on Pension Security, negates the essence of the right to social security and protection, it does not comply with the constitutional principles of the welfare state and is contrary to the provisions of Articles 1, 3, Part 3 of Article 22, Article 46 of the Basic Law of Ukraine [6].

The Constitutional Court also states that the legislator, by equalizing retirement age for men and women engaged in relevant work, which is associated with harmful effects on health and leads to loss of professional capacity or fitness to the age that gives the right to retirement by age, abolished special guarantees for the protection of women's work and health, and set special conditions for obtaining the right to retirement pension for years [6].

Conclusions. In the context of social development, it is important to note that pension systems are an integral part of national social security systems – the basis of public policy instruments in the field of social support and protection of the population [2, p. 28]. The pension reform in Ukraine has introduced a lot of innovations, changes to the legislation, however, some of them, according to the case law, contradict the norms of the Constitution of Ukraine, thus violating the essence of the right to social protection, in particular, regarding pension provision for educators, namely opportunities of retirement for years of service. Lifetime retirement benefits for teaching staff are essential, as pedagogical activities often result in loss of professional capacity.

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Summary

The article deals with the issue of realization of the constitutional right to pension provision by the citizens of Ukraine. In particular, the focus is on pension provision for educators. The stages of pension reform are analyzed, changes and innovations are characterized. The content of the concept of "retirement pension for years" is revealed, the terms of its appointment are determined. The court practice in the part of pension provision of educators of Ukraine is analyzed in this article.

Keywords: *the right to social protection, pension provision , pension reform, pension system, retirement pension, insurance experience, educational activities.*

COMBATING CRIME: CRIMINAL, CRIMINOLOGICAL, CRIMINAL PRECEDURAL, FORENSIC, ORGANIZATION AND TECHNICAL ASPECTS

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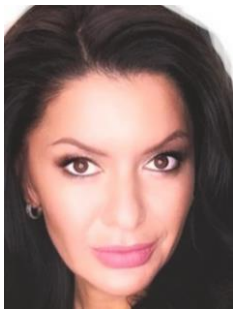

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CRIMINAL IDENTITY AS AN ELEMENT OF FORENSIC DESCRIPTION OF CRIMINAL OFFENSES

Юлія Чаплинська. ОСОБА ЗЛОЧИНЦЯ ЯК ЕЛЕМЕНТ КРИМІНАЛІСТИЧНОЇ ХАРАКТЕРИСТИКИ КРИМІНАЛЬНИХ ПРАВОПОРУШЕНЬ. Стаття присвячена висвітленню деяких аспектів розслідування кримінальних правопорушень. Розглядається особа злочинця як елемент криміналістичної характеристики. Вивчення особи злочинця надає працівникам слідчих підрозділів Національної поліції України низку додаткових можливостей. Особа злочинця як елемент криміналістичної характеристики – це сукупність соціально значущих ознак і відносин, які характеризують винну в порушенні кримінального закону людину, в поєднанні з іншими умовами та обставинами, що впливають на її злочинну поведінку. Зокрема, відомості про неї дають змогу виокремити ті дані, що необхідні для організації найбільш ефективного розшуку особи, яка вчинила кримінальне правопорушення, а в подальшому – її викриття, забезпечують усунення причин та умов вчинення кримінальних правопорушень та їх рецидивів. А під час проведення окремих слідчих (розшукових) дій та інших процесуальних дій – можливість ефективного встановлення психологічного контакту, застосування відповідних тактичних прийомів, комбінацій та окремих тактичних операцій.

Дослідження особи злочинця як елементу криміналістичної характеристики кримінальних правопорушень, надає змогу слідчому акумулювати в «портрет» ймовірного злочинця його характерні суттєві ознаки. Створення криміналістичного «портрету» особи злочинця є досить важливим для всього процесу досудового розслідування. У будь-якому випадку він надає змогу вчасно висунути певні слідчі версії та здійснювати розшук особи, що зникла з місця події, за «гарячими» слідами, а також можливості якісного проведення подальших слідчих (розшукових) дій та інших процесуальних дій.

Ключові слова: *злочин, криміналістична характеристика, особа злочинця, мотив, слідчі (розшукові) дії.*

Problem statement. In the course of criminal proceedings, much of the activity of law enforcement officials and the court is directed at identifying the person who committed the socially dangerous act, as well as communicating and conducting a number of investigative (investigative) and procedural actions, respectively, with the suspect, accused, defendant. Therefore, it is clear that the offender has a significant place in the system of any characteristic of the crime: criminal, criminological and, of course, criminalistic.

From a forensic point of view, the study of the offender's identity provides the investigation with a number of additional possibilities. In particular, information about it allows to separate the data necessary for the organization of the most effective search of the person who committed the crime, and in the future – its disclosure, provide elimination of the causes and conditions of committing criminal offenses and their recidivism. And during the conduct of investigative (search) actions – the possibility of effective establishment of psychological contact, the use of appropriate tactical techniques.

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Analysis of publications that started solving this problem. The identity of the perpetrator was considered in their writings by such scientists as V.P. Bahin, R.S. Belkin, A.F. Volobuyev, A.V. Ishchenko, V.K. Lisichenko, V.H. Lukashevich, M.I. Porubov, M.V. Saltevskyi, K.O. Chaplynskyi, V.Yu. Shepitko, M.P. Yablokov and others. It should be noted that our study is a comprehensive approach to the study of this category through the lens of studying different opinions of scientists and empirical material.

The article's objective is to investigate the offender's identity as an element of the criminalistics characterization of the crime.

Basic content. A number of forensic scientists consider it necessary to study the identity of the offender. Some of them determine the objective necessity of using information about this category not only in forensic tactics, but also in the methodology of investigation of crimes [12, p. 53-54]. Others consider the need to investigate the perpetrator's identity only to solve problems that arise in the face of forensic tactics [6, p. 7]. In any case, there is no doubt that the study of this issue as a forensic category is an important aspect for the investigation of each individual criminal offense.

Therefore, the identity of the offender needs in-depth research. After all, the identity of the perpetrator, as appropriate notes A.F. Zelinskyi is a cornerstone of criminal psychology, because the person who violated the criminal law is the author of the crime, and his "case" turns the citizen into a criminal who is rejected by the public consciousness [4, p. 9].The development of ideas about defining the notion of the offender's identity, as well as its content, has changed over several centuries. Until the twentieth century views on the identity of the perpetrator, as pertinently emphasized by S.A. Shalgunova were diverse. In the early stages of society, the researchers explained the reasons for committing criminal acts by influencing the person of something divine or devilish, the influence of mental deviations and society [16, p. 163]. There are also different definitions of this category now.

In particular, some authors regard this notion as a set of socially significant features, relationships and relationships that characterize a person guilty of violating the rules of criminal law [8, p.72]. In turn, I.M. Danshin defines the identity of the perpetrator as a set of essential and stable social properties and characteristics, socially significant biopsychological characteristics of the individual, which, objectively realized in a specific crime, give the act the character of social danger, and guilty of that person in the properties of public danger, with what it is held accountable under the criminal law [7, p. 65].V.G. Lukashevich and M.V. Saltevskyi identified it as a socio-biological system whose properties (physical, biological and social) are reflected in the material environment and used for crime investigations [13, p. 112]. And already M.M. Demidov, through the lens of forensic characteristics, defines it as a stable forensically significant set of psychophysical properties and qualities, motivational attitudes, emotional and rational spheres of human consciousness, which were reflected in the traces of crime in the process of preparation, commission and concealment of the crime [3, p. 16].

In agreement with the above concepts, we will state that the identity of the offender as an element of forensic characteristics – a set of socially significant features and attitudes that characterize a person guilty of violating the criminal law, in combination with other conditions and circumstances that affect his criminal behavior.

For the forensic doctrine of the offender's identity, determining his or her structure is important. F.V. Glazirin suggests attributing to it socio-demographic characteristics; psychological qualities; biological features of the person [2, p. 6]. Other authors define their content in their own way: demographic data; data describing the public place of the accused; information on the living conditions of the accused; information about the health of the accused; character and temperament [5, p. 16]. However, in our opinion, most clearly is defined the personality structure of the criminal by V.Yu. Shepitko: demographic data, moral qualities and psychological features [17, p. 258].To summarize, it should be noted that information about the perpetrator of the crime will be considered in relation to the following structure: 1) socio-demographic; 2) moral qualities; 3) psychological properties.

Socio-demographic characteristics are peculiar to any person. In our view, those of forensic significance are as follows: information on gender, age, education, marital status, occupation, place of residence, previous criminal record, belonging to a particular social group, and other demographic information. According to these characteristics, our study was conducted.

The attitude of the place of residence to the place of committing the criminal offense is important for law enforcement officials in various aspects. In particular, to promote the version of the location of the attacker, further investigative (search) actions, etc.

Summarizing the socio-demographic characteristics, it should be noted that they provide essential information about the identity of the offender. It can be used both in science and in practical activities, in particular in the development and implementation of measures for the prevention of criminal offenses, development of versions, preparation and direct conduct of investigative (investigative) actions. Human behavior depends largely on its status in society, so social manifestations are necessary to study the identity of the offender. Therefore, socio-demographic features contain information without which a complete forensic characteristic of the person is impossible.

The second group we will consider is the moral qualities of the offender. Like any human person, the person of the perpetrator, according to A.B. Sakharov, includes a certain system of moral properties – views and beliefs, needs and interests, life goals and expectations, intellectual, emotional and volitional features [14, p. 89]. In accordance with the moral qualities of man E. Ferry distinguished the following types of criminals: 1) born; 2) "criminals due to insanity" – psychopaths and persons suffering from mental anomalies; 3) criminals through passion; 4) random; 5) habitual [15, p. 31].

Morality and psychology of personality shapes the needs, interests and, finally, the motivation that gives rise to criminal behavior [11, p. 104]. Among the moral properties of the perpetrator's personality are the following: legal, labor, family, interpersonal, self-esteem ("self-awareness"). Defects of legal properties are expressed in criminal behavior and attitude towards the committed, to legal values – law, law enforcement, etc. Due to the specificity of the object of the assault, it is difficult to outline a single moral and psychological portrait of the perpetrator.

First, the moral traits of criminals are characterized by neglect of the normal physiological and moral development of the child, as well as the generally accepted rules of behavior. Secondly, the overwhelming fact of selfish motive. Thirdly, the ideals of such individuals are either low or absent.

The second group we will consider is the psychological qualities of the offender. In the personality structure of the perpetrator G.A. Avanesov distinguishes the psychological (personality) component. According to the author, it is built on the levels where the biologically conditioned natural properties and features belong to the lower, and the highest level forms the orientation of the individual. In turn, in the general structure of the individual can only be conditionally distinguished criminological level, where attention should be focused on the antisocial orientation of the person and the personal identification of the offender. With this approach, notes G.A. Avanesov, criminologists in the structure of the perpetrator's personality distinguish three main groups of features: a) general characteristics of the person; b) 3-4 special features of the offender; 3) the characteristics of the person of the particular subject who committed the crime, who individualize him as the person of the perpetrator [9, p. 264-265].It is worth considering the classification of personalities, proposed by the psychologist A.F. Lazurynskyi, but specifically perverted lower-level personality types. To them the scientist attributed the following: 1) a passive type, which acts in the form of two varieties: a) apathetic, characterized by indifferently-lingering attitude to all others, lack of clearly expressed interests and needs; b) unintentionally timid, easily persuaded, with a predominance of depressed mood. According to the scientist, people of this type, although not related to the criminal type, can be a source of replenishment of the criminal world; 2) the type of prudent selfish. People of this type are smart and cunning, callous and vicious; in the first place, they care about their benefits and interests, mostly material; this type is very close to criminal; 3) affectively perverted type. Its representatives – a disorderly fun, light-hearted people. By their social manifestations – drunkards, brawlers, brawlers, petty thieves; 4) active-perverted type (rapist). There are two subtypes: a) a disorderly rapist characterized by determination and energy. Does not like to work, prone to fights; b) concentrated-cruel, which does not stop even before the murder [10, p. 64].In general, the psychological characteristics of the perpetrator's personality, as noted by V.L. Vasilyev, is a system of several features: motives of behavior, general structure and individual traits of character, ability, emotional-volitional sphere, individual features of intellectual activity, memory and other cognitive processes [1, p. 330]. For criminals who commit their acts deliberately, the characteristic psychological features will be egocentrism, cruelty, aggression, cynicism, predisposition to associative forms, etc.

Conclusion. To summarize the consideration of the identity of the offender as an element of forensic characteristics, from the above data we will try to accumulate in the "portrait" of the likely offender who commits the criminal acts. The identity of the offender as an element

of forensic characteristics is a set of socially significant features and attitudes that characterize a person guilty of violating the criminal law, in combination with other conditions and circumstances affecting his criminal behavior. Creating a forensic "portrait" is important enough for the whole investigation process. In any case, it allows you to put forward certain versions and search the person who disappeared from the scene, as well as the possibility of qualitative further investigative (search) actions.

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Summary

The scientific article deals with some aspects of crime investigation. The identity of the offender is considered as an element of forensic characteristics. Investigating the identity of the offender provides the investigation with a number of additional features. The identity of the offender as an element of forensic characteristics is a set of socially significant features and attitudes that characterize a person guilty of violating the criminal law, in combination with other conditions and circumstances affecting his criminal behavior. In particular, the information about it allows to distinguish the data necessary for the organization of the most effective search of the person who committed the crime, and subsequently – its exposition, provide elimination of the causes and conditions of committing criminal offenses and their recidivism. And during the conduct of investigative (search) actions – the possibility of effective establishment of psychological contact, the use of appropriate tactical techniques.

Investigation of the identity of the offender as an element of forensic characteristics, allows to accumulate in the «portrait» of the likely offender his characteristic features. Creating a forensic «portrait» is important enough for the whole investigation process. In any case, it allows putting forward certain versions and searching for the person who disappeared from the place of the incident, as well as the possibility of qualitative conduct of further investigative (search) actions.

Keywords: *crime, criminalistics characteristics, identity of the offender, motive, investigative (search) actions.*

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WAYS OF COMMITTING FRAUD IN TOURIST SERVICES: FORENSIC ANALYSIS

Костянтин Чаплинський, Тетяна Калюга. СПОСОБИ УЧИНЕННЯ ШАХРАЙСТВА У СФЕРІ НАДАННЯ ТУРИСТИЧНИХ ПОСЛУ: КРИМІНАЛІСТИЧНИЙ АНАЛІЗ. Стаття присвячена дослідженню криміналістично-значущих особливостей способів шахрайства у сфері надання туристичних послуг. Увага приділяється описанню способів, з'ясуванню їх особливостей, визначенню факторів, які впливають на їх формування, на підставі чого здійснено їх систематизацію.

Дослідженню способу вчинення злочину у криміналістичній літературі приділяється велика увага. Діапазон думок вчених з цього питання дуже широкий і точки зору щодо визначення

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поняття способу вчинення злочину та його змістовного наповнення різноманітні.

Проведений аналіз показав, що більшість поглядів пов'язано із розглядом способу вчинення злочину у повноструктурному варіанті, у взаємному поєднанні його компонентів. Крім того, всі дії, що входять до структури способу (підготовка, вчинення та приховування) розглядаються як детерміновані об'єктивними та суб'єктивними факторами і спрямовані на досягнення єдиного злочинного результату.

Шахрайства у сфері туризму ретельно готуються і злочинці заздалегідь пристосовують обстановку з метою подальшого вчинення шахрайських дій. Виходячи з цього, доведено, що спосіб учинення шахрайства у сфері надання туристичних послуг характеризується наявністю системи заздалегідь узгоджених та спланованих дій щодо підготовки, вчинення та приховування слідів злочину.

Покладаючи в основу ряд критеріїв для класифікації, всі варіанти шахрайських дій у сфері туризму зведено у три групи: обманні дії з боку суб'єктів, які мають офіційний дозвіл на здійснення такої діяльності (здійснюють обман у намірах, або з приводу різноманітних дій і подій); обманні дії з боку суб'єктів, які не мають ніякого офіційного відношення до туристичного бізнесу, але виступають від імені таких осіб. В окрему групу віднесено вчинення шахрайських дій особами, діяльність яких виражалася у супроводженні дій, необхідних для отримання туристичних послуг.

Розкрито й систематизовано типові способи вчинення шахрайства у сфері надання туристичних послуг та дії з його приховування. Виокремлено кореляційні зв'язки між способами та слідами злочину, а також іншими елементами криміналістичної характеристики шахрайства.

Ключові слова: *шахрайство, туризм, договір, способи шахрайства, споживач туристичних послуг, туроператор, турагент.*

Problem statement. The progressive changes in the structure of crime and the emergence of new modern methods of action, including the use of fraud and abuse of trust, make it necessary to find new solutions and take action to address the problems of improving the activities of law enforcement agencies to detect and investigate frauds committed in the tourism sector. However, without knowledge of law enforcement agencies about the basic means by which such frauds are committed, it is not always possible to guarantee success, since an investigation under such conditions is carried out under conditions of information failure.

The analysis of publications that started solving this problem shows that the method of committing a crime is a central element of the mechanism of the crime and has been repeatedly considered in the scientific works of R.S. Belkin, V.K. Gavlo, G.G. Zuikov, V.P. Kolmakov, V.O. Obraztsov, A.M. Selivanov, N.P. Yablokov and other scientists. Attempts to systematize the methods of fraud can be seen in the works: A.F. Volobuev, O. Kryshevich, O.V. Kurman, T.V. Okhrimchuk, N.V. Pavlova, T.A. Pazinich et al. Meanwhile, there remain a number of unresolved issues regarding specific techniques and operations aimed at preparing, directly committing and concealing frauds related to the provision of tourist services. This indicates the need to improve law enforcement activities in terms of coverage of information about modern fraud in this area, which determines the relevance of this scientific article.

The article's objective is to analyze the approaches in the legal literature to the treatment of the crime, as well as to characterize the ways of committing fraud in the sphere of tourist services and their classification.

Basic content. Despite the wide range of opinions of scholars on the general issues of defining the concept and content of the crime, it should be noted that the scientific literature has not paid sufficient attention to the development of fraudulent practices in the provision of tourist services. You can find only the classification of criminal acts in the tourism business and criminal and criminal studies. According to A.I. Nester's most common types of fraud in the tourism business are the following: 1) the actual absence or reduction of services that were included in the value of the tourist product and paid for by customers; 2) providing false information to the customers of the tourist product or intentionally concealing it, silence about the circumstances that the guilty person was obliged to inform the person, but without doing so, mislead him; 3) requesting a separate payment for services, the cost of which was included in the tour program; 4) activities of day-to-day tourism firms, etc. [1].Instead, O.A. Klimenko proposes to group fraudulent actions in the sphere of tourism by the subject of their perpetration into: 1) those perpetrated by representatives of tour operators and travel agencies; 2) committed by representatives of other entities of the tourism industry, which provide for the reception, service and transportation of tourists; 3) committed by consumers of tourist services. In addition, it proposes to identify in some groups ways of fraud in tourism, depending on the victims: 1) a minor; 2) in relation to an elderly person; 3) in relation to a disabled person or a disabled person [2].In turn, L.M. Tomanevich and M.V. Ribbun believe that fraud in this area

can be grouped as follows: 1) fraud, initiated by tourists; 2) fraudulent actions initiated by tour operators; 3) fraudulent actions initiated by travel agents; 4) fraudulent actions initiated by state authorities; 5) fraudulent actions initiated by hotels; 6) fraud by carrier companies; 7) fraud in the sphere of activity of insurance companies; 8) cybercrime [3, p. 158].

However, when analyzing the course of action in the field of tourist activity, we have seen that fraud can be committed by 78% of the entities that have official permission to carry out such activities (fraudulent intentions or by various actions and events), and entities that have no official relationship with the tourism business, but act on behalf of such persons – 22%. In addition, in 36% of cases fraudulent activities were facilitated by persons whose activities were accompanied by actions necessary for obtaining tourist services.

The first group is characterized by fraudulent activities at any stage, from the creation of a tourist product by an entity to its maintenance and consumption.

The methods of the second group mostly take place at the stage of creation of the tourist product and at its sale (conclusion of the contract). Other stages may not be due to the lack of such a «tourist product».

The separate group includes the types of fraud, which are accompanied by the actions necessary for obtaining tourist services, by entities that are not related to the tourist activity (fraud in obtaining visas, passports, insurance cases, crossing the border, etc.).

Let's look at these groups of ways in more detail. First of all, it must be noted that in order to get to another country, you need a permit to enter or transit through its territory (visa). However, this authorization is not always obtained legally and is not always granted by the person authorized to issue it. Therefore, the first way is to commit fraudulent visas to cross the border for a tourist trip.

Instead, each state has the right to impose its own entry restrictions, set the list of required documents and rules for the import of goods and valuables. Some embassies, for example, require copies of documents confirming hotel reservations, flights, an insurance policy, and sometimes a security deposit (for each state, this amount is different) and a certificate of income providing some guarantees. Some embassies require border crossings to provide health information and criminal records, and so on.

As for our state, the rules for issuing visas for entry into Ukraine and transit through its territory are dictated by the Cabinet of Ministers Decree No. 118 of 01.03.2016, which also defines the list of authorized bodies entrusted with the functions of issuing such permits: foreign diplomatic institution of Ukraine, department of consular service of MFA, representation of MFA on the territory of Ukraine. Among the requirements (passport, application form, document on payment of consular fee, health insurance policy, etc.), foreign tourists are also required to provide documents confirming the availability of sufficient financial support for the period of planned stay and for return to the country of origin or transit. to a third country [4].

However, the results of empirical studies suggest that, for the most part (89%), consumers of tourist services do not apply directly to consular institutions and other authorized bodies, which are required by law to review visa applications and make decisions on visa processing, but apply with assistance to the subjects of tourist activity (tour operators, tour agents and other intermediaries).

Meanwhile, travel agencies sometimes use a variety of illegal schemes to make bogus invitations, fake vouchers, and apply for visa extensions, and so on. There is also information on corruption links between individual tourist entities and foreign diplomatic and consular staff [5, p. 31]. In practice, there are cases where fraudsters block the e-consulate system by overloading it so that no one can self-register and at the same time reserve seats in the system for office clients – visa intermediary [6].

The next way is when providing services that are included in the value of the tourism product declared by the tour operator.

The content of this method is a pre-planned reduction in the cost of paid services (for example, instead of a five-star tourist hotel is placed in a doubtful hotel with a minimum amount of amenities or in an area that does not meet the contractual terms and amount of money paid in terms of prestige and geographical location. fraudulent actions are made by reducing the volume of declared tourist services (for example, according to the terms of the contract the funds were paid for excursion, transport and other additional services, however the tourist does not receive these services, or the tourist receives a one-way ticket and is forced to purchase the ticket independently.) In some cases, it may be the actual absence of the services provided at the point of receipt of the tourist product, but this situation arises only if if the subject of the

tour operator's activity ceased his entrepreneurial activity in the sphere of tourist business and took possession of the client's money, and did not fulfill his obligations for realization of his tourist trip.

Recently, in connection with the mass migration of the Ukrainian population abroad for the purpose of finding a job, this type of fraud, such as "employment" under the guise of providing tourist services, has spread.

As A.I. Nesterova, such activity is mainly characteristic of the western regions, where there are many travel agencies, for which tourist activity is a cover for fraudulent activities. According to her, in recent years a number of criminal proceedings have been opened on the facts of the activity of such enterprises and persons involved in fraud (travel agencies «Mazzar», «Galatea», etc.) [7, p. 296].Moving on to the next type of fraud, it should be noted that the Law of Ukraine on Tourism provides for compulsory health and accident insurance. Other types of insurance the tourist chooses at his own discretion or at the recommendation of the tour operator. The insurance is provided either by the tourist on his own or by the subjects of the tourist activity on the basis of agreements with the insurance companies, which are entitled to carry out such activity, that is, have a corresponding license. The main purpose of this type of insurance is to compensate for medical expenses that may occur on a trip abroad due to a sudden illness or accident directly in the country (place) of temporary stay.

The foregoing makes it necessary to insure outlined cases. However, this activity is not always legal and often attracts fraudsters. Therefore, the next way is fraudulent activities related to tourism insurance.

I.O. Nesterova notes that in practice there are quite sophisticated and sophisticated schemes of fraud, involving Ukrainian tourist companies, employees of foreign hotels, foreign doctors, etc. As a result, having an insurance policy does not always guarantee the policyholder free and trouble-free treatment abroad [8, p. 57].In the legal literature you can find the following common types and schemes of fraud in the field of travel insurance: 1) the insurer develops the following rules and conditions of travel insurance, which significantly complicate the receipt of insurance payments to the insured in the event of an insured event; at the same time, these provisions are written out in the insurance contract in such a way that a person who has no relevant experience, is not able to identify it independently, the more so that before concluding the policy the insurer is strongly convinced (misleading) of the benefits of this insurer and which is covered by insurance. This simple method is one of the most common in practice; as a result, in the event of an insured event, the insured often remain without insurance payments; 2) certain types of travel insurance (for example, luggage insurance) are sometimes considered compulsory by the insurers, although they are not really so, and whether or not the tourist decides personally to do so; 3) the doctor, who works at the hotel, assures the tourist that his / her policy is invalid and sends to the doctor (by prior arrangement with him), who treats the cash; the payment amounts can be quite large, and there are no guarantees that the insurance company will agree to return them; 4) heads of tourist groups, having conspired with foreign doctors, under the pretext of compulsory reporting, collect insurance policies from tourists, and then on their basis medical documents are issued and invoices are issued for treatment of diseases about which the tourists themselves did not «suspect» ; similar cases are recorded in the popular among Ukrainian tourists of Greece, Cyprus, Turkey and other countries; 5) there are cases when, after the occurrence of an insured event, it becomes clear that the insurance company that issued the policyholder does not actually exist and the insurance policy in hand is ordinary paper, etc. [5, p. 50].Instead, the victims of fraud can be not only consumers of tourist services (92 %), but also entities providing tourist services (tour operators, travel agents) (8%).

From here, the following is fraudulent actions against the tour operator by the travel agency, and vice versa I.O. Nesterova describes the mechanism of committing fraudulent actions by the travel agency in relation to the tour operator, as follows. Yes, the travel agency begins to actively book tours for its tourists, but with payment is in no hurry. The tour operator from this agency actively receives applications, whereby the payment is confirmed by copies of bank payment documents. Given the long-standing partnerships with this company, as well as the solidity of the network, the operator, without waiting for the receipt of money, draws tourists all the necessary documents for the tour and sends on a "trip". However, after several weeks of waiting, the tour operator insists on paying the debt urgently. In response, the travel agency sends guarantee letters and assures that the money will soon be sent to the tour operator's account. However, the tour operator does not receive money [8, p. 296]. Sometimes travel agents forge payment documents certifying the client's transfer of vacation money, and the

money received from the latter is appropriated.

Turning to actions taken by entities that have no official relation to the tourism business but act on behalf of such entities, it would be desirable to note such a method as "creating a fictitious legal entity as a travel agency". At the same time, we did not speak about the creation of such a legal entity as a tour operator, since we did not see such cases in the criminal proceedings. In our view, this is due to a more complex registration procedure for such a person and more stringent controls by competent persons.

The scheme of such deception is very simple. Thus, at the stage of preparation of fictitious documents, a legal entity is created – a travel agency whose activity is related to the provision of a specific tourist product. The next stage is advertising the agency and attracting clients. After concluding a contract for the provision of tourist services (fictitious), the company collects money and disappears.

One of the more common ways of cheating on the part of a one-day company is also a "raffle." Fraudsters get information about people who intend to travel to another country and ring the phone, announcing the gain of a tourist permit, and are invited to come to the office. A few more people are waiting in the office, who also seem to have won the tickets. Scammers are showing a video showing the place of travel. After that the manager informs that they have won the tourist permit, but it is necessary to pay the flight to the country, and it should be done immediately. As a result, the voucher turns out to be invalid. Psychological treatment of "victims" can lead to the fact that even fairly distrustful people agree to make money immediately [9].Travel firms that are officially recognized as bankrupt may operate on the same principle, but continue to do business for some time.

There are cases of fraudulent activity by employees who have been hired to work for an agency that performs tourist activities legally. Of course, after signing a small number of contracts and receiving money from tourists, they disappear. However, the management of the travel agency only after the disappearance of this person becomes aware of fraudulent actions.

Conclusions. Therefore, there are many fraudulent schemes in the field of tourist services. Fraudulent actions may be taken either by entities having official authorization to carry out such activities (deceiving intentionally or by various actions and events) or by entities having no official relation to the tourist. business, but act on behalf of such persons. Fraud can be directly or indirectly attributed to persons whose activities are associated with the activities required to obtain travel services (representatives of insurance companies, consulates, airlines, etc.).

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Summary

The article deals with the study of forensically significant features of the methods of fraud in the sphere of tourist services. Attention is paid to description of methods, clarifying their characteristics, determining the factors that affect their formation on the basis of what they were ordering. Laying the basis of a set of criteria for the classification, all the options of fraudulent activities in the tourism sector are summarized in three groups: fraudulent actions by entities that are authorized to conduct such activities (exercise deception in intent, or about a variety of actions and events) fraudulent actions on the part of the constituent entities, which have no official relationship to the tourism business, but on behalf of such persons. In a separate group of related fraudulent operations by individuals whose activity was expressed in support of actions required to obtain travel services.

Keywords: *fraud, travel, contract, of fraud, consumer of travel services, tour operator, travel agent.*

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THE VALUE OF THE MECHANISM OF CRIMINAL LEGAL REGULATION FOR LAW-MAKING

Ігор Митрофанов. ЗНАЧЕННЯ МЕХАНІЗМУ КРИМІНАЛЬНО-ПРАВОВОГО РЕГУЛЮВАННЯ ДЛЯ ЗАКОНОТВОРЕННЯ. Проаналізовано механізм кримінально-правового регулювання з точки зору його структури. Розглядаються ключові категорії цього механізму – норми кримінального права та кримінально-правові відносини. Механістичний підхід до розуміння механізму кримінально-правового регулювання дозволяє побачити його структуру та фактично уможливлює усвідомлення його динаміки. Такий підхід дозволяє досягти мети роботи – моделювання концепту механізму кримінально-правового регулювання, я кому норма кримінального права визнається не лише базовим елементом, а конструкцією, в якій містяться практично весь інструментарій для функціонування такого механізму з метою виконання завдань КК України, а також виявляється значення розглядуваного механізму. Виводиться значення механізму кримінально-правового регулювання для законотворення через конкретні приклади законодавчих новел.

Зроблено висновок, що механізм правового регулювання останнім часом розуміється теоретиками права як технологічна схема правової регуляції, володіючи знанням про яку, юристом усвідомлюються всі ланки, які пройде процес впровадження норми права в регульовані суспільні відносини, які перепони можуть з'явитися на цьому шляху, а отже, здатний запропонувати

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науково обґрунтований алгоритм підвищення дієвості правничого регулювання за рахунок зміцнення його основних ланок.

Самостійно норми права є соціальними моделями та принципами навіть у частині конструювання тих або інших юридичних механізмів. Дослідження цих положень свідчить про потребу в перегляді змістовного навантаження досліджуваного явища. Механізм кримінально-правового регулювання має сприйматися як технологічна схема, що повинна використовуватися під час законотворчої діяльності.

Ключові слова: *норми кримінального права, кримінально-правові відносини, механізм кримінально-правового регулювання, законотворення, юридичні факти, взаємні права та обов'язки, суб'єкти кримінально-правових відносин.*

Problem statement. Today, hundreds of dissertations are proposed in Ukraine, which propose certain changes to the law, laws are passed, which have already been amended to the legislation of Ukraine on criminal liability (hereinafter – LUCL), for example, Laws No. 39-XX of 10.09.2019, No. 101-XX of 18.09.2019, № 140-XX of 02.10.2019, № 263-XX of 31.10.2019, № 284-XX of 12.11.2019, to check the effectiveness of which only the mechanisms of criminal law and criminal law are possible implementation. The "stillbirth" norms are not capable of "running" these mechanisms, and even, "running" them, they will not fulfill the tasks of the Criminal Code (hereinafter referred to as the Criminal Code) of Ukraine, as defined by Article 1 of the Criminal Code of Ukraine. Therefore, the review of the new rules can only be a certain mechanism that, with all other legal instruments, will evaluate the effectiveness of a rule of criminal law.

The main purpose of criminal law, like any other branch of domestic law, is the specific (detailed) regulation of the most important social relations, with the purpose of which uses a whole range of various legal regulation. In its coordinated system-forming interaction on the achievement of the fixed in Art. 1 of the Criminal Code of the objectives of the objectives they form a single, well-coordinated mechanism. This mechanism is called "legal regulation mechanism" by theorists of law, and for criminal law we use the formulation – the mechanism of criminal legal regulation.

Analysis of publications that started solving this problem. Few criminal law theorists have dared to address the problems of this mechanism. And this is not surprising, since it shows all the phenomena of criminal law in dynamics, in their real functioning. At the same time, the following Ukrainian scientists studied the specific issues of mechanisms of criminal influence and criminal law regulation: Yu.V. Baulin, P.S. Berzin, M.I. Melnyk, V.O. Navrotsky, O.V. Naden, M.I. Panov, Ye.L Streltsov, D.S. Shapchenko, P.V. Khryapinsky and others. Foreign scientists-criminologists did not stay away from these problems: E.B. Blagov, V.K. Duyunov, V.P. Konyakhin, M.M. Kropachev, N.O. Lopashenko, G.O. Petrova, V.S. Prokhorov and others. However, the problems of the mechanism of criminal law regulation have not been finally resolved, since the role that is given to it to check the validity of the rule of criminal law in the author's understanding is still unknown [1; 2; 3].

The article's objective. In view of the above, the purpose of the scientific publication is to model the concept of the mechanism of criminal law regulation, to whom the norm of criminal law is recognized not only as a basic element, but a construction that contains almost all the tools for the functioning of such mechanism for the purposes of the Criminal Code of Ukraine, and the value of the mechanism under consideration is also revealed.

Basic content. The mechanism of criminal law regulation can be defined as a system of various in nature and purpose of criminal legal means, which allow to fulfill the task of ensuring the protection of the most important values and prevention of criminal offense (a formal feature). Exploring the different viewpoints of scientists made it possible to conclude that scientists are consistently developing a mechanistic approach to the law as a whole and criminal law in particular. This is explained by the fact that the state implements the regulation of social relations, which are the subject of criminal law, by means of the rules of law, which are developed, fixed and applied. At the same time, the locomotive of criminal law regulation is the system of norms of criminal law, or more precisely, the system of norms of the Criminal Code of Ukraine. According to a mechanistic approach to criminal law regulation, the Criminal Code of Ukraine should be implemented in the real behavior of subjects through criminal relations, on the basis of which the latter arise and their dynamics (change, termination, termination, etc.). Without the relevant rules of the Criminal Code of Ukraine, these legal relationships can not exist. Criminal law regulation is a consequence of criminal law, a mechanism of systematic legal ordering of social relations [4, p. 117–118].

In addition to the rules of criminal law, the mechanism of criminal-legal regulation includes: legal facts or factual composition with such a decisive fact; criminal law relations (the requirements of criminal law are detailed for the respective subjects); an act of individual legal regulation (sentence, decision); system of means of criminal influence. The effectiveness of the mechanism of criminal law regulation depends directly on how well defined the tasks of regulation are and how optimally the means are chosen to fulfill them.

Analysis of different approaches to understanding the rules of law, as well as the features of the rules of criminal law [5, p. 89-106] allowed us to define the rule of criminal law as a mandatory rule for the non-commission of a criminal misdemeanor recorded by LUCL, and institutionally combined with it a command enforced by the enforcement potential of criminal remedies. It is fundamental, however, that the development and enforcement of criminal law rules that punish a criminal offense, and their subsequent application, is given some specificity, because such rules generally seem to be outside the rules of both criminal and criminal law. Other areas of law that provide for the legal protection of regulated public relations. Norms of criminal law are usually formulated as lists of definitions of socially dangerous acts that are transformed into LUCL in the duty of their non-compliance, and sanctions corresponding to the nature and degree of public danger of those actions. Therefore, the LUCL article does not fully describe the prohibited behavior (its features are not disclosed).

Criminal law norms give rise to relevant legal relations, the legal specificity of which is that: 1) their participants are only legal entities (persons with legal personality). As regards preventive criminal-law relations, they have as a subject of criminal law all citizens, including law-abiding citizens; 2) arise in the presence of the relevant rules of criminal law; 3) characterized by a connection of subjects in the form of correspondent subjective rights and legal obligations; 4) arise solely on the basis of a legal fact (actual composition). In view of this, O.S. Ioffe and M.D. Sharhorodsky notes that legal relations arise not simply from legal facts, but from changes specified in the law, which must "undergo" actual relations as a result of their occurrence [6, p. 181]. As for the activity regulated by the procedural criminal law of Ukraine, it should be borne in mind that the legal fact of the emergence of procedural criminal-legal relations is not a legal or even objective circumstance, but signs of an objective, legally significant (relevant for the court) the circumstances that led to the model of restorative criminal-law relations; 5) are established, guaranteed and protected by the government [7, p. 271–272].

If we know what constitutes a mechanism for criminal law regulation, a fair question arises as to what we should do with this knowledge and what its practical content is. Each of the structural parts we study is an independent legal category that is fundamental and has been studied in legal science for a long time and sufficiently deep. In criminal law textbooks there are no chapters on the mechanism of criminal law regulation at all. So what is his knowledge for? What is the idea of the mechanism of criminal law regulation. What is the purpose of combining these legal phenomena into a single mechanism of criminal legal regulation?

In our opinion, to know how criminal law works ("works"). The knowledge that we have thus obtained, summarized and presented as the only mechanism is necessary for proper law-making. In order for a legal fact to be the basis for the emergence of criminal law relations, it must meet all the requirements of legislative technology. Yes, if the legislator tries to enforce the legal protection of amber and to counteract it with criminal means as an encroachment on social relations that provide environmental protection, rational use of its resources and environmental safety as a special environmental condition that meets the criteria set in the legislation, , the limits and standards that determine its purity, resource-intensiveness (environmental), environmental sustainability, species diversity, ability to satisfy people's interests, he/she must design his composition as a criminal offense against the environment.

For example, on September 2, the Head of State instructed the Verkhovna Rada to approve the Amber Extraction Bill by 01.12.2019. 09/04/2019 V.O. Zelensky submitted to the Parliament of Ukraine as an urgent bill “On Amendments to the Criminal Code of Ukraine on Criminal Responsibility for Illegal Extraction of Amber or Move It Across the Customs Border of Ukraine”. The said bill proposes Part 1 of Art. 201 of the Criminal Code of Ukraine (hereinafter referred to as the Criminal Code), after the words "cultural values", supplement with the word "amber", para. 1 h. 2 tbsp. 240 shall be supplemented with the words "except in cases provided for in other articles of the Criminal Code of Ukraine" and also supplemented by the Criminal Code of Ukraine with Article 2401 "Illegal extraction of amber". At the same time, this criminal offense is proposed as a criminal offense against the environment with its location in the Criminal Code of Ukraine after Art. 240 "Violation of the rules of protection or use of subsoil".

Part 1 of Art. 2401 of the Criminal Code of Ukraine proposes to punish the illegal extraction of amber in the form of a fine from seven hundred to three thousand non-taxable minimum citizens' incomes (hereinafter – NTMCI) or restriction of liberty for a term of one to three years, or imprisonment for the same term. Part 2 of Art. 2401 of the Criminal Code of Ukraine – for the sale, purchase, storage, transfer, transfer, transportation, processing of illegally harvested amber in the form of a fine from three thousand to ten thousand NTMCI or restriction of freedom for a term of three to six years, or imprisonment for the same term. Part 3 of Art. 2401 of the Criminal Code of Ukraine – for the actions envisaged by h. 1 or 2 of this Article, committed by prior agreement of a group of persons either repeatedly or in considerable amounts, as well as the actions provided for in part one of this Article, committed in the territories or objects of the nature reserve fund, in the form of imprisonment for a term four to seven years.

In the proposed embodiment, the criminal offense under Art. 2401 of the Criminal Code of Ukraine, under no circumstances can be attributed to criminal offenses against the environment. This is explained by the fact that when attributing certain actions to criminal offenses against the environment, it is necessary to focus on their environmental friendliness. The sign of environmental friendliness by which the legislator refers socially dangerous acts to criminal offenses against the environment, as relatively independent in the system of the Special part of the Criminal Code, is related to the social and natural justification of the direct interaction of society and man with the environment, the level of prospects of scientific technologies, diversity of anthropogenic impact on the environment. Distinctive features of criminal offenses against the environment are: development of components of environment and natural resources as a basis for a certain type of activity; focus on the use of environmental objects that is directly prohibited by the CC; contact socially condemned impact on environmental objects that alters its natural (normal) state or individual indicators of its objects; violation of the right to an environmentally safe environment, which holds a special place in the system of constitutional rights and freedoms of individuals, because it covers the whole set of ecological constitutional rights of man and acts as a guarantee of the right to life and the right to health care.

In other words, formulating a criminal offense against the environment requires that it encroach on the generic object of these criminal offenses. The focus of action on this object is reflected in the formulation of the relevant consequences – creating a danger to life, health or environment, or causing appropriate harm to life, human health or the environment [8-11; 12, p. 208–211]. Therefore, the draft Article 2401 of the Criminal Code of Ukraine on the illegal extraction of amber is superfluous given the existence in the criminal law of Article 240, part 1 of which punishes for violation of the established rules for the protection of subsoil, if it created a danger to life, human health or the environment, in the form of a fine of three hundred to six hundred NTMCI, or restraint of liberty for a term up to two years, or imprisonment for the same term. The wording of parts 2 and 3 (except for the use of the phrase in part 3 of Article 2401 of the Criminal Code of Ukraine "actions envisaged by part one of this Article committed in the territories or objects of the nature reserve fund"), in my opinion, indicates the illegality of the turnover illegally harvested amber. Considering that the President of Ukraine proposes to legalize the production of amber, the violation of the established order of circulation of illegally harvested amber will constitute a criminal offense in the sphere of economic activity, the object of which is the protected state system in the public relations, which are protected by the state in the economic sphere. a society oriented towards the perspective of the market economy of Ukraine [13, p. 154–157].

Due to the fact that Article 240 is sufficient for counteracting the illegal amber production in the Criminal Code of Ukraine. to place under Art. 213 of the Criminal Code of Ukraine "Violation of the procedure for scrap metal operations". At the same time, when formulating a criminal offense, it is enough to point out the implementation of the relevant actions by entities that do not have the appropriate licenses for the right to engage in appropriate activities with Amber. Provide for mandatory licensing of amber-related activities, including mining, amber, in business law.

In addition, one of the main foundations of any branch of law, the more criminal, is the principle of legality. According to Part 2 of Art. 3 of the Criminal Code of Ukraine "The laws of Ukraine on criminal liability (hereinafter referred to as" LUCL"), adopted after the entry into force of the Criminal Code of Ukraine, are included in it after their entry into force, that is, not any, but the LUCL. Today, I state the "secrecy" of changes to the Criminal Code of Ukraine. Thus, the Law of Ukraine "On Special Procedure for Removal of the President of

Ukraine from office (impeachment)" of September 10, 2019 № 39-IX para. 1 h. 2 tbsp. 351 of the Criminal Code of Ukraine, as amended, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Ensuring the Effectiveness of the Institutional Mechanism for Prevention of Corruption" of October 2, 2019 No. 140-IX, amended the note to Art. 45 of the Criminal Code of Ukraine.

The Bill "On Prevention and Counteraction to Legalization (Laundering) of Proceeds of Crime, Financing Terrorism and Financing the Proliferation of Weapons of Mass Destruction", submitted by the Cabinet of Ministers of Ukraine and adopted by the Verkhovna Rada of Ukraine in its first reading on 1 November 2019 Part 2 of Art. 962, pp. 3, 5, n. 2 notes Art. 963, Part 2 and 3 Art. 964, para. 4 and 5 h. 2 tbsp. 967, Part 1 Art. 969, para. 2 h. 1, para. 2 h. 2 tbsp. 2051, Art. 209, Art. 2091, Part 1, Art. 2585, Art. 306 of the Criminal Code of Ukraine, as well as to supplement the Criminal Code of Ukraine with Articles 2586 "Passing the Terrorism Training" and 2587 "Departure from Ukraine and Entry into Ukraine for Terrorist Purpose".

Thus, Part 1 of Art. 2586 it is proposed to impose a penalty for the training of terrorism, that is, to obtain instructions from a person, including the acquisition of knowledge or practical skills, from another person concerning the manufacture or use of explosives, firearms or other weapons or harmful or dangerous substances, or other specific methods or techniques for for the purpose of organizing, preparing or committing the criminal offenses provided for in Articles 258 to 2585, 2587 of the Criminal Code of Ukraine, in the form of imprisonment for a term of three to eight years from confiscation this property or without it.

The amending of the Criminal Code of Ukraine with new components of terrorist offenses looks a bit strange, since the arsenal of existing criminal-law standards of the Special Part is enough today to counter terrorism. This raises some questions about understanding the content of existing criminal law standards aimed at counteracting this. Thus, Article 2584 of the Criminal Code of Ukraine establishes punishment for recruiting, arming and training a person for the purpose of committing a terrorist act, as well as using a person for this purpose in the form of imprisonment for a term of three to eight years with or without property confiscation.

The listed forms of the said offense (2584 of the Criminal Code of Ukraine) are recognized at the present stage by fairly widespread forms of criminal unlawful behavior. In this case, arms are recognized as supplies to persons involved in terrorist activities of all kinds of weapons, explosives and explosive devices, training is the passage of military and sabotage training required to commit criminal offenses of a terrorist nature, requiring special skills. weapons, the manufacture or use of explosives, harmful or dangerous substances, tactical methods of warfare in various conditions, including battle in settlements, etc.). At the same time, such actions are part of the objective side of the criminal offenses envisaged by Art. 2583 and 260 of the Criminal Code of Ukraine. In addition, the actions that make up the objective side of the criminal offense set out in Art. 2581 of the Criminal Code of Ukraine "Involvement in the Commitment of a Terrorist Act" and the use of a person for the purpose of committing a terrorist act (Article 2584 of the Criminal Code of Ukraine), which consists in the direct use of such person in the commission of a terrorist act.

In this case, there is a certain competition of the already existing criminal law norms (Article 2583, Article 260, Article 2581 of the Criminal Code and Article 2584 of the Criminal Code of Ukraine) on some features of the objective side, as phenomena of negative and undesirable caused by subjective factors (defects in lawmaking techniques, regulatory redundancy, the emergence of new concepts without regard to their mandatory systematic statement, lack of a clearly motivated criminal policy, the concept of construction LUCL. And the legislator also tries to introduce the rules separately get up the penalties for training terrorism (Article 2586 of the Criminal Code of Ukraine) and departure from Ukraine and entry into Ukraine for terrorist purposes (Article 2587 of the Criminal Code of Ukraine). or other actions. Finally, this approach may cause lawmakers errors in enforcement activity during the qualification assessment of certain acts.

Conclusions. The mechanism of legal regulation has recently been understood by law theorists as a technological scheme of legal regulation, with the knowledge of which the lawyer is aware of all the links that will pass the process of implementing the rule of law in regulated social relations, which obstacles may meet along the way, and therefore able to offer a scientific proposal. an algorithm for increasing the effectiveness of legal regulation by strengthening its core links. Without exaggeration, it can be said that, after the law is drafted and passed, a highly effective mechanism for implementing its rules can be refined, but ignoring a sufficiently rigid relationship between the legal structure and the model of the criminal law norm is a

factor, at least, one of the factors of the low-quality level of legislative acts. The rules of law themselves are social models and principles, even in the construction of certain legal mechanisms. The study of these provisions indicates the need to review the substantive load of the phenomenon under study. The mechanism of criminal law regulation should be perceived as a technological scheme, which should be used in lawmaking activities. Scientists have a mechanism of criminal law regulation should act as a guideline for testing their legislative proposals and checking proposals to change the sanctions of certain criminal legal norms of the Special part of the Criminal Code of Ukraine.

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Summary

There is the analysis of the mechanism of criminal legal regulation from the point of view of its structure. The key categories of this mechanism have been considered – the rules of criminal law and criminal law relations.

The importance of the mechanism of criminal law regulation for law-making is shown through concrete examples of legislative novelties.

***Keywords**: criminal law norms, criminal law relations, mechanism of criminal law regulation, lawmaking, legal facts, mutual rights and obligations, subjects of criminal legal relations.*

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CRIMINAL AND LEGAL ESSENCE OF THE «CRIMINAL OFFENSE» CATEGORY

Ганна Федотова. КРИМІНАЛЬНО-ПРАВОВА СУТНІСТЬ КАТЕГОРІЇ «КРИМІНАЛЬНИЙ ПРОСТУПОК». З метою визначення кримінально-правової сутності категорії кримінальний проступок проаналізовано дефініцію «кримінальне правопорушення» як родового (дочірнього) поняття та охарактеризовано видові (похідні) поняття «злочин» та «кримінальний проступок». Розкрито усвідомлення сутності явища «кримінальний проступок» в кримінально-правовій науці за результати якої доведено притаманність злочинної природи кримінальному проступку.

Зазначено, що, незважаючи на те, що вчені-правознавці достатньо давно вивчають проблеми кримінальних проступків, в усвідомленні сутності цього явища в кримінально-правовій науці та практиці бракує одностайності.

На підставі аналізу думок науковців зроблено висновок, що термін «проступок» здебільшого використовується як тотожне при визначенні правопорушення, без якогось змістового розмежування. Таке ототожнення, на нашу думку, некоректне, оскільки правопорушення є більш загальним поняттям та за чинним законодавством охоплює всі види проступків і злочини.

Наголошено на притаманності кримінальному проступку злочинної природи, підтвердженням чого є прийняття 22 листопада 2018 року Верховною Радою України Закону України «Про внесення змін до деяких законодавчих актів України щодо спрощення досудового розслідування окремих категорій кримінальних правопорушень» (№7279-д). Після набуття ним чинності 1 вересня 2020 р. буде введено в дію положення щодо урегулювання питання кримінальних проступків, наділяючи вказану категорію статусом одного з видів кримінального правопорушення, за яке передбачено кримінальну відповідальність, використовуючи при цьому виокремлюючи критерії – ступінь суспільної небезпеки, вид і міру покарання. Відповідно до положень Закону «кримінальним проступком» є передбачене Кримінальним кодексом діяння (дія чи бездіяльність), за вчинення якого передбачене основне покарання у виді штрафу в розмірі не більше трьох тисяч неоподатковуваних мінімумів доходів громадян або інше покарання, не пов'язане з позбавленням волі.

***Ключові слова:** кримінальне правопорушення, злочин, кримінальний проступок, кримінальне процесуальне законодавство, кримінальне законодавство.*

Problem statement. With the adoption of the Criminal Procedure Code of Ukraine in 2012 (hereinafter referred to as the CPC), in addition to the «crime», the only criminal, socially dangerous and harmful act for which criminal liability may occur, such concept as «criminal

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misconduct», which have a lower degree of public danger, a simplified prosecution process, and softer punishments. In addition, the CPC introduced the concept of «criminal offenses», which encompassed all criminal offenses that, so to speak, are divided into crimes and criminal offenses. Thus, the concept of «criminal offense» actually captured the place of the generic (child) concept to refer exclusively to the specific concepts of «crime» and «criminal misconduct». The definition of the conceptual apparatus and the investigation of the category of criminal offense in the doctrine of criminal law should be carried out through the analysis of the concept of «criminal offense» enshrined in criminal procedural law, which covers both crime and criminal offense [1].

The article's objective. Let's try to reveal the essence of the concept of «criminal offense» by defining the components of this phenomenon.

Basic content. «Crime» is one of the fundamental categories of criminal law, the key concept in this field of law, which underlies all other criminal concepts and institutions. This word is formed from the noun «evil» and the verb «to do» and means «to commit evil», «to do evil» [2, p. 267; 3, c. 605]. Crime, like any other offense, is the act of a person, moreover, by its very nature, is an attack on those relations which have developed in the society, reflecting its most important interests, that is why they are protected by the law on criminal liability.

The concept of crime is derived from crime. In a concise form, crime is a social phenomenon, a process, a state, a pattern, and the totality of crimes committed. Ya. I. Glinsky [4, p. 32] regards «crime» and «criminality» as relative and conventional concepts that partially reflect some of the social realities. For understanding the nature of crime, I. I. Karpets emphasizes [5, p. 87], it is important to keep in mind that it reflects the particular contradictions and deformations of social being. To some extent, they are right, it is common for society to determine crime and punishment without worrying about the consequences. Thus, in Soviet times in the 1930's there was a period when criminal liability was imposed for abortion [6], in the course of time the criminal liability of pregnant women for abortion was abolished and it concerned only the persons (including doctors) who performed abortions outside hospitals or other medical institutions [7; 8]. The similar example in the times of independence of our country is the adoption of the Law of Ukraine «On Amendments to the Criminal Code of Ukraine on Improving Responsibility for Trafficking in Persons and Engaging in Prostitution» dated January 12, 2006, No. 3316-IV, which abolished criminal liability of a person for systematic engagement in prostitution (provision of sexual services) and established responsibility for pimping or involving a person in prostitution (Article 303 of the Criminal Code of Ukraine) [9]. But the question arises as to the public danger of this act. It cannot appear and disappear depending on the will of the legislator. Defining a person's behavior as a crime (criminalizing an act) or excluding it from the range of criminal acts (decriminalizing an act) is a continuous process of assessing the conformity or non-conformity of that behavior with social development.

According to some scholars, social danger is a social feature characteristic only of crimes [10; 11, c. 74; 12, c. 8].

At the same time, opinions are expressed about the unity of all offenses, including crimes, which is social in nature – their social danger, and the difference is only due to a different degree of this social danger [13; 14; 15; 16, c. 17; 17; 18, c. 115].

Crimes are inherent in the greatest danger due to the object of the attack, the nature and gravity of the harm, the mode of action, the form and degree of the fault, the motives and purpose, as well as all other objective and subjective features. There is no clear opinion as to the concept and content of public danger. Public danger refers to a material sign (an intrinsic property) of a criminal act that reveals its social essence, enshrined in law, and has legal significance.

The degree of public danger is conditioned by the presence or absence of certain signs that affect public danger, with neither the legislator nor the law enforcement body having the ability to influence the public danger of action. That is, danger is inherent in action not because it has been so appreciated by someone, but because it inherently contradicts the normal conditions of existence of this society, and encroaches on publicly protected relationships. For example, paying a debt to a debtor is a civil legal relationship, but if you look at it in detail and find out that the intention to misappropriation was formed long before they were borrowed, it already forms a crime – fraud.

S. V. Kivalov [19] spoke his mind about the system of public danger in the context of the substitution of the term «crime» for «criminal offense», proposing to define «criminal offense as a socially dangerous, harmful, criminal unlawful act (act or omission) of the subject of criminal offense, and criminal misconduct – as a type of criminal offense that has a reduced

degree of public danger that does not lead to criminal convictions. In this sense, the signs of criminal misconduct are due not only to the absorption of many (disciplinary, administrative, civil) offenses by crime, but also to the social characteristics of encroachment on basic social values».

Despite the fact that legal scholars have long been studying the problems of criminal misconduct, there is a lack of unanimity in the awareness of the essence of this phenomenon in criminal science and practice.

The scientific and practical significance of this problem is determined by the need to update opinions on criminal offenses, which is caused by the emergence of new state priorities, reform of criminal justice, refocusing on other, more sophisticated and free methods of legal regulation.

The term «misconduct» is multifaceted in its meaning and is used in different meanings and contexts.

Many scholars have considered the definition of criminal misconduct in their works, including I. P. Golosnichenko, M. M. Dmitruk, O. O. Kashkarov, O. D. Kos, A. A. Manzhula, L. V. Pavlik, S. V. Petkov, V. O. Tuliakov, P. L. Fris and others. However, there is no clear understanding of the legal nature and definition of the specific concept that would reveal the nature of the criminal offense.

For this purpose, it is logically to pay attention to the linguistic aspect, which, above all, will help to clarify the legal meaning of the term "misconduct". According to the etymology, misconduct is defined as «sin», guilt or «lech» [20, v. 1, p. 328, v. 3, p. 2010]. Modern dictionaries of the Ukrainian language reveal misconduct as an act that violates any norms, rules of conduct, generally accepted order; guilt [21, p. 306; 22, c. 817]. In the general social sense, misconduct means an anti-social or harmful to society action aimed at destroying the foundations of civilized life and violating the norms fixed by the legal codes of the state [23, p. 20]. In a legal encyclopedia, misconduct is considered a crime – a type of offense that is guilty of (or inaction), different from a crime of lesser degree of public danger. One of the measures of public influence for misdemeanor involving a violation of public order is public condemnation, reprimand, fine, and so on; for misconduct in the course of their duties, one of the disciplinary sanctions; for committing an administrative offense – one of the administrative penalties [24, p. 47]. V. V. Kopeychikov defines misconduct as an act that violates the rules of law, but does not reach the level of public danger inherent in crime [25]. Traditional and generally accepted theory of state and law is the opinion according to which the offense is classified into crimes and misdemeanors, depending on the degree of public danger (harm) [26, p. 438–439]. In Soviet law, as stated by S. V. Petkov [27], the definition of misconduct only as an administrative offense was wrong. Such a judgment existed to simplify the activities of the socialist bodies, and therefore all misdemeanors were called offenses and were placed in one code – the Code of Ukraine on Administrative Offenses. According to the above theory, misdemeanor-torts (Latin delictum – misdemeanor) are offenses that cause harm to a person, society, state and are grounds for bringing an offender to the liability provided by law. But misdemeanors should be distinguished from crimes, since a criminal offense is a criminal act envisaged by a socially dangerous act (act or omission), which involves the assault on the social order of the state, its political and economic systems, property, person, political, labor, property and other rights and freedoms of citizens, as well as other socially dangerous act, provided for by the criminal law, which is to encroach on the rule of law. Therefore, the term «misconduct» is mostly used as an identity in defining an offense, without any meaningful delineation. Such an identification is, in our view, incorrect, since offense is a more general concept and covers, under applicable law, all types of misconduct and crime.

There has been widespread debate about the legal content of criminal misconduct among legal scholars. I. P, Golosnichenko [28, p. 70] proposes to refer to the experience of foreign countries and to introduce in Ukrainian legislation the term «criminal misconduct» together with administrative offenses and crimes, motivating it with the conformity of the laws of unlawful acts classification and taking into account all peculiarities of establishing both material and procedural relations. Comparing the definitions of «misdemeanor» and «violation», A. A. Manzhula [29] concludes that the violation is non-compliance with the system of rules, while the misdemeanor is non-compliance with a particular type of specific rule, rules of behavior. Many lawyers claim that the institution of criminal misconduct is an institution of criminal law [30]. Instead, L. Pavlik [31, p. 524] considers it «unconventional» for the field of criminal law. A. D. Kos, defines criminal offense as an element of crime-fighting policy, refer-

ring to the content of the Concept of Criminal Justice Reform. P. L. Fries is ambiguous in his statements about the wrongdoing [33]. He cites several options, such as: «criminal offenses», «punishable offenses, transgressions» and proposes to use the term «criminal offenses» (which, in our view, is not inherent in this field) in criminal theory, understanding it as socially harmful, unlawful, guilty act (act or omission) committed by a physical or legal entity, as well as by an organizational entity that does not have the status of a legal entity but is empowered to act on its own behalf, for which the Criminal Code provides for liability.

V. O. Tuliakov [34, p. 29, 117] is convinced that the term «criminal (triable) misconduct» is inappropriate, and considers the term «criminal offense» to be the most justified, since the word «misconduct» indicates the connection with other types of offenses and the part «criminal» is connected with the crime. According to its properties, criminal misconduct, according to the scientist, is an intermediate act between a crime and an administrative offense, the committing of which results in criminal responsibility.

These statements are undoubtedly worthy of attention, since they distinguish from the multifaceted and contradictory subject of knowledge the characteristic features inherent in one phenomenon – criminal misconduct, and start a new legal institute in the science of criminal law that needs theoretical substantiation.

Therefore, comprehension of some types of crimes and criminal activity from the former formal-dogmatic position is impossible, since there comes the period of a new vision of problems and ways of neutralizing the consequences of illegal activity [35, p. 5–8]. In adhering to this position, scientists point to the fact that there are no traits of criminal offense in criminal activity.

Criminal misconduct, according to A. S. Makarenko [36], is a type of criminal offense and is a non-criminal criminal act.

L. Pavlyk [31], considering the concept of «offense» as «an act that violates any norms, rules of conduct, generally accepted procedure, guilt», defines the concept of «criminal misconduct» as an act that violates criminal law, and concludes that the two concepts are different in content and not inherent in the criminal nature of criminal misconduct. But such a judgment in our opinion is not acceptable.

Confirmation of the criminal nature is the adoption of the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine on Simplifying the Pre-trial Investigation of Certain Categories of Criminal Offenses» (№7279-д) [37] on November 22, 2018 by the Verkhovna Rada of Ukraine.

The Act will enter into force on January 1, 2020 and will enact provisions on the settlement of criminal offenses, granting that category the status of a criminal offense for which criminal liability is provided, taking into account at the same time the distinguishing criteria – the degree of public danger, type and way of punishment. According to the provisions of the Law, a «criminal offense» is an action (action or omission) provided by the Criminal Code, which imposes a basic penalty of not more than three thousand non-taxable minimum incomes or other punishment unrelated to deprivation.

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Summary

In order to determine the criminal nature of the category of criminal offense, the definition of "criminal offense" as a generic (subsidiary) concept is analyzed and the specific (derivative) concepts of "crime" and "criminal offense" are characterized. Awareness of the essence of the phenomenon of "criminal misconduct" in criminal science has been revealed.

Keywords: *criminal offense, crime, criminal offense, criminal procedural law, criminal law.*

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LEGAL PROVISION OF MEDIATION IN UKRAINE

Сергій Бабанін. ПРАВОВЕ ЗАБЕЗПЕЧЕННЯ МЕДІАЦІЇ В УКРАЇНІ. Потреба впровадження інституту медіації до правової системи України у цивільний та кримінальний процеси викликана, зокрема, необхідністю розвантаження судової системи України, оскільки завищена кількість справ, які знаходяться в провадженні суддів, не дає можливості здійснювати у повному обсязі належну підготовку та розгляд таких справ. Розглянуті основні положення внесених до Верховної Ради України проектів Закону «Про медіацію» № 2480-1 від 09 квітня 2015 р. та № 3665 від 17 грудня 2015 р. Запропоновані визначення медіації, медіатора, сфери застосування медіації, видів спорів, по яких проведення медіації доцільно встановити обов'язковим, угоди за результатами медіації. Так, під медіацією слід розуміти позасудове врегулювання спору за участю нейтральної сторони – медіатора, який шляхом ведення перемовин зі сторонами спору досягає прийняття цими сторонами взаємовигідного для них рішення.

Медіатором є фізична особа, яка внесена до Єдиного реєстру медіаторів України,

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держателем якого є Міністерство юстиції України, або до реєстру медіаторів країни – члена Європейського Союзу. Мінімальний вік медіатора в Україні, який може проводити медіацію по спорах, пов'язаних з порушенням тих чи інших нормативно закріплених прав, доцільно встановити у двадцять п'ять років, а також передбачити обов'язковість наявності у нього вищої юридичної освіти та стажу професійної діяльності у сфері права щонайменше три роки. У Законі України «Про медіацію» доцільно передбачити перелік спорів, по яких проведення медіації встановити обов'язковим. Крім того доцільно визнати угоду за результатами медіації обов'язковою для виконання сторонами у визначені ним строки. У разі ж невиконання стороною взятих на себе зобов'язань передбачити їх виконання у порядку, встановленому Законом України «Про виконавче провадження».

Ключові слова: *медіація, медіатор, сфери застосування медіації, угода за результатами медіації, позасудове вирішення спорів.*

Problem statement. Ukraine has become one of the 46 countries to have signed the UN Convention on International Agreements on Mediation in Singapore on 7 August 2019 [1]. This Convention seeks to facilitate and facilitate the implementation of the decisions reached by the parties in the course of mediation in international commercial disputes. At the same time, it lays the foundation for the introduction of a mediation institute into the legal system of Ukraine. The introduction of this institute connects the modern development of the legal system of Ukraine with the European legal systems, values and priorities of development of the modern civilized world [2, p. 1]. The need to implement this institute in civil and criminal cases is, in particular, a necessity for unloading the judicial system of Ukraine, since the excessive number of cases in the proceedings of judges does not allow proper preparation and consideration of such cases. Thus, the burden on one judge is about 70 cases per year (and, for example, in 2011, this figure was 140 cases). For example, in Germany, the burden on a judge is 55 cases and materials per year, which is considered an overload of the judicial system. The recommendations of the European institutions unanimously urge the member states of the Council of Europe not to increase but to reduce the judicial burden. Such provisions are, in particular, contained in the recommendations of the Committee of Ministers of the Council of Europe: No. R (81) 7 on measures to facilitate access to justice; No. R (99) 19 on mediation in criminal matters; No. Rec (2001) 9 on alternatives to litigation between administrative authorities and private parties; No. Rec (2002) 10 on mediation in civil matters [3].

Analysis of publications that started solving this problem. The question of introduction of the institute of mediation in the legislation of Ukraine is relatively new, but the basics of its research were initiated in the works of R.F. Arakelyan, G.P. Vlasova, I.A. Voytyuk, I.V. Gritsyuk, L.V. Golovko, E.V. Georgievsky, T.A. Denisova, I.I. Yemelyanov, V.V. Zemlyanskaya, O.A. Kalganova, D.V. Kovrizhenko, O.M. Kovalenko, N.A. Mazaraki, V.T. Malyarenko, S.I. Oliynyk, O.V. Taran, V.M. Trubnikov, V.V. Topchiy and other scientists.

The article's objective is to develop proposals for legislative regulation of the mediation process in Ukraine.

Basic content. With a view to unloading the courts of Ukraine from minor civil and criminal cases, it is an urgent need to adopt the Law of Ukraine «On Mediation» and to introduce appropriate amendments and additions to other legal acts.

To date, there is no normative definition of mediation in Ukraine. In our view, mediation should be understood as an out-of-court settlement of a dispute involving a neutral party, a mediator who, by negotiating with the parties to the dispute, achieves a mutually beneficial solution for them. The above definition should be fixed in the Law of Ukraine «On Mediation».

Mediation is an alternative method of dispute resolution that, on the one hand, reflects the high level of development of the legal culture of society, and on the other, allows the parties to choose the most effective and acceptable option for them to resolve the dispute on the basis of fundamental principles of law, which reflect the outstanding values of social development, such as good faith, reasonableness, justice, which is also the basis for the implementation of the rule of law in Ukraine [2, p. 30-31].

One of the key issues of the future Law of Ukraine «On Mediation», in our opinion, is to determine the requirements for obtaining the status of mediator.

The draft Laws on Mediation registered in the Verkhovna Rada of Ukraine contain different approaches to this issue.

Thus, the draft Law «On Mediation» No. 2480-1 of April 9, 2015, defines in Art. 5 «Conditions for acquiring mediator status», which may be a mediator who has reached the age of twenty-one years and has undergone professional training in the field of «mediation» in an

educational institution or organization in Ukraine or abroad. The mediator may not be a person who is recognized by the court as restricted or incapacitated. Vocational training of mediators must include at least one hundred and twenty academic hours of theoretical and practical training, the last of which must be at least sixty academic hours. The presence of a mediator's professional training shall be certified by a diploma, certificate, certificate or other document issued in the name of the mediator, which shall contain information on the volume (number of hours) of theoretical and practical training, period of study, name of the educational institution or organization that carried out the training [4].

The Draft Law «On Mediation» No. 3665 of 17.12.2015, as of 26.02.2019, defines in Art. 10 «Requirements for a mediator and his special training», which can be a mediator of thirty years of age, has a university degree and has received special training in mediation in Ukraine or abroad. Mediation training must be at least 90 semester hours of primary education, including at least 45 semester hours of practical training. Special training in the field of mediation is provided by legal entities of any form of ownership and organizational and legal form, including educational institutions, one of the activities of which is the activity of professional special training of mediators. The presence of special training of the mediator shall be certified by a diploma, certificate, certificate or other document issued in the name of the mediator, which shall contain information on the amount (number of hours) of training in the field of mediation, the period of study, the name of the legal entity provided for in the second paragraph of this part. A mediator may not be a person: 1) recognized by the court as incapable or limited capacity; 2) having a criminal record not repaid or not withdrawn in the manner prescribed by law; 3) dismissed from office as a judge, prosecutor, investigator, from public service or from service in bodies of local self-government for violation of oath, committing a corruption offense; 4) authorized to perform the functions of the state or local self-government; 5) which is a public or private contractor [5].

These bills contain significant differences in determining the minimum age of the mediator, as well as the formation of a candidate for mediator.

In our opinion, in determining the minimum age and formation of a mediator, the type of disputes should be taken into account, it can be considered. If these are disputes related to the violation of certain regulatory rights that today only courts have the right to consider, then it is advisable to focus on the requirements for candidates for the position of judge. According to Art. 69 of the Law of Ukraine «On the Judicial System and the Status of Judges», a citizen of Ukraine not younger than thirty and not older than sixty-five years, with a higher legal education and professional experience in the field of law for at least five years, can be appointed competent, virtuous and owning official language [6].

Therefore, the minimum age of a judge is thirty years and the length of service in the field of law is at least five years. However, judges have the right to hear cases of varying complexity. As mediation is intended to deal with minor civil and criminal cases, the requirements for a mediator candidate should, in our view, be somewhat less than for a judge.

We propose to set a minimum age of a mediator in Ukraine, which can mediate disputes related to violation of certain normative rights, in twenty-five years, as well as the obligation to have a higher legal education and professional experience in the field of law for at least three years.

In the Law of Ukraine «On Mediation» we propose to provide the following definition of the term mediator: an individual who is entered in the Unified Register of Mediators of Ukraine, held by the Ministry of Justice of Ukraine, or in the register of mediators of a Member State of the European Union.

Key issues related to the implementation of mediation in Ukraine are determining the scope of its application. As noted by N.A. Mazaraki, a feature of legal regulation of mediation is the combination of state, contractual regulation and self-regulation. The state should establish general principles of the mediation procedure, determine the legal status of the subjects and procedural legal consequences of applying the mediation procedure. In turn, self-regulatory organizations of mediators should set corporate standards of activity, qualification requirements for professional mediators, etc. By concluding mediation agreements, the participants of the mediation determine their rights and obligations in the mediation procedure, the terms and procedure of the mediation itself. Such a dispositive combination will allow to provide versatility and flexibility of regulation of mediation together with ensuring rights of the parties of mediation and third parties by establishing imperative principles [2, p. 31-32].

As mediation can be applied to a wide range of disputes, we agree with the possibility

and expediency of self-regulation of certain types of mediation. However, we believe that mediation in disputes related to violations of certain statutory rights, which are currently only available to courts, should have a clear regulatory framework.

The Draft Law «On Mediation» No. 2480-1 of 09.04.2015 is defined in Art. 4 «Scope of mediation», which mediation extends to any conflicts provided by this Law, including civil, economic, administrative, labor, family disputes, as well as cases concerning administrative offenses, criminal proceedings in cases provided for in force legislation [4].

The Draft Law «On Mediation» No. 3665 of 17.12.2015, as of 26.02.2019, defines in Art. The «Scope of the Act» specifies that mediation can be applied in any conflict (dispute), including civil, family, labor, economic, administrative, as well as in the proceedings for criminal offenses, crimes of minor or moderate gravity and in criminal proceedings in the form of a private prosecution as provided for in Article 477 of the Criminal Procedure Code of Ukraine, and cases of administrative offenses [5].

The above provisions of the projects do not define a specific list of cases on which the mediation procedure is conducted. We believe that the lack of specifics will not facilitate the effective implementation and implementation of the Mediation Institute in Ukraine.

We propose to provide in the Law of Ukraine «On Mediation» a list of disputes, which make mediation mandatory. In our view, it is advisable to include the following disputes in this list: 1) civil – disputes concerning hereditary rights; 2) family – divorce, separation of property of the spouses, recognition of paternity, disputes over parenting, disputes about participation in the upbringing of the child, determining the place of residence of the child, disputes on ways of fulfilling responsibilities to support the child and determining the amount of alimony, participation in additional expenses for the child , on the duty and amount of alimony for the maintenance of adult children, the maintenance of one spouse; 3) labor – all categories of disputes; 4) administrative – unlawful dismissal, renewal at work, recovery of average earnings during forced absenteeism and non-pecuniary damage; 5) criminal – in cases of private prosecution.

Another key issue for the implementation of mediation in Ukraine is the determination of the form and legal force of the document, which is adopted on the basis of mediation.

The Draft Law «On Mediation» No. 2480-1 of 09.04.2015 is defined in Art. 30 «Mediation Agreement» specifies that mediation may result in a mediation agreement. In this case, this agreement is concluded in writing, signed by the parties, the mediator, representatives and / or legal representatives of the parties (if any); includes a joint decision of the parties to settle a conflict between them and / or an obligation to form and procedure for eliminating the damage caused by the conflict; should not contain any provisions that lead to violation of legal or ethical standards; is subject to mandatory execution within the time limit specified by it; in case of non-fulfillment by the party of the obligations assumed by the mediation agreement, the other party has the right to go to court in accordance with the procedure established by law [4].

The Draft Law «On Mediation» No. 3665 of 17.12.2015, as of 26.02.2019, defines in Art. 20 «Mediation Results Agreement», which is a mediation agreement in writing and signed by the parties to the mediation; it must contain a joint decision of the parties to the mediation on the settlement of the conflict (dispute) and be binding on the parties; in case one of the parties to the mediation fails to fulfill its obligations under this agreement, the other party to mediation has the right to go to court in accordance with the procedure established by law [5].

In our view, both bills do not provide the mediation agreement with sufficient legal force, which could significantly impede the implementation of the mediation institute in Ukraine, since the parties will not be interested in resolving the dispute through mediation, but will try to resolve the dispute immediately in court.

We propose to include in the Law of Ukraine «On Mediation» the following provisions: the agreement on the results of mediation is concluded in writing, signed by the parties and the mediator, affixed with the seal of the mediator and entered in the Unified register of agreements on the results of mediation, the holder of which is the Ministry of Justice; each agreement has a separate serial number according to the register; the number under which the transaction is registered is indicated on the form of this agreement issued by the mediator; an agreement on the results of mediation conducted by a mediator of a Member State of the European Union shall be entered in the Unified Register of Agreements on the results of mediation by a mediator of Ukraine on the basis of an agreement; an agreement on the results of mediation is obligatory for the parties to execute it within the deadline set by them; in case of non-fulfillment by the parties of their obligations, their fulfillment shall be conducted in accordance with the procedure established by the Law of Ukraine «On Enforcement Proceedings».

Conclusions. The proposed provisions for the future Law of Ukraine «On Mediation» will, in our view, facilitate the rapid and effective implementation of this method of out-of-court settlement of disputes in the legal practice of Ukraine, and will also serve as a basis for further scientific discussions in this area.

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Summary

The article deals with research of issues of introduction of the institute of mediation in the legislation of Ukraine. The main provisions of the draft Laws on mediation submitted to the Verkhovna Rada of Ukraine No. 2480-1 of 09.04.2015 and No. 3665 of 17.12.2015 are proposed. The definitions of mediation, mediator, scope of mediation, types of disputes over which mediation is conducted it is advisable to set binding, mediation-based agreements.

Keywords: *mediation, mediator, fields of application of mediation, agreement on mediation results, out-of-court settlement of disputes.*

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ON THE CONSERVATION OF THE TRACE PICTURE ON THE CLOTHES OF THE CORPSE DURING ITS EXAMINATION

Ганна Бідняк. ДО ПИТАННЯ ЗБЕРЕЖЕННЯ СЛІДОВОЇ КАРТИНИ НА ОДЯЗІ ТРУПА ПІД ЧАС ЙОГО ОГЛЯДУ. Досліджено питання щодо виявлення слідів злочину під час огляду ушкоджень одягу трупа на місці події, проаналізовано думки провідних науковців з цього приводу. Акцентовано увагу на тому, що одяг перший сприймає дію ушкоджую чого фактору (тупого чи гострого знаряддя, кулі, високої температури й ін.) і тим самим змінює картину ушкодження на тілі потерпілого. Надані пропозиції щодо огляду одягу трупа, його вилучення та пакування з метою збереження слідів для подальшого експертного дослідження. Зазначені особливості слідів біологічних речовин на одязі трупа: крові, сперми, сечі, слини, кала тощо. Їх вид, форма, напрямок, розмір, колір, розташування, ступінь просочування ними тканини дозволяє зробити відповідні висновки (на наявність статевого акту; асфіксію; про тривале перебування тіла в певному положенні тощо). Розглянено питання щодо вогнепальних ушкоджень на одязі трупа, особливу увага приділена пороховим зернам та їх часткам. Надані рекомендації їх фіксації та дослідженні поверхні навколо вхідних отворів та у випадку виявлення порохових відкладень. Визначені помилки, які допускають особи під час огляду трупа та його одягу, серед яких розповсюджені: знятий після огляду одяг з ушкодженнями знову надягають на труп, одяг оглядають безпосередньо на тілі трупа, при цьому не знімаючи його загалом.

Зазначене неминуче призводить до втрати важливих деталей, забруднення одягу сторонніми речовинами, не пов'язаними з подією злочину, що може зумовити експертну помилку при подальшому огляді трупа в секційній залі. Доведена зміна слідової картини при порушенні послідовності огляду трупа та його одягу. легко руйнуються під час механічного впливу сліди протекторів шин автомобілів, утворені землистими накладеннями на одязі трупа, через те, що частини, які утворюють ці сліди, обсипаються.

***Ключові слова**: огляд трупа, огляд одягу трупа, ушкодження одягу трупа, сліди злочину, судово-медичний експерт, слідчий.*

Problem statement. The lack of data obtained from the examination of the victim's body may be compounded by a study of his clothing. Clothing, being an artificial cover that protects the human body from the influence of the environment, the first perceives the effect of the damaging factor (blunt or sharp guns, bullets, heat, etc.). Thus, the presence of clothing changes the pattern of damage to the body of the victim, first of all, on his skin, compared with damage on open areas of the body. For example, in a car accident the traces of a car tire tread when moving the victim occur more frequently on their clothing than on the body. In case of a gunshot injuries presence of clothing is crucial to determine the distance of the shot, as clothes can fully apprehend the traces of a close shot and they will be absent on the victim's skin covering.

Naturally, the delaying effect of clothing depends largely on its thickness and density. The more the layers of clothing, the thicker and denser they are, the more pronounced the restraining effect of clothes other things being equal. For example, in the case of damages by rail transport, the presence and severity of the pressure band corpse – the main sign of moving a wheel, depend entirely on the thickness and density of clothing. When a shot with a fractional charge is fired, multilayer dense clothing delays part of the grains and they do not affect the body of the victim. Clothing protects the skin of the body from the effects of high temperature, but in case of fire, it can itself be a source of severe burns to the victim.

Analysis of publications that started solving this problem demonstrate that certain injuries on the body of the victim were investigated by the following scientists: M.F. Krivosh-

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apkin, A.F. Lisitsyn, A.A. Lopatiev, M.M. Tagayev, M.I. Pyrogov, however, some aspects of this issue require further clarification.

The article's objective is to identify, fix and remove traces of crime on the body of a corpse during its examination.

Basic content. The investigator conducts the examination of the corpse, as well as its clothing at the scene, with the obligatory participation of a forensic expert as a specialist. Although it is believed that the investigator directly conducts the examination, his function is to draw up a report. Thus, during a survey of practitioners from an investigative units, about 86% agreed with this fact and 12% said that the specialist had an auxiliary role. Also, 78% of respondents draw up a separate protocol for examination of a corpse, 22% consider it to be part of the general protocol for examining the scene of an accident.

After describing the position of a corpse in relation to certain objects in the protocol of examination, the type, style, state of clothing, presence or absence of individual elements, breaks, layers, its correspondence to the size of the victim, etc. are recorded. Especially focusing on the major pieces of clothing in case of detection of the unknown corpse; identifying how tightly a tie and belt are tied, the presence of valuable jewelry. Then the corpse is turned over, the clothes are examined from the opposite side, including the presence of extraneous microobjects, the contents of the pockets are examined, and all elements of the clothing are removed in turn. In addition, they also record the conformity of the upper and lower elements of clothing, its smell, the degree of humidity, localization, the size and color of the spots, the degree of impregnation of the fabric, the presence of tags about the place of manufacture. The protocol notes any clutter in clothing. When clothes are lifted, crumpled, dislodged, it can indicate a fight (self-defense), death movements of the wounded, movement of the corpse. If the body is dragged along the ground, horizontal folds of clothing are formed, soiled on the outside and completely clean in folds. The presence of clothing that does not correspond to the growth of the corpse, a sharp difference in the quality of outerwear and underwear is also noted in the protocol. The above may indicate certain facts, such as ownership of another person's clothing.

It is also necessary to record the presence on the clothing of traces of biological substances: blood, semen, urine, saliva, feces, etc., because their appearance, shape, direction, size, color, location, the degree of impregnation of their tissue allows to draw appropriate conclusions. Traces of semen may indicate sexual intercourse; excretion of feces, urine characteristic of asphyxia; the location and direction of the blood traces may indicate the position of the body causing damage; the strong blood leakage of individual pieces of clothing and the considerable length of such streams indicate a long stay of the body in a certain position. Contamination of the victim's clothing with certain materials, the presence of certain odors sometimes indicates the professional identity of its owner. If certain parts of the clothing are removed and located close to the corpse, they are also carefully examined as this may allow one to determine individual circumstances of the event, for example, when committing suicide with the use of a single-footed shotgun, it may be removed for the purpose of pushing a trigger with a finger.

The conditions under which examination of the corpse and its clothing at the scene usually does not allow to reveal all the details of the damage. Therefore, the task of the forensic expert is to find out in advance about the location and nature of the lesions, as well as to properly remove the damaged clothing to send it for detailed laboratory examination.

Before removing clothes from the corpse, it is necessary to match damage of clothes with damage on the body and the direction of the fibers in damaged parts on clothes. At the same time, the examination of the articles of clothing is carried out in the order it was worn on the corpse. Measures are taken to prevent the loss of important material evidence: bullets and their particles, grains, bone fragments, fragments of glass, etc. First of all it is important for gunshot injuries in case these items can be found around both inlet and outlet openings and are usually mostly on clothes with tight, thick and particularly multilayer materials. Fragments of glass can sometimes be found in car injuries.

Shards of the shell and the core of the bullet may be detected in the area of the inlet openings. The latter are formed by the defeat of some special-purpose bullets, as well as by the defeat of ordinary bullets after the previous obstacle has overcome them, which leads to their deformation and tearing into pieces.

Fragments of the shell and core of the bullet can be detected in the area of the inlet of the gunshot openings. The latter are formed by the defeat of some special-purpose bullets, as well as by the defeat of ordinary bullets after the previous obstacle has overcome them, which leads to their deformation and tearing into pieces. Such fragments can be located both on the

surface of the clothing around the inlet and immersed in its structure, and in the case of damage to multilayered clothing – to be located in its inner layers. When inspecting clothes, all fragments of the bullet should be removed, as they can also become separate physical evidence, the size and location of the center of the main inlet of all damage from individual fragments should be described.

The procedure for detecting and removing specified objects shall be recorded by the investigator in the descriptive part of the scene examination report relating to the examination of the corpse. In order to prevent the loss of the fragments, it is advisable to move the corpse to suitable tarpaulins or other suitable objects (stretchers, sheets, blankets) before examination. The same items are used when transporting a corpse to a autopsy room, protecting it from foreign contamination.

It should be noted that in order for the objects found to have the status of evidence, it is important to properly record them. The protocol should include the following information:

1) name of the articles of clothing available on the corpse, indicating their color;

2) state of clothing on the corpse (unbuttoned, etc.);

3) presence of contaminants or secretions of the person and their location;

4) presence of damage [2].

Among the common mistakes often made by the persons, who perfom examination are the following: first, the damaged clothing, which is taken after examination, is put on the corpse again. Secondly, the clothes are examined directly on the body of the corpse, without removing it altogether. This inevitably leads to the loss of important parts, contamination of clothing by outsiders unrelated to the event of the crime, etc., which may lead to expert error when further examination of the corpse in the autopsy room.

In the context of this issue, opinions of K.I. Tatiev and I.V. Skopin regarding the transportation of a naked corpse, which will completely change the picture in the area of damage looks doubtful. The opinion of K.M. Panteleyev that when transporting a dressed corpse it will be subjected to significant changes in damage to the corpse's clothing, and when transporting the corpse without clothing – they will be preserved on the clothes in their original form, provided that they are properly packed looks correct. At the same time, to prevent damage to the corpse, the body may be wrapped in sheets after removal of clothing [3].

Additionally, if the clothes are not removed from the corpse until its research in the laboratory, it may be subjected to numerous mechanical influences, namely during a dynamic stage of examination of the corpse at the scene; as a result of the collision surface of clothes with the walls of the car body during transport; when transferring a corpse to a morgue and undressing it before forensic examination. For example, it is easy to break during the mechanical impact of car tire treads formed by earthy overlays on the corpse's clothing, because the parts that make up these tracks crumble. Traces of mapping that are of great value in a variety of examinations, as a result of manipulations with the corpse, may be lost entirely or partially (becoming ф smear-marks).

When considering fire damage to corpse clothing, particular attention should be paid to powder grains and their particles. Only at the scene does the forensic expert see the full picture of their location around the inlet. Most of the powder is held loosely on clothes and is easily lost (crumbling), which leads to a change in the original appearance of the area of the inlet.

In the absence of reliable methods of preventing the fall of powder grains and their particles from the surface of the clothing when inspected at the scene, it is necessary to carefully examine the surface around the inlets and, in the case of powder deposits, measure the diameter of such deposits and take a picture of the overall appearance of the surface around the inlet.

In this case, it is advisable to remove several grains of powder if they are not firmly attached to the surface of the clothing. Such removal of powder residues is accordingly reflected by the investigator in the protocol of the scene examination, and the extracted grains of the powder are sent for laboratory examination together with items of clothing. At the same time, the soot deposits from the shot are held more firmly on the clothing than the remains of the powder grains. Only smoke, which looks like a layer of loose overlays, can usually be subjected to partial change (lubrication). At the same time, the diameter of the soot sediment, its color, the nature of the edges on the corpse's clothing must be reflected in the examination report. Such an assessment of the damage to the corpse's clothing, in conjunction with other data, may help with reconstruction of the crime scene.

Conclusion. Thus, as a conclusion, it can be noted that a qualified examination of the corpse's clothing at the scene of their detection can provide an important data for clarifying the

circumstances of the event, the mechanism of the crime. Despite the radically dissenting opinions of both scientists and practitioners, using the general rule of dealing with footprints, we consider it expedient to completely remove the corpse's clothing from the scene as an object carrier for the maximum preservation of the crime traces.

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Summary

The issue of the participation of a forensic expert during of damage clothes of the corpse at the site of its discovery were studied; opinions of leading scientists on this matter were analyzed. The proposals on investigation of corpse's clothes, its extraction and packaging to preserve traces for further expert study are submitted.

***Keywords**: corpse examination, examination of corpse`s clothing, damage of corpse's clothing, traces of crime, forensic expert, investigator.*

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USE OF THERMAL IMPORTER FOR BIOMETRIC IDENTIFICATION OF HUMAN

Андрій Гребенюк. ЗАСТОСУВАННЯ ТЕПЛОВІЗОРА ДЛЯ БІОМЕТРИЧНОЇ ІДЕНТИФІКАЦІЇ ЛЮДИНИ. Розглянуто сучасні технології біометричної ідентифікації людини, що застосовуються як для охоронних систем так і для систем контролю і управління доступом, які існують в різних країнах світу і використовуються на практиці різними установами і організаціями у тому числі правоохоронними органами.

Основними перевагами біометричної ідентифікації є складність підробки ідентифікаційного параметра, практична неможливість втрати ідентифікатора, неможливість передачі ідентифікатора іншій людині. Зчитування біометричних параметрів вимагає від системи надійності обчислювальних алгоритмів, а також високого швидкодії. В іншому випадку залишається ймовірність виникнення помилок, які бувають двох основних типів: помилковий відмова в доступі або помилкова ідентифікація. Для біометричних систем необхідно враховувати ймовірність виникнення помилок FAR / FRR.

Най частіше в системах контролю доступу використовується така біометрична характеристика, як відбитки пальців. Однак в місцях, що вимагають більшого рівня безпеки, наприклад, в охоронюваних приміщеннях аеропортів, урядових будівлях і т.д., використовується сканування сітківки ока і технологія розпізнавання облич.

Інтерес до цих систем дуже великий в зв'язку з широким колом завдань, які вони вирішують. В даний час популярність технології розпізнавання осіб в різних сферах діяльності зростає. Технології розпізнавання облич застосовуються в найрізноманітніших сферах.

Головний недолік технології розпізнавання облич – це погіршення якості розпізнавання при погіршенні освітленості або зміні положення голови і ракурсу. Для зменшення помилкових відмов і хибних ідентифікацій стали застосовувати тепловізійні відеокамери. Основна конкурентна перевага відеокамер з тепловізором – ефективна робота в будь-яких погодних умовах. При снігу, в пургу, під час дощу, вітер, такі камери знаходять мету навіть якщо вона сховалася за густим листям дерев.

Розглянуто також особливості використання телевізора для біометричної системи так як на даний момент вважається перспективним напрямом, який дозволяє прибрати всі недоліки, які існують при використанні звичайних відеокамер.

***Ключові слова**: ідентифікація людини, тепловізійні відеокамери, біометрична автентифікація, контроль доступу.*

Problem statement. Currently, there are a number of methods and technologies that allow you to produce identification of a person according to his biological parameters. All of them are based on the fact that each of us has an individual combination of physiological, psychosomatic, personal and other characteristics.

The use of biometrics in access control and management (ACM) systems seems natural and logical. However, the practical implementation of this idea was not so simple. Only now, biometrics is becoming an integral part and an important factor in the ACM market.

The development of computer technology has made it possible to create devices that are able to quickly and reliably process biometric data using special algorithms. They have become widely used in access control systems. The parameters read by the biometric access control system are divided into two broad classes:

1. Static – permanent or slightly variable throughout life (outline of the face, fingerprints, capillaries of the fingers, drawing of the iris, DNA code and more);

2. Dynamic – behavioral or psychosomatic, which are prone to major changes depend-

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ing on age and environment (handwriting or tone of voice).

The main advantages of biometric identification are the complexity of tampering with the identification parameter, the practical impossibility of losing the identifier, the inability to pass the identifier to another person.

Reading biometric parameters requires a reliable system of computational algorithms, as well as high performance. Otherwise, there are two main types of errors: false denial of access or false identification.

For biometric systems, the probability of FAR / FRR errors should be considered. Where FAR is the False Acceptance Rate (False Reception Rate) and FRR is the False Rejection Rate. It is necessary to take into account the relationship of these indicators: artificially reducing the level of sensitivity of the FAR system, we usually reduce the percentage of FRR errors, and vice versa. [1,3]

To date, all biometric technologies are likely, none of them capable of guaranteeing the complete absence of FAR / FRR errors.

Analysis of publications that started solving this problem. The problem of biometric identification is devoted to many publications including the following authors: Lavrukhin A.I., Ivanitsky G.R., Deyev A.A., Khizhnyak E.P., Khizhnyak L.N., Selyanichev A.L., Zakharov V.P., Rudeshko V.I., Lavrukhin A.I., Selyanichev O.L. and others [1 – 4]. The importance of scientific achievement and contribution to the theory and practice of information security of these scientists can hardly be overestimated.

The article's objective is to consider the most promising areas for the development of biometric technologies and effective existing biometric systems, based on their effectiveness. But the possible introduction of human identification using a thermal imager to ensure the reliability of face recognition and in all weather conditions.

Basic content. Biometric systems consist of two parts: hardware and specialized software. Hardware includes biometric scanners and terminals. They capture a particular biometric parameter (fingerprint, iris, vein drawing on the palm or fingers) and turn the information received into a digital model available to the computer. And the software tools process this data, correlate with the database and make decisions about who is in front of the scanner.

In order for the biometric system to be able to identify the user in the future, it is necessary to first register information about its user. Commercial systems (unlike those used by law enforcement and law enforcement) do not store real IDs but their digital models. When a user re-accesses the system, the model of his / her ID is re-formed and compared to the models already stored in the database.

Any biometric access control system includes an access control device – a reader or scanner. This is a device that reads information, then this information is analyzed and compared with the personal information of the person recorded earlier. If the data is the same, the person is authenticated. If the authenticated user is allowed to stay in this room for that period of time, the device beeps and opens an electronic lock.

Most often, biometric characteristics such as fingerprints are used in access control systems. However, in places requiring a higher level of security, such as in secure areas of airports, government buildings, etc., retinal scans and face recognition technology are used.

Face recognition technology works on a similar principle to the human brain. After all, we first see the image, in this case a person, pay attention to the features of his/her face and process them in our head. The same with technology: the system must look for faces in the image and highlight the desired area.

Different algorithms are used for this purpose. Sometimes the system determines the similarity of proportions, selects the contours in the image and compares them with the contours of individuals or distinguishes symmetry through neural networks.

Now such technologies are available in different countries, because with their help it is possible to solve many problems in different spheres, including in the sphere of security, forensics, face-control.

Facial recognition is the automatic localization of a human face in an image or video and, if necessary, the identification of a person's identity based on available databases. The interest in these systems is very high because of the wide range of tasks they solve. Currently, the popularity of face recognition technology in various fields of activity is increasing.

Facial recognition technologies are used in various fields [1, p. 5]:

- providing security in places of large crowds;
- security systems, avoid illegal entry into the territory of the object, search for intruders;

- "face-control" in the segment of catering and entertainment, search for suspicious and potentially dangerous visitors;
- verification of bank cards;
- online payments;
- contextual advertising, digital marketing, Intelligent Signage and Digital Signage;
- phototechnics;
- forensic science;
- teleconferences;
- mobile applications;
- photo search in large photo bases;
- tagging people in photos on social networks and more.

Face recognition (as well as other related operations) is a fairly common task. Therefore, many companies provide ready-made services in the form of cloud APIs (software intermediaries between applications) to qualitatively solve these problems. In addition to IT giants like Microsoft and Google, specialized companies are also involved in face recognition. Their products are rapidly evolving and provide even more fun features such as identifying faces and silhouettes in a crowd.

The main disadvantage of face recognition technology is the deterioration of recognition quality when the illumination is diminished or the head and angle are changed.

Thermal imaging cameras have been used to reduce erroneous failures and false identifications. The main competitive advantage of cameras with thermal imaging is efficient operation in all weather conditions. In snow, in blizzards, in the rain, in the wind, such cameras find a purpose, even if it is hidden behind the thick leaves of trees.

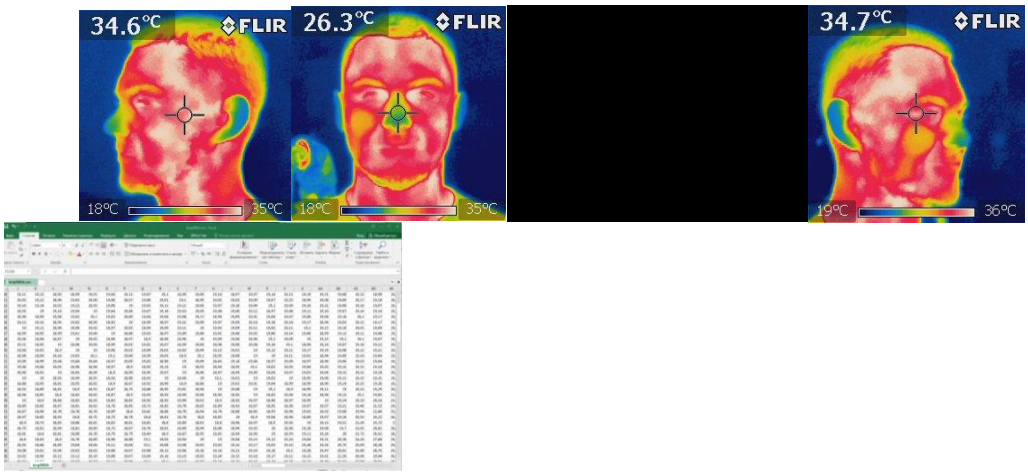

Fig. 1

Generation of a three-dimensional face surface is performed using the 3D Basel Face Model (BFM) tool in Matlab language using the data of images of a thermal imaging camera Fig. 1. For this purpose, a vector α of 199 components is created, where $\alpha 1 \in N(0, 1)$ is a random variable with normal distribution and all other values are zero. The first factor is responsible for the shape of the face, so changing it allows you to generate identical faces with different shapes. The resulting vector is used to generate faces using the standard BFM tool feature. [2, p. 4]

Conclusion. The use of thermal imaging cameras, for face recognition purposes, is currently considered a promising direction, which allows to remove all the disadvantages that exist when using humble video cameras.

- Face recognition in total darkness and in low light conditions;
- Face recognition with makeup, different hairstyles, beard, hat, glasses;
- Allow to recognize twins

There are two areas that are being developed in other countries:

1. Identification by a pre-created thermogram of the identified persons.
2. Identification of a person by images obtained from a thermal imaging camera, and as a person of standards the database of ordinary two-dimensional images is used. This problem is solved by using deep neural networks.

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SUMMARY

The article deals with modern technologies of biometric identification of the person, which are used both for security systems and for access control and management systems, which actually exist in different countries of the world and are used in practice by various institutions and organizations including law enforcement agencies. Features of the use of the TV for the biometric system are also considered.

***Keywords**: human identification, thermal imaging cameras, biometric authentication, access control.*

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IMPROPER FULFILLMENT OF RESPONSIBILITIES FOR MAKING THE SAFETY OF CHILDREN'S LIFE AND HEALTH OF: ISSUES FOR IMPROVING CRIMINAL LAWS

Алексей Ковальчук. НЕНАДЛЕЖАЩЕЕ ИСПОЛНЕНИЕ ОБЯЗАННОСТЕЙ ПО ОБЕСПЕЧЕНИЮ БЕЗОПАСНОСТИ ЖИЗНИ И ЗДОРОВЬЯ ДЕТЕЙ: ВОПРОСЫ СОВЕРШЕНСТВОВАНИЯ УГОЛОВНОГО ЗАКОНОДАТЕЛЬСТВА. Предметом исследования статьи являются уголовно-правовые нормы, устанавливающие ответственность за ненадлежащее исполнение обязанностей по обеспечению безопасности жизни и здоровья детей (ст. 165 Уголовного кодекса Республики Беларусь). Значительное внимание в статье уделяется научному толкованию признаков данного вида преступления. На основе проведенного

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исследования автор обращает внимание на несоответствие наименования данной статьи ее фактическому содержанию в части именования потерпевшего и возможных способов данного вида преступления. Аргументируется необходимость включения в диспозицию ч. 1 ст. 165 УК такого признака объективной стороны как «неисполнение», характеризующегося чистым бездействием, поскольку само по себе ненадлежащее исполнение обязанностей по обеспечению безопасности жизни и здоровья малолетнего не является тождественным неисполнению таких обязанностей. Автором предлагается введение уголовной ответственности за совершение исследуемого преступления родителем, поскольку уголовный закон необоснованно исключает его ответственность за данное преступление. Это обосновывается тем, что обязанности по воспитанию малолетнего на родителя не могут быть возложены по службе, специальному поручению или приняты добровольно, такие обязанности вытекают исключительно из семейных отношений.

Также обращается внимание на необходимость восполнения пробела в части криминализации общественно опасного последствия от анализируемого преступления в виде наступления смерти двух и более малолетних, что позволит наиболее точно дифференцировать уголовную ответственность за данное преступление. По мнению автора, позиция разрешения выявленных проблем путем формулирования нового видения ст. 165 УК позволит наиболее полно реализовать принцип правовой определенности уголовно-правовых норм белорусского уголовного законодательства об ответственности за данный вид преступления, реализовать принцип справедливости уголовного закона и уголовной ответственности.

Ключевые слова: *ненадлежащее исполнение обязанностей, неисполнение обязанностей, малолетний, несовершеннолетний, вред жизни и здоровью, уголовное законодательство, уголовная ответственность.*

Problem statement. The state, providing protection for the younger generation, establishes the responsibility of parents and other obligated persons for their improper performance of duties to ensure the safety of life and health of children. The rights and obligations of family members need constant and reliable protection from attacks by individuals whose views and needs do not coincide with generally accepted and socially approved rules of behavior [1, p. 13]. The article on criminal liability for the improper fulfillment of obligations to ensure the safety of life and health of children, as a special means of protecting the named benefits of children, was not known to the previous criminal legislation of Belarus. The rules on liability for this crime appeared only in the Criminal Code of the Republic of Belarus in 1999 (hereinafter – the Criminal Code) in Art.165 of the Criminal Code, and as correctly noted T.G. Khatenevich, were called upon to implement, as enshrined in ratified international acts [2-3], the principle of strengthening the responsibility of persons obliged to raise children and creating the conditions for their possible death or injury [4, p. 65-66]. Therefore, the point of view existing in the science of criminal law regarding the inappropriateness of the analyzed criminal law prohibition in the Criminal Code, we find insolvent [5, p.98], which does not take into account the generally preventive effect of the norms studied by us.

Basic content. The above article is currently worded as follows.

Article 165. Improper fulfillment of duties to ensure the safety of life and health of children.

1. Inadequate fulfillment of duties to ensure the safety of life and health of a minor by a person who is entrusted with such duties by service, or by a person who carries out these duties on a special assignment or voluntarily assumes such duties that entails inflicting less serious bodily harm to the children by negligence, the absence of signs of misconduct – shall be punishable by a fine, or by deprivation of the right to occupy certain positions or engage in certain activities with a fine, or corrective labor for a term of up to two years, or restriction of liberty for a term of up to three years.

2. The same act, which, through negligence, entailed the death of a child or causing grievous bodily harm, – the applicable sentence is the restriction of liberty for a term of up to four years or the deprivation of liberty for the same term with a fine and with the deprivation of the right to occupy certain positions or engage in certain activities or without deprivation.

The main immediate object of the analyzed crime.

In criminal law theory, for the most part, there is unanimity of scientists in understanding the immediate object of this crime as the life and health of a child [4, p.62; 6, p.351; 7, p.346; 8]. However, in some theoretical sources you can find a classification of crimes against life and health, where Art. 165 of the Criminal Code refers to crimes that cause harm to human health [9, p.80-99], which seems to be based on the title of this article and analysis of the norms enshrined in it, does not fully take into account the essence of the object of criminal law

protection of this crime. In our opinion, the point of view of N.A. Babiy, who understands the safety of life and health of children [10, p.112]. Based on the foregoing, adhering to the concept of recognition as an object of a crime of public relations, we believe that the object of the crime under study is public relations that ensure the safety of life and health of a child. It also seems fair to single out an additional immediate object – social relations that ensure the normal physical, mental and moral development of minors. It is also necessary to clarify that in some cases, social relations may suffer, ensuring the execution of official or professional (non-official) duties to ensure the safety of life and health of a child, acting as an alternative additional direct object of the named crime.

Victims of the crime in question, based on the analysis of Part 1 of Art. 165 of the Criminal Code, acts as a child, under which the criminal law in part 7 of article 4 understands a person who has not reached the age of fourteen on the day of the crime. Self-legal protection of the life and health of a child is caused by specific age, socio-psychological and other features of his personality, which require additional guarantees for the exercise of his rights. Therefore, if the act described in part 1 of Article 165 of the Criminal Code in relation to a person who has reached the age of fourteen at the time the crime was committed, such an act, if there are appropriate signs, entails criminal liability on a general basis for causing appropriate bodily harm or death through negligence.

Let us pay attention to the name of the analyzed article "Improper fulfillment of obligations to ensure the safety of life and health of children". As you can see, based on the interpretation of the title of the article, as well as the wording of the victim in part 1 of Article 165 of the Criminal Code, the legislator identifies the concepts of "juvenile face" and "children", which is hardly to be recognized as admissible for the following circumstances. Firstly, the concept of "children" by age is much broader than the concept of "juvenile face". Moreover, when you consider that the concept of "children" can be represented in the singular as the concept of "child", under which on the basis of Art.1 of the Law of the Republic of Belarus "On the Rights of the Child" is understood to be an individual until he reaches the age of eighteen years of age (full age), if under the law he has not previously acquired full civil capacity [11], then the use of this concept in relation to the analyzed article will also not be appropriate.

Secondly, the use of the concept of "children" in the plural does not seem to correspond to the content of the analyzed norm, since article 165 of the Criminal Code protects the life and health of not children (two or more), but a specific young child. Therefore, the understanding by some scientists of the object of the named crime and the victim as the health and life of young children is not accurate [6, p. 351]. In the presence of a qualified consequence in the form of the occurrence of death of two or more children as a result of the aforementioned crime, T.N. Khatenevich [4, p. 61]. However, the author does not offer possible options for filling such a gap. We consider it necessary to supplement Art. 165 of the Criminal Code with a corresponding especially qualifying attribute. In order to implement the principle of legal certainty, the name of Art.165 of the Criminal Code must be stated as "Improper fulfillment of obligations to ensure the safety of life and health of *children*".

The objective side of the commented crime is expressed by the legislator as an act in the form of improper fulfillment of obligations to ensure the safety of life and health, socially dangerous consequences in the form of less serious bodily harm (part 1 of article 165 of the Criminal Code) or serious bodily injury or death (part 2 of article 165 UK) and a causal relationship between them.

Act of the legislator in part 1 of Article 165 of the Criminal Code is formulated as improper fulfillment of obligations to ensure the safety of life and health of a child. T.G. Khatenevich and N.A. Babi argue that the improper performance of duties to ensure the safety of life and health of children is expressed in inaction [4, p. 62; 10, p. 112]. P.A. Dubovets and R.N. Klyuchko believe that the commission of a crime under Art. 165 of the Criminal Code, can be expressed both in the improper fulfillment by a person of his duties to ensure the safety of life and health of young children, and in the failure to perform such duties in general [6, p. 351; 7, p. 346]. We see the fallacy of the positions of scientists who believe that this crime is expressed in inaction, since the phrase "improper performance of duties" implies the action of the subject to perform such duties, but inappropriately, i.e. fussy, negligent, formal, untimely wrong, incomplete. The conclusion of scientists about the commission of this crime by inaction seems to be based on the fact that the Criminal Code does not have a norm that entails liability for pure inaction, and the qualification of such inaction under the general articles on responsibility for crimes against life and health does not reflect the specifics of the

criminal protection of children . We believe that this situation in science can be reflected in the incorrect practice of applying this article, therefore, to resolve this problem, it is necessary to supplement the disposition of Part 1 of Art.165 of the Criminal Code in the form of "non-fulfillment" of the respective duties. The title of the article under study is subject to a similar change. The presented regulatory approach will more fully reflect the essence of the act as a result of the commission of this crime and fill the legislative gap regarding the person's non-fulfillment of obligations to ensure the safety of children.

Obligations to ensure the safety of life and health of a child can be assigned to a person, as indicated by the criminal law, in the service, either on special assignment, or voluntarily accepted by that person. In this sense, the disposition of the analyzed norm is blanket. The specific obligations of the subject of the crime, depending on the scope of their implementation, are enshrined in local, departmental or other legal acts. Thus, in order to criminalize this crime, the law enforcer should establish the following conditions in aggregate: 1) what specific duties were assigned to the person who improperly performed them; 2) what exactly of the indicated duties was improperly performed; 3) whether the person had an objective and subjective opportunity for the proper execution of his duties.

Recall that when committing a crime under Art. 165 of the Criminal Code, the subject may be assigned the corresponding duties of service. Moreover, official duties often imply official duties. In this part, one should not confuse the duties assigned to the person in office by the duties assigned to the official, since not every carrier of duties in the respective position can be an official whose features are described in part 4 of Art.4 of the Criminal Code. The disposition of h. 1 Article. 165 of the Criminal Code, a negative sign is fixed containing a condition under which improper fulfillment of obligations to ensure the safety of life and health of a child does not entail liability under this article, expressed by the phrase: "in the absence of signs of malfeasance." Thus, the responsibility of officials who improperly performed their duties to ensure the safety of life or health of children only occurs for crimes against the interests of the service.

Since the constituents of this crime are material, the crime is recognized to be completed from the moment the specified consequences occur. An important sign of the objective side of this crime is the causal relationship between the act and the consequences that have arisen. To determine it, the law enforcer should be appointed to conduct appropriate examinations, as a result of which the question of establishing the severity of the injuries caused and the main immediate cause of the onset of such consequences should be raised. If the act was caused by the behavior of the perpetrator and was a necessary, logical and sufficient condition for the onset of socially dangerous consequences, then we should talk about the presence of a causal relationship.

The subject of this crime is special – an individual, sane person who has reached 16 years of age, who is obliged to ensure the safety of life and health of a minor. Analysis of the disposition of Part 1 of Art. 165 of the Criminal Code makes it possible to identify the following subjects of this crime: 1) a person who is responsible for ensuring the safety of life and health of a child in the service. These should include a teacher, educator, medical professional, trainer, etc. 2) a person performing such duties on a special assignment. Persons who perform these duties on behalf of the order include those who are instructed to accompany children on tourist and other trips, trips, etc. 3) a person who voluntarily assumed such duties. Persons voluntarily accepting such duties may be a guardian, trustee, nanny, nurse, grandfather, grandmother, etc.

However, T.G. Khatenevich notes that the subject of this crime should include parents participating in the upbringing and maintenance of children [4, p. 65]. Agreeing with this point of view, it should be concluded, however, that proceeding from the interpretation of part 1 of article 165 of the Criminal Code, it is difficult to attribute parents to three of the above categories of the subject of this crime, since the responsibility for raising a child cannot be assigned to them by service, special assignment or accepted voluntarily, such obligations stem from family relationships. Therefore, to fill in the gap of the criminal law norm that we are analyzing, to eliminate the problems of law enforcement, the parent should be supplemented as a person who can act as the subject of this crime.

The subjective side of this crime. E.A.Sarkisova is convinced that the subjective side of the crime in question is characterized by an imprudent form of guilt in the form of frivolity or negligence. With frivolity, a person foresaw the possibility of consequences in the form of less severe or serious bodily harm or death of a child as a result of his improper fulfillment of his duties to ensure the life and health of a child, but without sufficient grounds counted on their prevention.

With carelessness, the person did not foresee the possibility of the onset of such consequences, although with the necessary care and foresight, he should and could have foreseen them [8]. We are of the same opinion. However, we note that the primary act can be committed both intentionally and through negligence. The fault of the subject of the crime in relation to the socially dangerous consequences of such an act is characterized only by a careless form. If the intent of the subject of the crime with respect to socially dangerous consequences has occurred, the responsibility of this subject should be committed for intentionally causing bodily harm or death to a child. The motives and goals of this crime do not affect the qualification of this crime, however, they can be taken into account by the court when sentencing.

Conclusion. A study of the article on criminal liability for the improper fulfillment of obligations to ensure the safety of life and health of children allowed us to propose its edition in the following form.

Article 165. Failure or improper performance of duties to ensure the safety of life and health of a child.

1. Failure to perform or improper performance of duties to ensure the safety of life and health of a child by a parent or other person who is entrusted with such duties by service, or by a person who carries out these duties on a special assignment or voluntarily assumes such duties that entails inflicting less on the negligent grievous bodily harm, in the absence of signs of misconduct – shall be punishable by a fine, or by deprivation of the right to occupy certain positions or engage in certain activities with a fine, or corrective labor for a term of up to two years, or restriction of liberty for a term of up to three years.

2. The same act, which, through negligence, entailed the death of a minor or causing grievous bodily harm, – the applicable sentence is the restriction of liberty for a term of up to four years or the deprivation of liberty for the same term with a fine and with the deprivation of the right to occupy certain positions or engage in certain activities or without deprivation.

3. An act provided for in paragraph 1 of this article, which, through negligence, entails the death of two or more children, – the applicable sentence is the restriction of liberty for a term of up to five years or the deprivation of liberty for a term of up to six years with a fine and with deprivation of the right to occupy certain positions or engage in certain activities or without deprivation.

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Summary

The subject of this article is the criminal law that establishes liability for the improper fulfillment of obligations to ensure the safety of life and health of children (Article 165 of the Criminal Code of the Republic of Belarus). Considerable attention is paid to the scientific interpretation of the signs of this type of crime. Based on the study, the author draws attention to the inconsistency of the name of this article with its actual content in terms of naming the victim and possible methods of this type of crime. According to the author, the position of resolving the identified problems by formulating a new vision of Art. 165 of the Criminal Code will make it possible to fully realize the principle of legal certainty of criminal law provisions of the Belarusian criminal law on liability for this type of crime, to implement the principle of justice of criminal law and criminal liability.

Keywords: *improper performance of duties, non-performance of duties, child, harm to life and health, criminal law, criminal liability.*

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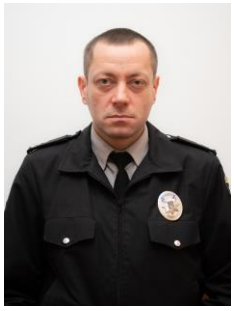

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THE POSSIBILITIES OF INFORMATION SUPPORT IN OVERCOMING OF COMBATING CRIMINAL JUDICES

Віктор Плетенець. МОЖЛИВОСТІ ІНФОРМАЦІЙНОГО ЗАБЕЗПЕЧЕННЯ В ПОДОЛАННІ ПРОТИДІЇ КРИМІНАЛЬНОМУ СУДОЧИНСТВУ. У статті наголошується, що ефективність розслідування кримінальних правопорушень в умовах протидії зумовлена рівнем інформаційного забезпечення цього процесу. З одного боку, на своєчасно отриманих відомостях ґрунтується пізнавальна діяльність слідчого, з іншого – прийняття ним оптимальних рішень. На підставі аналізу статистичних даних Генеральної прокуратури України зазначається, що у 60 % кримінальних проваджень правоохоронцями не було зібрано достатньої кількості інформації, що у свою чергу, не дозволило притягнути винуватців за вчинені суспільно-небезпечні діяння.

Наголошується, що оперативно-розшукова діяльність і забезпечує процес розслідування відомостями, котрі в інший спосіб отримати складно, а іноді – неможливо. Особливого значення це набуває за умов недостатньої кількості інформації, що притаманний початковому етапу розслідування. Це варто розглядати необхідною передумовою здійснення тактичних та оперативних заходів, успішного розслідування з мінімізацією можливого тиску з боку зацікавлених осіб на учасників кримінального провадження.

Звертається увага, що системний підхід правоохоронців до інформації може зменшити витрати часу, сил та засобів на отримання позитивного результату. Невизначеність з організацією розслідування взагалі та методами подолання існуючого тиску з боку зацікавлених осіб зокрема, здебільшого, є результатом дефіциту інформації у правоохоронців. Це впливає на можливість прийняття організаційних і тактичних рішень як у визначенні напрямків розслідування, так і заходів з подолання протидії.

Системність, наголошується в роботі, має бути не тільки в зборі інформації, а й її використання в кримінальному провадженні. Так, майстерно застосовані тактичні прийоми є запорукою результативної слідчої (розшукової) дії, яка, у свою чергу, виступає підґрунтям для формування доказів у кримінальному провадженні. Діяльність від застосування окремо взятого тактичного прийому до розслідування взагалі має ґрунтуватися на наявних у правоохоронців відомостей, визначенні тих, які необхідно отримати та прогнозу реалізації цієї цілі, у тому числі з урахуванням наявного тиску з боку зацікавлених осіб.

У статті наводиться перелік факторів, котрі можуть впливати на результативність застосування інформаційного забезпечення та заходів, спрямованих на покращення використання відомостей в кримінальному провадженні. У той же час наголошується, що зазначене має інформаційне, орієнтуюче значення для окреслення шляхів подоланні проявів протидії кримінальному судочинству.

У висновках надається визначення інформаційного забезпечення подолання протидії кримінальному судочинству.

Ключові слова: *кримінальне судочинство, провадження, подолання протидії, інформація, інформаційне забезпечення.*

Problem statement. The effectiveness of the investigation of criminal offenses in the context of counteraction is conditioned by the level of information support of this process. On the one hand, the information received in a timely manner is based on the cognitive activity of the investigator, on the other – the decision making by the investigator of optimal decisions. At the same time, the analysis of statistics of the Prosecutor General's Office of Ukraine [1] makes it possible to emphasize that in 60% of criminal proceedings the police did not collect sufficient information. It did not allow to make informed decisions, including the involvement of relevant persons for committing socially dangerous acts.

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Unpunished criminals continue to commit more grave and daring socially dangerous acts, taking measures to counteract criminal justice, including the destruction, alteration or concealment of information relevant to establishing the circumstances of a criminal offense.

Analysis of publications that started solving this problem. On certain aspects of information support of crime investigation, such criminal scientists as: T.V. Averyanova, R.C. Belkin, O.O. Belov, V.V. Biryukov, O.B. Dronova, V.A. Zhuravel, I.O. Jerusalimov, P.P. Ishchenko, E.D. Lukyanchikov, I.V. Piryg, V.V. Tyshchenko V.Yu. Shepitko, K.O. Chaplinsky and others.

Forensic scientists paid attention to the investigation of the problems of counteraction to the investigation: O.V. Alexandrenko, I.V. Gritsyuk V.M. Karagodin, I.A. Nikolaychuk, V.V. Trukhachov, E.V. Babayeva, S.Yu. Zhuravlev, L.V. Livshits, B. Ya. Kulikov, R.V. Mudretsky, A.N. Petrova, O.I. Romtsiv, R.M. Shekhavtsov, B.V. Shchur and others.

At the same time, no attention was paid to the information support of overcoming criminal justice by criminal scientists. This also leads to the difficulties faced by law enforcement agencies in the investigation and judicial review of the counteraction proceedings.

The situation is better seen in a systematic approach to research, in which information support issues would be considered through the prism of the needs of the employees of practical units in overcoming manifestations of counteraction to criminal proceedings by interested parties. This is conditional on objective expediency, since the existing studies alone cannot provide for the needs of practice in fulfilling the tasks of combating crime.

The article's objective is to outline the possibilities of information support in overcoming manifestations of counteraction to criminal justice.

Basic content. The organized nature of the criminal activity necessitates the introduction of effective measures, the use of information available to law enforcement. Only because of this, as V.E. Tkalich points out, is it possible to have an effective preventative effect on all criminogenic factors that determine crime. The role of information technology in combating crime is itself diverse. In operational and search activities, they can be successfully used to detect, document, disclose, prevent crimes and terminate criminal activity, including: in the early stages of their preparation, attempt and commission [2, p. 211-212].

Operational search activity also provides the process of investigating information that is otherwise difficult to obtain and sometimes impossible. This is of particular importance given the lack of information inherent in the initial phase of the investigation. This should be considered a necessary prerequisite for the implementation of tactical and operational measures, successful investigation with minimization of possible pressure from interested parties on the participants in criminal proceedings.

Information support, O.M. Bandurka emphasizes, is the core of the operational-search activity [3, p. 282].

Therefore, the systematic approach of law enforcement to information can reduce the time, effort and resources spent to produce a positive result.

The uncertainty with the organization of the investigation in general and the methods of overcoming the existing pressure from the interested parties in particular, is mainly the result of a lack of information from law enforcement. This affects the ability to make organizational and tactical decisions both in identifying areas of inquiry and in taking counter-measures.

Also noteworthy are the positions of scholars on the designation of information support for pre-trial investigation and judicial review of criminal proceedings.

Thus, according to A.M. Ishin`s of informational provision of pre-trial investigation, solves the following questions: the choice of subjects of information gathering, their competence; definition of terms, procedure and methods of obtaining, recording, processing and systematization of the received information; analysis of information in the framework of a certain procedure, using standard methods and involving appropriate specialists; organization of use of results of information analysis in practical activity of bodies of preliminary investigation [4, p. 22].

Thus, the possibility of obtaining information promptly necessitates the improvement of interaction between different law enforcement units. It is possible to achieve this, first of all, by consolidating efforts, comprehensively solving the problems of informational support of the activity of law enforcement agencies in overcoming manifestations of counteraction to criminal justice.

Information security is a special form of control over those threats that may come from crime [5, p. 146].

It is worth noting that crime is one of the main challenges for the state and its institu-

tions. It is a systemic phenomenon that requires an integrated approach, coordinated with the efforts of the concerned state bodies. The same attitude is required for themselves against criminal proceedings. Measures to overcome them, for the most part, are taken from the moment they are diagnosed. However, the activities of law enforcement can also be carried out to the hypothetical possibility of pressure from stakeholders. The effectiveness of taking measures both to overcome and prevent the manifestation of counteraction to criminal justice depends directly on the timely receipt and use of the necessary information.

Actual direction of information support of the process of combating crime is the elimination of haphazardness in the collection of information, inconsistency between different entities in the analysis of information on the criminal situation and the development of response measures, in case of its complication, which as a result does not allow to make an effective management decision and reduces the level of their implementation [6, p. 107-108].

Systematicity, in our opinion, should be not only in the collection of information, but also its use in criminal proceedings. Yes, skillfully applied tactical techniques are the key to effective investigative (investigative) action, which in turn acts as a basis for the formation of evidence in criminal proceedings. Activity from the use of a particular tactical admission to the investigation should generally be based on the information available to law enforcement officers, the determination of what is to be obtained and the forecast of the realization of this goal, including taking into account the existing pressure from stakeholders.

At the same time, factors that may affect the effectiveness of information support need to be highlighted.

So, first, it is an opportunity for law enforcement officers to quickly access the necessary information. This should be considered as an objective factor independent of the will of the employees, since obtaining information, for most of them, has a complicated procedure that is carried out through agreement with the relevant executives or – a formal request. However, part of the databases is not automated, which necessitates the need for resources (human, temporary) to process the request. If, however, the need for access to information in criminal proceedings repeatedly arises, then the cost of obtaining it increases proportionally.The bureaucratic and outdated approach to data-driven activities, on the one hand, negates the promptness of data collection and, on the other, increases the number of informed officials and the possibility of early leakage of information and as a result of pressure from stakeholders.

Our position is also confirmed by studies conducted in Germany, according to which access to information bases is determined by the necessary factor for improving the activities of law enforcement agencies. At the same time, the main criteria for the organization of information support include: reliability, completeness, efficiency, availability of formalization of the description of forensic information, taking into account the display of potential evidential information, validity and, finally, accessibility for all subjects of investigation [7].

Secondly, there is an interconnected relationship between the moment of receipt and the use of the information. Yes, the less time it takes to get information to use it, the more impact it can have. The choice of the moment of application is subjective and should be conditioned, including by a factor of suddenness in the attainment of tactical goals by law enforcement, as well as taking into account that data, in the time of information technologies, are losing their relevance very quickly. This, on the one hand, determines the need for prompt, and on the other – timely use of information.

Thus, access to automated information bases for law enforcement officials should be simplified. This will ensure greater efficiency not only in the application, but also in minimizing the early leakage of information and counteracting criminal proceedings by interested parties.

The need for repeated use in the investigation of criminal offenses of the accumulated data sets necessitates the formation of forensic information systems, which act as a means of information support of investigation in general and overcoming manifestations of this activity, by interested parties in particular.

Information systems are understood to mean an organizationally ordered set of information sets about objects and information technologies, including modern computer hardware, software and communication networks, which provide processes for input, processing and delivery of information [8, p. 11].

Thus, the information security of the police is an organic unity of work to determine the content, volume, quality of information required for management, as well as measures for the rational organization of the collection, systematization, accumulation and processing of this information by applying a variety of methods, techniques and technical means [9, p. 161].

The above requires from law enforcement not just accumulation, but first and foremost systematization of information in the form of a simple, logically-built and intuitive, from the first application, structure. Because the need to understand the multifunctionality of the information system, for the most part, carries an unnecessary emotional burden, so as a result of its use in law enforcement may create a stereotype of unjustification and inappropriateness of time and effort to obtain the necessary data. This, in our opinion, is a significant component in the information support of the activities of law enforcement.

A special place in the information support of criminal proceedings is occupied by descriptions of objects contained in records. Their main purpose is to provide information about the availability of data about the object and its location at the time of the request, which will assist law enforcement agencies in the prevention, detection and investigation of criminal offenses.

Also, as the scientists point out, the following main tasks are being solved: identification of detainees and arrested persons; obtaining information about the past criminal activity of persons, subject to an on-going investigation or criminal proceedings, etc. [10, p. 91].

Of particular importance is the information support of judicial proceedings related to the analysis and legal evaluation of evidence gathered in criminal proceedings. The introduction of modern information technologies into the specified activity requires the creation of such a subject information environment that will provide the judge with the necessary data, minimize its costs for technical work, which as a result will contribute to the quality and promptness of the judge's decision-making [11, p. 83]. It should be noted that in the case of improper treatment of pre-trial investigators, these manifestations will inevitably affect the court in criminal proceedings.

In the course of the trial, the counteraction not only disappears, but can also take on new forms and ways of influence, characterized by the expansion of the range of subjects, the pursued goals [12, p. 97].

Thus, in our opinion, the presence of an information environment will help to minimize the pressure during the criminal proceedings, which will ensure that the court will not only make quick decisions, but first of all, grounded decisions.

Information on counteraction to criminal proceedings will necessitate the adoption of appropriate measures by law enforcement. Thus, in the presence of internal pressure, investigators mostly resort to organizational and tactical actions, adjusting plans, changing the sequence and timing of investigative (investigative) actions, taking measures to ensure the safety of participants.

In the case of external counteraction, for the most part, the management of the investigative unit is informed, the procedural supervisors, the proceedings may be transferred for investigation to the higher divisions. Persons who exert pressure must be held accountable.

The aforementioned list of measures is indicative only, and their division is conditional, since they can be taken on the facts of internal as well as external opposition to criminal proceedings. However, the aforementioned has an informative, indicative value for outlining the ways of overcoming manifestations of counteraction to criminal justice.

The main tasks of functioning of the information system of the organs of internal affairsorgans of internal affairs are:

- ensuring the ability to promptly receive information in a complete, systematic and easy-to-use form for disclosure by police officers and units;

- ensuring dynamic and effective information interaction of all sectoral police services of Ukraine, other law enforcement agencies and state institutions; security of information. The police also use other information support. For accessibility, it can be divided into open and closed security. Open is the provision of external public use, for example, regional address files (address bureaus), and closed – limited use, for example, operational reference files of information sources, intended only for a certain category of employees admitted to operational search activities. Some MIA services create their own specific information systems that support the functional activity of the structure.Such systems have the General Directorate of Fire Protection, the State Security Service, Medical Administration and some others;

- investigating, preventing and investigating criminals; collection, processing and generalization of operative, operative-search, operative-reference, analytical, statistical, and control-information for assessment of the situation and making reasonable optimal decisions at all levels of activity of police bodies [13].

At the same time, improving the activities of law enforcement agencies not only in the formation of information bases, but also the use of information contained in them, taking into

account modern technical capabilities, available experience of their use in our and other countries, will increase the satisfaction of the needs of practice.

Conclusion. In the framework of this work, we have made only an attempt to outline the possibilities of informational support in overcoming the counteraction to criminal justice, which require more thorough scientific research, which cannot be realized within the article.

Despite the aim of the original study to suggest an original definition, we consider it possible to note the following. Yes, the formation of information in the form of simple, logically constructed with automated access to the data sets by its collection, analysis, research and systematization in accessible for further free, repeated use by law enforcement agencies of information both in the framework of investigation, judicial review of criminal proceedings in general, and those for which are counteraction and, in our understanding, information support for overcoming counteraction to criminal justice.

Opportunity to receive information promptly necessitates the improvement of interaction between different law enforcement units. The implementation of this should be carried out, first of all, through the consolidation of efforts and comprehensive solution to the tasks of informational support of the activities of law enforcement agencies in overcoming manifestations of counteraction to criminal justice.

Improvement of the activity of law enforcement agencies not only in the formation of information bases, but also the use of information contained in them, taking into account the current technical capabilities, available experience of their use in our and other countries, will increase the satisfaction of the needs of practice.

The directions of our further scientific research will be directed to the study of information technology capabilities in the activities of law enforcement agencies in overcoming manifestations of counteraction to criminal justice.

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Summary

The article emphasizes that the uncertainty with the organization of the investigation in general and the methods of overcoming the existing pressure on the part of the interested parties in particular, is the result of the lack of information from law enforcement. This affects the ability to make organizational and tactical decisions both in identifying areas of inquiry and in taking counter-measures. Emphasis is placed on the importance of using information technology in the activities of law enforcement.

Keywords*: *criminal justice, proceedings, countering, information, information support.

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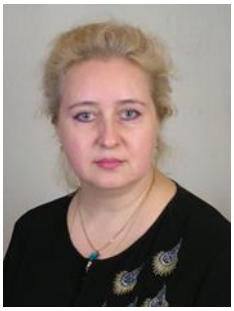

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CRIMINAL LIABILITY FOR THE ILLEGAL CIRCULATION OF ARMS IN CRIMINAL LEGISLATION OF FOREIGN COUNTRIES

Світлана Шалгунова, Олександра Скок, Таісія Шевченко. КРИМІНАЛЬНА ВІДПОВІДАЛЬНІСТЬ ЗА НЕЗАКОННИЙ ОБІГ ЗБРОЇ В УКРАЇНІ ЗА КРИМІНАЛЬНИМ ЗАКОНОДАВСТВОМ ЗАРУБІЖНИХ КРАЇН. Порівняльно-правовий аналіз кримінального законодавства зарубіжних країн завжди викликав інтерес у вітчизняних дослідників, оскільки надавав можливість вивчити різні підходи до розуміння ряду категорій та інститутів кримінального права іноземних держав, що найчастіше є передумовою для їхнього використання з метою подальшого удосконалення українського кримінального законодавства. Варто визнати, що в ряді іноземних держав питанню, пов'язаному з незаконним обігом зброї на законодавчому рівні надається більшого значення, ніж у КК України.

Незаконний обіг зброї у світі є багатоаспектною проблемою. Він включає в себе незаконне виготовлення зброї, її контрабандне переміщення через національні кордони, нелегальну торгівлю зброєю. Останнє вже тривалий час є частиною нелегального бізнесу організованої злочинності різних країн. Кількість злочинів із застосуванням різноманітних видів зброї зростає поряд із розповсюдженням предметів озброєння у світі.

Як і будь-який механізм, що розробляється, а потім втілюється і працює у суспільстві, система норм, що регулює обіг зброї на території України не є досконалою і має певні недоліки. Одним із таких недоліків є відсутність належної нормативно-правової бази, що регулює обіг зброї на території країни. Необхідність посилення протидії злочинності, з незаконним обігом зброї, удосконалення з цією метою законодавства обумовлює необхідність в розробці відповідних заходів щодо протидії незаконному поводженню зі зброєю, з'ясування сутності кримінально-правових відносин. Для створення певних заходів, необхідно звернути увагу на досвід різних країн з цього питання, розглянути кримінально-правову характеристику норм, що встановлюють відповідальність за незаконні дії, пов'язані з використанням, придбанням, зберіганням, носінням зброї, бойових припасів тощо за законодавством різних держав.

Боротьба з нелегальним розповсюдженням вогнепальної зброї індивідуального використання є достатньо складним завданням, тим більше, в умовах військового конфлікту на території будь-якої держави. Це пояснюється тим, що незаконною торгівлею зброєю займаються не тільки транснаціональні злочинні угруповання, в операціях з нелегального обігу зброї активну участь беруть державні органи, що діють під прикриттям.

Успіх протидії незаконному обігу зброї в багатьох випадках залежить від правового режиму використання тих предметів озброєння, що перебувають у цивільному обігу, ступеня до їх доступу для населення, а також організації контролю над ними.

Ключові слова: *кримінальна відповідальність, зброя, незаконний обіг, вибухова речовина, боєприпаси, володіння зброєю, зберігання зброї, торгівля зброєю, виробництво зброї, передача зброї.*

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Problem statement. The problem under study is relevant not only for Ukraine but for the entire world community. The issue of combating illicit trafficking in arms has received considerable attention from many international organizations. Many special sessions of the General Assembly of the International Criminal Police Organization on Improving the Effectiveness of Firearms Accounting and the implementation of measures to improve international cooperation in this fight are devoted to addressing this issue.

According to an employee of the General Secretariat of Interpol, D. Manross, awareness of the problem of gun ownership at the national level is high enough, at the same time, the reaction to the use of firearms for a large number of killings is rather slow [1].

The UN Commission on Crime Prevention and Criminal Justice has conducted an expert survey on the regime of firearms possession of different countries by forces of experts from 50 countries. The study showed that in all countries there is a tendency to tighten regulation of the circulation of firearms. This is especially true of Australia, Canada, the United Kingdom, Russia, the Czech Republic, Estonia, Latvia, Lithuania, Moldova, France, China, which have already adopted the relevant regulations. In Brazil, Denmark, India, such new legislation is under preparation.

Quantities in possession of firearms range from less than 1 individual owner per 1,000 population (Tunisia, Singapore) to over 120 (Germany). In Finland, the number of firearms reaches 400 per 1000 people. In this country, about half the population have firearms in their families. There (as well as in Germany, Denmark, Sweden, Romania and other countries) there are no prohibitions on the possession of long-barreled, hand-held types of civilian firearms [2].

There is no reliable data on how many firearms in the world are being produced illegally, how many are smuggled into the countries, what is the amount of military weapons and weapons stolen from legitimate owners. Foreign publications have provided only an approximate amount of funds received annually for arms trafficking worldwide: approximately $ 500 billion [3].

It is also difficult to estimate the degree of arming of the population and the criminal world. One can only give an approximate estimate using the information received from law enforcement agencies, the results of a population survey and research conducted on the issue. Such information gives reason to believe that the uncontrolled proliferation of firearms contributes to the increase in the number of crimes. Whatever supporters of the legalization of free arms trafficking in Ukraine say, such a move will only exacerbate the criminogenic situation and increase rates of violent crime, which have increased significantly over the last 5 years.

Analysis of publications that started solving this problem. Foreign scientists involved in the study of the relationship between the presence of firearms in the population and mortality due to violent crimes, accidents and suicides concluded that as soon as the firearm becomes readily available to the population, the likelihood of deaths of people will be increased . Such a situation is illustrated by statistics cited by American scientists: F. Cook, D. Nayzhin, M. Wolfgang, G. Zaisela, D. Zuela, F.E. Zimming, an English researcher by D.P. King [4], Canadian criminologists I. Waller [5] and S. Fitzsimmon [6] and others.

According to the study of F.E. Zimring, the likelihood of murder in a gun attack was five times higher than that of a cold weapon attack. Thus, it appears that the five-fold difference in mortality is explained by the greater risk of firearms, commonly referred to as the technical superiority effect [7].

The **objective** of the study is to summarize our foreign experience of criminal regulation of arms trafficking, which is based on several points. First, the study of the criminal law of the Commonwealth of Independent States (CIS). Secondly, the study of the experience of European countries, due to the fact that Ukraine is part of Europe and at this time is actively integrated into the trading and political European space. Thirdly, the experience of establishing criminal liability in those countries with which Ukraine has borders is important to us, as arms smuggling is one of its ways of receiving weapons and weapons into Ukraine.

Basic content. Legislative acts regulating the issue of arms trafficking in the CIS countries are the Model Law on Weapons and the Model Criminal Code.

The Model Law on Weapons, adopted in 1997, regulates legal relationships arising from the circulation of civilian, service, and combat small arms and light weapons, ammunition and ammunition in the territory of the CIS countries and aims at protecting the life and health of citizens, property, public safety, nature protection, natural resources, development of international cooperation in the fight against illegal proliferation of weapons and ammunition [8].

The structure of this Law, as well as any other law, consists of articles, parts of articles, their clauses. This law contains 30 articles. According to the provisions of this Law, it regulates

the main issues: terminological concepts (Article 1), types of weapons and their characteristics (Articles 3-5), restrictions on the circulation of civilian and service weapons (Article 6), the procedure for certification, licensing and registration of weapons and ammunition, revocation of licenses (Articles 7-13, 26), the procedure for the acquisition, sale, production, storage of weapons and ammunition (Articles 14-22), the procedure for collecting fees when issuing licenses and permits for possession of weapons and ammunition (Article 23), use of weapons (Article 24), accounting procedures in carrying, transporting, destroying, collecting and destroying weapons (Article 25), seizing weapons and ammunition (Article 27), as well as control of weapons accounting (Article 28) and compliance with legal acts and provision its implementation (Articles 29-30).

As can be seen from the analysis of the content of this Law, in 1997 the basic principles and rules of arms trafficking in the CIS countries were determined. In spite of such detailing of the procedure for ensuring legal trafficking and limitation of illicit trafficking in weapons and ammunition in the CIS countries, Ukraine did not accept this Law as a basis for streamlining its own legislation on these issues.

Positive, in our opinion, in this Law is that it defines the concept of a weapon that has both legal and major criminal trafficking in Ukraine, its main types, the procedure for its issuance, storage, transportation, collecting, destruction. In addition, this Law provides for the procedure for the legal use of weapons by citizens of the CIS countries. This law can be called ancillary to the current legislation of Ukraine on the activities of the police, the Security Service of Ukraine and other law enforcement agencies, which provide for the prevention of crime, part of which is illegal arms trafficking. Also, this Law gives citizens who have been victims or witnesses to crimes a right to defend their own rights, freedoms and interests against criminal offenses (Article 24): citizens have the right to use the weapons they legitimately have to protect life, and property in the state of necessary defense or urgent need. The use of a weapon must be preceded by a clearly stated warning to the attacker against whom the weapon is being used, except when a delay in the use of the weapon poses a real risk to human life or may entail other grave consequences. Of course, the use of weapons should not create a risk to the lives of other citizens who are not related to the incident (that is, to third parties).

Seizure of weapons and ammunition to it, according to the specified Law, is carried out by the police (police) and can be carried out in the following cases: absence of licenses for the production of civilian and service weapons and ammunition to it; the absence of licenses for the collection and display of civilian and service weapons and ammunition; absence allowed to store and carry weapons; revocation of permits and licenses in accordance with the procedure established by law; violation by the legal or natural persons of the rules of circulation (transfer, acquisition, collecting, exhibiting, storage, carrying, transportation, transportation and use) of weapons before the relevant decision is made by the state bodies in accordance with the procedure established by national legislation; identification of self-made or proprietary weapons and ammunition, with modified ballistic and other technical characteristics; the occurrence of the death of the owner of the weapon to resolve the issue of inheritance of his property; liquidation of a legal entity that was licensed to carry out arms trafficking (repair, sale, etc.).

The control over the circulation of civilian and service weapons and ammunition is carried out by internal affairs bodies (police) and the relevant government bodies, which issue licenses for the production of such weapons and monitor compliance with standards in their manufacturing (Article 28).

It is necessary to define also that this Law provides that after its entry in force of the CIS countries must within three months bring the national legislation into conformity with the provisions of the Model Law under consideration (Article 29). However, as we can see, the Verkhovna Rada of Ukraine has not yet taken the appropriate steps in this direction. The draft Law on Weapons has been under consideration since 1992, several drafts have been prepared, most recently the drafts by S. I. Fris and V. Zelensky in 2019, but the requirement of the Model Law on Weapons has not been fulfilled. Thus, it is impossible to speak of a real and effective prevention of crimes related to the illicit trafficking in weapons in the territory of the Ukrainian state. In our view, the prevention of both the illicit trafficking of weapons and the regularization of existing legal trafficking, as well as the prevention of crimes committed with the use of weapons (both firearms, cold and stun guns) is possible only on the basis of the current legal framework, which should cover the whole complex of issues: from definition of basic terms, to establishment of types of legal responsibility for different according to the degree of public danger of offense in accordance with the rules of the Administrative Code and the Criminal

Code of Ukraine.

The Model Criminal Code for CIS Member States provides for crimes under the heading of weapons, weapons, explosives and explosives in various sections and chapters.

Most of the crimes involving criminal liability for trafficking in weapons are classified as grave and particularly grave. Serious crimes are punishable by imprisonment of up to 12 years, and especially serious crimes – imprisonment for a term of more than 12 years.

The Criminal Codes of Russia, Belarus, Georgia, Moldova, Kazakhstan and Tajikistan criminalize unlawful acts related to trafficking in weapons, ammunition, explosives and explosives. But, in the presence of many common features of responsibility for actions, which include the concept of illegal carrying, storage, purchase, manufacture of firearms (other than smooth-bore hunting), ammunition, or explosives, there are significant differences between them that are missing in Ukrainian law.

The Criminal Code of the Republic of Kazakhstan contains four parts. In Part 1 of Art. 251 provides for the responsibility for the illicit purchase, transfer, sale, storage, transportation or carrying of firearms (other than smooth-bore hunting), ammunition, explosives and explosive devices. Part 2 of Art. 251 of the Criminal Code of Kazakhstan establishes responsibility for the same actions, committed by a group of persons by prior consent or repeatedly. Part 3 of the same article – the same acts committed by an organized group, and finally part 4 indicates the criminal responsibility for the illegal carrying or sale of daggers, Finnish knives or other cold weapons, except when carrying a cold weapon is associated with industrial hunting.

According to the Criminal Law of the Republic of Tajikistan in Art. 195 establishes responsibility for the illicit purchase, transfer, sale, storage, transportation or carrying of weapons, ammunition, explosives and explosive devices. It is worth noting that Part 4 of Art. 195 of the Criminal Code of Tajikistan provides for the responsibility for the illicit purchase, transfer, sale or carrying of gas weapons, daggers, Finnish knives or other cold weapons, including small arms.

The Criminal Code of the Republic of Belarus contains directly an article in which the object of the abduction is weapons, its main parts, ammunition, explosives, explosive devices (Article 297) property or no forfeiture. The theft of nuclear, chemical, biological or other weapons of mass destruction or major parts of such weapons – shall be punishable by imprisonment for a term of five to ten years from confiscation of property or confiscation.

It should be noted that the criminal legislation of Denmark does not provide for liability for crimes related to nuclear, chemical, biological and other weapons of mass destruction.

Thus, there are significant differences in the Criminal Codes of Ukraine and Denmark in establishing the responsibility for the abduction or theft of a weapon. They concern, first and foremost, the size of the sanctions – Denmark's criminal law is far less severe than Ukrainian law. Secondly, the Danish Criminal Code does not contain a special rule establishing responsibility for the theft or theft of a weapon. Third, the Criminal Code of Denmark does not provide for liability for the illicit circulation of nuclear, chemical or other weapons of mass destruction, as well as materials or equipment that can be used in the creation of weapons of mass destruction. In our opinion, the Ukrainian Criminal Code has significant advantages in this aspect.

The analysis of the rules of the Criminal Code of Switzerland [9] indicates that they are rarely mentioned in weapons, which are mentioned in the sections on state crimes, crimes against life, liberty and sexual integrity of a person. It is likely that these issues are dealt with in more detail in cantonal criminal law, which is also a source of criminal law in this country. Positive and logical, in our opinion, in the criminal law of Switzerland, we can recognize that the legislator, in formulating criminal law, providing responsibility for the illicit trafficking in weapons and its use in the commission of other crimes (murder, theft, robbery), pays attention to the sub the more effective aspect of guilt is the presence of the target of the guilty person to use a weapon in the commission of any crime. The criminal law of Switzerland provides for criminal liability for the illicit trafficking of weapons, explosives in independent warehouses, for the commission of each of which provides for different types of punishment. In the Criminal Code of Switzerland, as well as in the Criminal Code of Denmark, there is no specific rule that provides for the responsibility for the theft of nuclear, chemical or other weapons of mass destruction.

Article 135-72 of the Criminal Code of France stipulates that the use of a weapon in the commission of a crime is a liability. In Art. 311-8 of the Criminal Code of France states that theft is punishable by 20 years' imprisonment and a fine of 1 million francs if it is committed with the use or threat of use of a weapon (first case), if the person carrying the weapon requires permission or carrying a weapon is prohibited (second case). Paragraph 10 of Art. 222-13 of

the Criminal Code of France provides for criminal liability for violent acts involving the use or threat of the use of weapons, which does not entail complete disability for more than 8 days, in the form of 3 years in prison and a fine.

A more systematic and streamlined regulatory act governing the circulation of weapons in France is the Law on Weapons, adopted on April 18, 1939, the advantage of which is that it established the classification of weapons and defined the rules, regulations governing the production, trade, storage and use of weapons. According to this law, all weapons are divided into eight categories.

The provisions of the said normative act provide for severe sanctions for misuse of the first four categories of weapons. Based on Art. 1 of the French Law on Arms, any individual, enterprise or community intending to manufacture or trade in weapons in the first seven categories is required to submit a statement to the police prefecture. A similar application is made in the case where a functioning manufacturer or seller of weapons has the intention to convert or discontinue manufacturing or trade.

The categories of weapons are divided into prohibited and authorized by laws or the competent authority. The illicit trafficking in weapons in Section 1 includes the offenses set out in Articles 563, 564, 566, 567, 568, 569, 570 of the Criminal Code of Spain.

The issue of the regulation of criminal liability for the illegal trafficking of weapons is reflected in detail in the rules of the Criminal Code of Spain [10]. Section 1 of this Code deals with the illicit trafficking of weapons and is entitled "On the Possession, Trade and Storage of Weapons, Ammunition or Explosives and on Terrorism." Responsibility is differentiated depending on the affiliation of the weapon to a particular group, which classifies the weapon, its number, the affiliation of the perpetrator to the armed criminal organization and the purpose of the use of the weapon. This section contains two sections related to trafficking in weapons: Section 1 (on the possession, trade and storage of weapons, ammunition or explosives) and Section 2 (on terrorism).

The Criminal Code of Europe sets out the historically long-established Criminal Code of the Federal Republic of Germany (Criminal Code of Germany) of May 15, 1871. Germany's Criminal Code is one of the world's oldest codified criminal laws. It does not envisage a large number of offenses related to the trafficking in weapons. Such a turn is overwhelmingly governed by administrative law or a separate legal act. In two articles of the Criminal Code of Germany the weapon acts as the object of crime. Thus, theft of personal firearms (for possession of which a special permit requires a special permit), machine gun, machine gun, automatic weapons, explosives, military weapons (item 7 h. 1 243) is considered a particularly serious type of theft. The manufacture of, obtaining for itself or for another person, storing or handing over to another person a firearm, explosive or substance or device intended to organize an explosion or fire for the purpose of attacking air or inland water transport (paragraph 4 h.). 2 316c). The Criminal Code of Germany does not have a criminal ban on the illicit use of arms without a specific purpose. But the use of weapons for unlawful purposes increases the punishment for the committed crime.

The Criminal Code of the Netherlands does not contain such acts where special objects or implements are weapons, ammunition, explosives, explosive devices; nuclear, biological, chemical weapons of mass destruction. In separate articles of the Criminal Code of the Netherlands it is stipulated that committing theft (art. 310), extortion (art. 317), appropriation (art. 321) of the said items entails criminal liability [11]. The Criminal Code of the Netherlands, unlike the codes already considered, does not contain any crime, in which the weapon or other substances considered by us are the object of the crime. The issue of arms trafficking may be governed by other regulations in the Netherlands.

As is well known, UK law is not codified. Responsibility for the illicit trafficking in weapons in the UK is governed by a large number of regulations, some of which apply to the whole country and the other to its individual territories. Moreover, some acts are adopted by parliament and have the level of laws, while others are issued by executive bodies with the prior authorization of the parliament (so-called delegated legislation). The peculiarity of these acts is that they, as a rule, are complex in nature, that is, they include rules of various branches of law, most often criminal and administrative.

In 1972, the UK Criminal Justice Act imposed strict liability for firearms offenses. In 1996, the UK Offensive Weapons Act increased the punishment for carrying a weapon that could be used for assault, increasing the maximum sanction from 2 to 4 years in prison. Criminal liability for carrying a firearm in public places has been increased to two years in prison.

On 1 July 1997, the Law on Small Arms in Personal Use was put into effect in the United Kingdom with the relevant supplement, which prohibited the possession of small arms of small caliber to all citizens of the country. The adoption of the same law on small arms was expected later after being considered in the British Parliament.

In addition to European countries, in our opinion, it is advisable to consider the experience of other foreign countries that are not in the European space.

In 1968, the United States passed two important laws to combat crime, including the fight against arms trafficking: the Gun Control Act and the General Crime and Safety Control Act on the streets (Omnibus Crime Control and Safe Streets Act). Pursuant to the Firearms Control Act, the types of licenses were determined depending on the type of weapon and explosives. All parties to such an agreement must have appropriate authorization. The Law stipulates that the parties to the agreement are obliged to register their business transactions in accordance with a provision established by the Ministry of Finance. If the license holder violates the legal conditions for conducting business related to firearms, the Minister of Finance has the right to terminate his license early. A license for entrepreneurial activity is not granted, and weapons are not sold to the following categories of citizens: convicted of a serious crime; accused of a serious crime and hiding from criminal proceedings; patients with mental illness and recognized by such a court; to those in treatment at a psychiatric hospital, to drug addicts.

According to this law it is forbidden to sell handgun firearms to persons under 21; rifles and carbines – to persons under 18; firearms – to persons released from the United States Armed Forces for acts of dishonor; non-US citizens, foreign nationals who reside illegally in the United States. The gun control law provides for severe sanctions. Yes, providing false information in an application for the purchase of a weapon is punishable by imprisonment for a term up to 5 years and / or a fine of up to $ 5 thousand.

According to another regulation – the United States Federal Armed Career Act (1984) – a person who has committed a felony using a firearm and has three or more convictions for robbery or theft with penetration is punishable by imprisonment for a term of 15 years without parole.

Strict sanctions are applied to committing crimes in the field of illicit trafficking. Thus, in the United States, the person who committed the theft of a firearm, explosives, is punishable by imprisonment for a term up to 10 years and / or a fine (Article 844, 924 of Section 18 of the US Code). A more severe punishment is imposed on a person who has conspired with others to commit a crime related to the import or import of firearms or ammunition. Such a person shall be punished by imprisonment for a term up to 20 years and / or a fine (Article 924 of Section 18 of the US Code).

Conclusion. The modern historical period is characterized by the active activity of many countries in the world to improve their criminal legislation. New criminal codes have been drafted and adopted by the legislators of Germany, Austria, Spain, France. The experience of other states makes it possible to develop their own criminal law with greater efficiency. It is worth noting that the laws of several US states impose severe sanctions on crimes related to the use of firearms. 18 states, such as Arizona, Michigan, Florida, South Carolina, provide for such sanctions. In the 1990s, steps were taken in many western countries to increase the stringency of legislation regarding the sale of firearms to the public on the one hand and to withdraw it through voluntary extradition, including for monetary consideration – on the other. It should also be noted that in the vast majority of foreign countries, crimes committed with the use of firearms and explosives are classified as particularly serious by law.

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Summary

The article deals with the issue of criminal liability for the illegal trafficking of weapons in the criminal law of the countries – members of the Commonwealth of Independent States, Europe and the United States of America.

***Keywords**: criminal liability, weapons, illicit trafficking, explosives, ammunition, weapons possession, weapons storage, arms trafficking, weapons production, weapons transfer.*

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ORGANIZATIONAL PECULIARITIES OF CONDUCTING INDIVIDUAL (INVESTIGATIVE) ACTIONS IN THE INVESTIGATION OF CRIMES IN THE FIELD OF THE AGRICULTURAL COMPLEX

Володимир Єфімов. ОРГАНІЗАЦІЙНІ ОСОБЛИВОСТІ ПРОВЕДЕННЯ ОКРЕМИХ СЛІДЧИХ (РОЗШУКОВИХ) ДІЙ ПРИ РОЗСЛІДУВАННІ ЗЛОЧИНІВ У СФЕРІ АГРОПРОМИСЛОВОГО КОМПЛЕКСУ УКРАЇНИ. У статті досліджуються організаційні особливості проведення окремих слідчих (розшукових) дій при розслідуванні злочинів в сфері агропромислового комплексу України. Акцентується увага на послідовності проведення слідчих (розшукових) дій при розслідуванні економічних злочинів, що вчинюються в агропромисловому комплексі, яка залежить від способу виявлення, закріплення та збереження інформації, а також черговості виявлення й фіксації слідів злочинного посягання. Висвітлюються задачі проведення слідчого огляду: – фіксація та процесуальне оформлення місця, де відбувалось вчинення злочину; –

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виявлення та фіксація слідів злочину як матеріальних так і «інтелектуальних». Вказано, що в якості свідків можуть бути допитані наступні категорії осіб: 1) працівники банківських установ; 2) працівники державних установ (закладів, організацій) сфери управління органу державної виконавчої влади (Українського державного фонду підтримки фермерських господарств і його регіональних відділень, Головних управлінь (управлінь) агропромислового розвитку обласних (районних) державних адміністрацій та інших); 3) керівники сільгосппідприємств та їх секретарі й помічники; 4) головні бухгалтери та інші працівники фінвідділів (відділень) сільськогосподарських підприємств; 5) працівники науково-дослідних установ та навчальних закладів; 6) працівники підрядних фірм з будівництва, реконструкції споруд та приміщень; 7) інші особи.

Також зосереджується важливість того, що якісно зафіксована інформація в наступному дозволить правоохоронцям вдало побудувати версії про можливу причетність до злочинів конкретних осіб, також від якості проведення огляду можливого місця вчинення зазначеної категорії злочинів, залежить успіх їх подальшого досудового розслідування. відзначити, що знання слідчим і оперативним працівником основних організаційних аспектів проведення тих чи інших слідчих (розшукових) дій, переліку реалізованих пошукових заходів у справах про злочини у сфері агропромислового комплексу, дозволить йому грамотно і успішно вирішувати поставлені перед ним завдання по виявленню, розкриттю і повному розслідуванню злочинів в зазначеному секторі економіки України.

***Ключові слова**: агропромисловий комплекс, слідчі (розшукові) дії, огляд документів, обшук, допит свідків, слідчий, оперативний працівник.*

Problem statement. 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, not the best, which have affected the provision of one of the functions of the National Police – the protection of the economy, namely the fight against economic crime. 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.

Analysis of publications that stated solving this problem. The legal bases of peculiarities and organization of exposing economic crimes, especially the implementation of this activity in relation to certain sectors 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. Vasilinchuk, V.Ya. Gorbachevsky, 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. Nikiforchuk, V.L. Ortynsky, V.I. Litvinenko, V.I. Lebedenko, K.M. Olshevsky, I.V. Servetsky, V.D. Pcholkin; O.O. Savchenko, O.P. Snigerev, A.I. Fedchak and others.

The article's objective is to analyze some aspects related to organizational peculiarities of conducting separate investigative (investigative) actions in investigating crimes in the sphere of agro-industrial complex of Ukraine.

Basic content. Today, the investigative practice of investigating crimes in the agro-industrial comp lex (AIC) of Ukraine proves that the sequence of application of investigative (investigative) actions 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.

The most common and effective investigative (investigative) actions in the investigation of crimes related to the use of budgetary funds in AIC are the review of documents, searches and interrogation of witnesses [1, c. 99].

Examination of materials of criminal proceedings indicates that the place of committing crimes in the field of agriculture may be: – office of the chief accountant or other premises of the enterprise or institution; – place of transfer of funds at registration of documents; – the place of conclusion of the contract of sale of finished goods, equipment, raw materials or contract for the performance of any services and the like.

Of all investigative (investigative) actions, the review is the most widespread, as it is most commonly used by law enforcement officials in the course of criminal proceedings being opened and investigated. Forensic research is defined primarily as a generic, collective concept that integrates all types of review to which the investigator (an overview of the scene, terrain or premises, objects, documents, etc.) [2, c. 28].

The crime scene must be inspected immediately. This is due to the dynamics of the crime of this type, as well as the specifics of exposing a person or group of persons involved in

the commission of criminal acts, or the identification of caches where they may be found exposing evidence. In addition, a crime scene inspection provides an opportunity to understand whether a specified crime is ongoing or not [3].

The main tasks of conducting an investigative or inspection carried out by operatives are: – fixing and procedural registration of the place where the crime took place; – detection and fixation of the traces of crime, both material and "intellectual".

Inspecting copies of accounting documents, inspection materials, or audits of farms is the primary task of identifying notes, corrections, and the like. in documents reflecting the postings of postings for completed work or sales of finished products.

Particular attention should be paid to reviewing the possible crime scene. As a rule, crime scene in the sphere of agriculture is: – office of the chief accountant or other premises of the enterprise where financial issues of economic activity can be discussed; – place of transfer of funds or signing of documentation; the place of conclusion of contracts for the sale and purchase of equipment or other contracts for the performance of any services for the benefit of customers.

During the inspection, first of all, they pay attention to notepads, workbooks, notebooks that are on the desks of managers, accountants and other persons related to accounting documents. Pay attention to the trash cans where there may be drafts or broken documents. The most careful way is to check the niches of the tables, look at the walls for paintings, posters, as well as other places where it is possible to conceal cash, valid contracts of sale of property on the balance sheet of the company, other accounting documents confirming the so-called "black" accounting. Also, special attention is paid to copies of various certificates, contracts of sale. If necessary, documentation of interest to the investigator or operative is carefully described in the record and removed for further procedural steps.

In the case of equipment purchased at the expense of budget funds, in this case it is necessary to conduct an inspection of the premises where the said property is stored or used, namely garages, other warehouses, parking places of vehicles. When identifying documents related to transportation of property, it is necessary to check them by date, quantity, place of transportation, as well as the actual availability of this property.

It should be noted that the success of their further pre-trial investigation depends on the quality of the review of a possible crime scene. It is necessary to keep in mind the timeliness and lawfulness of certain investigative (investigative) actions in order not to violate the requirements of criminal procedural law. The implementation of most of the developed state measures, programs to overcome the shadow economy in the agro-industrial complex of Ukraine is possible only on condition of political will and public support of this sphere to eliminate the causes and conditions that lead to a significant spread of criminalization of socio-economic relations of agricultural production.

In criminal proceedings, fraud, misappropriation, misappropriation of property, or misappropriation through the abuse of office, most often, the materials of audits or direct testimony of the employees of the enterprises themselves about committing these crimes are the beginning of the opening of proceedings.

Often, there is an increase in economic crime with violent acts involving firearms and explosive devices. There are cases where so-called "white-collar" criminals seek the help of criminal authorities in order to obtain protection from influential persons in the criminal world with the ability to use weapons, explosive devices. The latter may intimidate possible witnesses or destroy the very evidence of economic crimes, which significantly complicates the process of investigating crimes in the specified category of criminal proceedings.

It should be noted that qualitatively recorded information in the following will allow law enforcement officers to successfully build versions of possible involvement in specific individuals' crimes, as well as the quality of the review of a possible crime scene, depending on the success of their further pre-trial investigation. It is necessary to keep in mind the timeliness and lawfulness of certain investigative (investigative) actions in order not to violate the requirements of criminal procedural law.

During the investigation of crimes related to the use of budget funds in the agro-industrial complex, the following categories of persons may be interrogated as witnesses: 1) employees of banking institutions; 2) employees of state institutions (institutions, organizations) of the sphere of management of the state executive body (Ukrainian State Fund for Support of Farms and its Regional Branches, Main Departments (Departments) of Agroindustrial Development of Regional (District) State Administrations and others); 3) heads of agricultural enterprises and their secre-

taries and assistants; 4) chief accountants and other employees of financial departments (branches) of agricultural enterprises; 5) employees of research institutions and educational establishments; 6) employees of contracting firms for construction, reconstruction of buildings and premises; 7) other persons (relatives or friends of the suspect) [1, c. 101].

The main tasks that the investigator should set during interrogation are to establish the fact of committing the crime, to study the identity of the respondent (suspect), as well as to identify the causes and conditions conducive to the crime. Of great importance in the interrogation will be his preparation. The main task in this aspect of the action will be a competent choice of the time of the questioning. Incomplete examination of all material pertaining to the case, as well as the investigator's incompetence in understanding how to commit theft (misappropriation, misappropriation, fraud, or fraud) of budgetary funds allocated for the development of the agro-industrial complex can cause irreparable damage to criminal proceedings [4].

The survey of practitioners allows to conclude that the interviewed person realizing that the investigator does not fully possess the information on the crime being investigated or does not understand the mechanism of its commission, may feel confident that in the future it may adversely affect the results of the investigators (investigative) actions in criminal proceedings. Postponing the same interrogation indefinitely is also inappropriate. In our view, it would be more rational to conduct the first interrogation after collecting all the evidence at least one episode (if the case is multi-episode).

As a rule, preparation for the interrogation should consist not only in the study of the suspect's personality, but also in the study of the budget organization in which the crime took place, the peculiarities of its functioning, the conduct of business operations and transactions therein. A written plan must be drawn up before questioning. How the investigator will work in the process of investigative (search) action. A thoughtful, well-prepared written plan gives greater confidence to the investigator that he will not forget any circumstances of the case, will not miss the details of the investigation. In our view, the plan of interrogation in criminal proceedings should be divided again into episodes that have already been proven, with reference to the letters of the criminal proceedings, because the investigator, in a hurry turning through the pages of criminal proceedings, will look to the suspect in a convincing picture of his guilt will be proven and the conduct of the investigator will leave the impression of unprofessional law enforcement.

The next detail required for a successful interrogation will be the identity of the suspect himself. Comprehensive study of personality can give us a more complete picture of the mechanism of the crime, the number of episodes and other details. Here the whole portrait of the suspect is established, whether he committed this crime of this kind, what positions he held before, or whether he is still complicit in the crime under investigation. All this will be useful to know to predict the behavior of the interviewee and to build the tactics of the interview.

It is very important for the investigation that not only the investigators of forensic versions be nominated, but also the participation of an operative employee who conducts operative-search support of conducting investigative (investigative) actions. Joint efforts are aimed at establishing the features of the mechanism of crime by the interviewee, which the investigator will need to pay attention to in the process of establishing contact at the psychological level. Further versions put forward by investigators should be verified.

It should be noted that interrogation of relatives in criminal proceedings will be of considerable importance. In this aspect, the actions of an operative employee who seek to establish such relatives or close relationships that will agree to cooperate with the investigation play an important role, since these individuals have a constitutional right not to testify. Their interrogation is necessary in all cases: when the person is wanted, when the location of the main suspect is known to us, but the accomplices can hide and continue to resist the investigation. First, if a person is wanted, then relatives can know the possible location of the person. Second, interrogation of relatives is largely related to the disclosure of personal information, and in some cases intimate. Third, in the case of material interest on the part of relatives, the investigator may be able to get serious pressure from them [4].

During the interrogation of the suspect's relatives, the following information should be found out: – composition of the suspect's family; – the presence of relatives on the territory of the countries of the former Commonwealth of Independent States and other countries; – what education the suspect received, the name and location of the school with whom he or she maintains contacts; – if it is related to military service, if served, the name, location and number of the military unit and with whom it maintains contacts; – previous places of work, what positions he occupied and in what years, reasons for dismissals or transitions; – the financial status

of the suspect, what big purchases he has been making lately, what property belongs to him and his family; – whether the hobby has a suspect or other inclination or hobby.

Conclusions. As practice shows, one of the effective ways of collecting information and the identity of the suspect is to receive a one-sided negative characteristic of the suspect. In this case, the interrogated person will correct and add information about the identity of the suspect, his / her circle of acquaintances, hobbies, etc.

To summarize, it should be noted that the knowledge of investigators and operatives of the basic organizational aspects of the conduct of certain investigative (search) actions, the list of implemented search measures in cases of crimes in the field of agro-industrial complex, will allow him to competently and successfully solve his task. , disclosure and full investigation of crimes in the specified sector of the Ukrainian economy.

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Summary

The organizational features of conducting individual investigative (investigative) actions in investigating crimes in the sphere of agro-industrial complex of Ukraine are investigated in the article. Attention is drawn to the sequence of investigative (investigative) actions in the investigation of economic crimes committed in the agro-industrial 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**: agro-industrial complex, investigative (search) actions, examination of documents, search, examination of witnesses, investigator, operative worker*.

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ORGANIZATIONAL FEATURES OF OPERATING AND SEARCHING SECURITY OF WORKERS OF CUSTOMS OF UKRAINE

Інна Єфімова. ОРГАНІЗАЦІЙНІ ОСОБЛИВОСТІ ОПЕРАТИВНО-РОЗШУКОВОГО ЗАБЕЗПЕЧЕННЯ БЕЗПЕКИ ПРАЦІВНИКІВ МИТНИЦІ УКРАЇНИ. Досліджено організаційні особливості оперативно-розшукового забезпечення безпеки працівників митниці України. Акцентується увага на висвітлені теоретично сформульованих та емпірично доведених положень і рекомендацій щодо оперативно-розшукового забезпечення безпеки працівників митниці та запропоновано шляхи удосконалення цієї діяльності з урахуванням реформування оперативно-розшукового законодавства та безпосередньо положень нового Кримінального процесуального кодексу України.

Підкреслюється, що визнаючи значимість здобутків науковців, оперативно-розшукове забезпечення безпеки працівників митниці й досі залишається актуальним. Можливо публічне обговорення зазначених проблем підвищить ефективність оперативно-розшукової практики забезпечення безпеки не тільки працівників митниці, а й інших правоохоронних органів України у контексті глобального реформування законодавства України.

Наголошено, що велике значення для правового регулювання оперативно-розшукового 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.

Вказано, що комплекс правових заходів, у першу оперативно-розшукових, 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 зробити операцію зі зміни зовнішності співробітника тощо). Для більш ефективної реалізації заходів, передбачених цими законами, необхідно ввести до структури Державної фіскальної служби України спеціальний підрозділ, на який буде покладено вирішення заходів безпеки або який штатно можна ввести в управління власної безпеки працівників органів Державної фіскальної служби України.

***Ключові слова**: оперативно-розшукова діяльність, негласні слідчі (розшукові) дії, оперативно-розшукове забезпечення, безпека, працівники митниці, підрозділи власної безпеки, Державна фіскальна служби України.*

Problem statement. 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 corrupt 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, 17 crimes were registered against customs officers in 2016, 23 crimes in 2017, and 21 crimes in 2018.

Analysis of publications that stated solving this problem. 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. Anufriyev, K.V. Antonov, O.M. Bandurka, V.I. Vasylinchuk, S.M. Gusarov, 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.Yo. Nikiforchuk, V.A. Nekrasov, S.V. Slinko, S.V. Obshalov, V.L. Ortynsky, M.A. Pogoretsky, D.V. Priymachenko, V.D. Pcholkin, V.S. Sapsay, V.V. Topchiy, V.G. Teliychuk, O.V. Khusainov, S.S. Chernyavsky, O.O. 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.

Basic content. In the science of the legal cycle, increasing attention is paid to the research of investigative and operational security of law enforcement officials and employees of the customs of Ukraine. Given the changes in the structure and dynamics of crime, there is a corresponding specialization of research in the analysis of operational security search of the security of law enforcement officers by the relevant categories of operational investigation cases or interaction with individual operational units of the National Police.

The laws of Ukraine "On State Protection of Court and Law Enforcement Workers" and "On Ensuring the Safety of Persons Participating in Criminal Procedure", which provide for the system, are of great importance for the legal regulation of the operational and search security of the Customs officers of Ukraine. measures to prevent the performance of assigned duties and the exercise of the rights conferred, as well as encroachment on the life, health, housing and property of these persons and their close relatives in bunch of official activities.

The complex of legal measures, in the first operational search, must guarantee the employees and their close relatives their legal, physical, psychological protection and protection of non-property rights and freedoms in case of necessity. But many problems arise when implementing security measures. First of all, the mechanism of implementation of these measures, the speed and promptness of carrying out the appropriate measures, the proper logistical support for their implementation (for example, it is necessary to make an operation to change the appearance of an employee, etc.), has not been worked out. For a more effective implementation of the measures provided for by these laws, it is necessary to introduce into the structure of the State Fiscal Service of Ukraine a special unit, which will be entrusted with the decision of security measures or which can be permanently introduced into the management of own security of employees of the State Fiscal Service of Ukraine [1].

The study of the guarantees of legal protection of the employees of the Customs of Ukraine suggests that this area does not fully meet the requirements of the time. The main reasons for this situation are the deficiencies in the structure of the State Fiscal Service of Ukraine's own security units and the declarative nature of their functions; a significant number of tasks assigned to these units; uncertainties of the peculiarities of the organization of operational and search activity of the units of own security of the State Fiscal Service of Ukraine; inadequate regulation of the activities of these units; imperfection of information-analytical work and lack of criteria for evaluation of objects of preventive (preventive) influence of the units of own safety; lack of a clear system of performance appraisal indicators; insufficient development of the system of selection of candidates for work in the internal security units of the State Fiscal Service of Ukraine on the basis of the psychological model of personality of the operative employee; the absence of an effective mechanism for the interaction of the units of their own security with the operational units of the National Police of Ukraine and other law enforcement agencies.

Analyzing the definitions of scholars, the notion of guarantees of legal protection allowed us to formulate our own interpretation. Yes, guarantees for legal protection of customs officers – is a set of basic and auxiliary measures envisaged by the Customs Code, the Criminal Procedure Code and the legislation of Ukraine on operative-search activity, aimed at reducing the level of dangerous factors to the real possible minimum, which allows to guarantee the

preservation of life and health, normal mental state and capacity of workers Customs in the performance of functional duties, professional (operational, operational, combat) tasks in both everyday and extreme, emergency situations.

According to this definition, the main and ancillary measures of legal safeguards are considered. The main activities include: professional; spiritual; legal; tactical; psychological and pedagogical; physical; individual. Auxiliary – personnel; organizational; psychomotor; governing; medical; material and technical; social; economic.

Investigations into criminal proceedings, the opinions of scientists and practitioners have shown that, within the operational and search characteristics, the determinants that contribute to the commission of crimes against customs officers are of the greatest interest. These include objective and subjective factors of economic, political, ideological, cultural, moral and psychological, social, socio-biological, legal nature [2].

The results of the questionnaire survey of the State Fiscal Service of Ukraine's employees determined that among the types of crimes they were able to prevent or stop were crimes provided for by the Criminal Code of Ukraine: article 190 Fraud, article 342 Resistance to a Law Enforcement Officer, article 369 Offering, Promising or Misappropriating an Official ", article 370 “Provocation of bribery”, article 343 of the Criminal Code of Ukraine “Interference with the activity of a law enforcement officer”, article 345 “Threat or violence against a law enforcement officer”, article 347 “Deliberate destruction or damage to property of a law enforcement officer”, article 348 the life of a law enforcement officer, member of a public order and state border guard, or a serviceman, article 349 "Capturing a representative of a government or law enforcement officer as hostage", article 350 "Threatening or abusive behavior against an official or a public official".

Conflicts in interpersonal relationships play a significant role in committing offenses and crimes against customs officers. The encroachment and encroachment on the personality of customs officers is not only an encroachment on their fundamental rights, but also on the rights of any person, it is an encroachment on the security of the entire society.

Clashes between the two parties to the conflict may be triggered by malpractice on the part of the customs officer and the immoral behavior of the perpetrators. The specificity of customs officers' activity causes the presence of multivariate conflict situations. Authorities empowered by customs officers, the need to apply coercive measures to effectively counter criminal offenses in the customs sphere, the conditions of constant bilateral struggle, other antagonistic conditions of customs activity are the main source of any conflict situations that arise in the workplace [3].

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The practical implementation of the model of operative-search support of criminal proceedings for crimes against customs officers is carried out under the influence of such operational-tactical situations [4].

The first situation is characterized by the fact that the operational units carry out the detection and exposition of latent and conspecific types of these crimes independently at the stage of verification in the form of operational verification or development. Documented in these organizational forms allows for the comprehensive use of the entire arsenal of covered investigative (search) actions to detect criminal signs, actual data on the tools and methods of committing acts of self-violence, objects of harm, harm to them, the behavior and actions of persons, who committed them, etc.

The second situation is typified by the mentioned crimes, which are committed under the conditions of obviousness or by methods and actions that do not make it difficult for them to be identified by the victims, eyewitnesses, others, and even more so by professional operatives and investigators of law enforcement agencies. This group of crimes consists of those committed by single or situational groups using brute force, intimidation of their victims, in places accessible to the presence and observation of others. In this situation, the adoption of operational and tactical decisions on conducting covered investigative (search) actions and the application of criminal procedural function to expose and investigate crimes against customs

officers may be carried out solely by the individual evaluation of the material under investigation and should proceed from the objective possibility of involvement for these purposes. forces and means of the State Fiscal Service of Ukraine. Covered investigative (search) actions can and should be planned and carried out purposefully. Limited to investigative and organizational-administrative measures, this cannot be achieved.

The third situation is characterized by the disguise, suddenness and organization of criminal activities that have been left out of social control and with the highest priority of covered investigative (search) actions or provide their security with counteraction to the law enforcement function of the state. As a rule, it manifests the actions of organized crime groups that commit serious acts of self-violence ("ordered" killings, robberies against objects of customs authorities, gangster attacks on goods and motor transport of customs, hostage-taking, and the like). Covered investigative (search) actions are mainly used after serious acts of violence and violence and criminal proceedings against them, and promptly-investigating its provision creates favorable conditions for their complete and objective investigation.

Effectiveness of the system of forces, means and methods of operative-investigative activity in the operative-investigative support of criminal proceedings in cases of self-aggravated crimes against customs officers is dependent on organizational and tactical factors.

The reasons that reduce the effectiveness of the operative-search support at the stage of pre-trial investigation in criminal proceedings about self-aggrandizing crimes against customs officers are: the shortcomings of the regulatory regulation of this sphere of activity; low level of operational readiness of Ukrainian criminal police forces and means; mismatch of the level of organization of work to the requirements of time; insufficient level of professional training of operatives; the lack of modern scientific developments regarding the use of innovative technical capabilities for conducting covered investigative (search) actions.

Features of the operative-search support of the court proceedings for criminal proceedings against crimes against customs officers are the following: interaction of operative officers of the National Police with operative employees of the units of the State Fiscal Service of Ukraine's own security units and employees of the court and prosecutor's office regarding the timely detection of criminal acts; the duty of law enforcement agencies, in the face of entities of search and operative activity, to promote the practical achievement of the principle of inevitability of liability of perpetrators for committing crimes against customs officers; in addition to establishing objective truth during the trial, search and operative support is aimed at overcoming the counteraction from the criminal environment and neutralizing the criminal influence on the participants of criminal proceedings for crimes against customs officers; comprehensive use of covered forces and the entire system of operational-search methods implemented in specific activities [5].

The main directions for improving the activities of customs officers in preventing crimes against them are the following: strengthening the customs base of the customs (equipment of premises by means of video surveillance, modern means of personal protection); enrollment in the program for students of the Law Faculty of the University of Customs and Finance of the subject "Personal safety of customs officers"; enrollment in the course of initial training, retraining and advanced training of the subject "Personal security of customs officers"; development and submission to the customs authorities of practical recommendations on the application of measures of physical influence, special means and firearms in extreme situations; conducting practical seminars in the territorial divisions of customs on personal safety of workers; the introduction in the customs of the mobile groups, the so-called "customs guard", which in the event of conflict situations during the performance of duties customs officers will provide legal assistance to both customs officials and offenders.

Conclusions. Customs officers are constantly fighting crime related to smuggling and violation of customs rules throughout the customs territory of Ukraine. Their professional activities are at risk for life. In today's context, when many business entities try to circumvent the law and do not pay customs duties, using any illegal methods, customs officers face considerable opposition when countering these crimes. That is why the personal safety of customs officers is of great importance in their professional activities.

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Summary

The organizational features of operational and search security of the customs officers of Ukraine are investigated in the article. Attention is drawn to the coverage of theoretically formulated and empirically proven provisions and recommendations on the operational and investigative security of customs officers and suggests ways to improve this activity in the light of reforming the operative and investigative legislation and directly the provisions of the new Criminal Procedure Code of Ukraine.

Keywords*: operational-search activity, covered investigative (search) actions, operative-search support, security, customs officers, units of their own security, State Fiscal Service of Ukraine.*

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TYPES OF EXPERTISE ASSIGNED IN THE INVESTIGATION OF CRIMES RELATING TO ILLEGAL USE OF BUDGET FUNDS IN THE FIELD OF HEALTH CARE

Валентин Бідняк. ВИДИ СУДОВИХ ЕКСПЕРТИЗ, ЩО ПРИЗНАЧАЮТЬСЯ ПРИ РОЗСЛІДУВАННІ ЗЛОЧИНІВ, ПОВ`ЯЗАНИХ ІЗ НЕЗАКОННИМ ВИКОРИСТАННЯМ БЮДЖЕТНИХ КОШТІВ У СФЕРІ ОХОРОНИ ЗДОРОВ`Я. Злочини, пов`язані з незаконним використанням бюджетних коштів у сфері охорони здоров`я, вчиняються високоосвіченими посадовими або службовими особами і мають свою специфіку. Для успішного їх розслідування працівникам органів досудового слідства необхідні додаткові знання в галузі медицини, економіки тощо. Коли йдеться про використання спеціальних знань, як з боку практиків, так і науковців особлива увага приділяється призначенню судових експертиз. Підтвердженням цього факту є аналіз результатів опитування працівників Національної поліції України, які займаються розслідуванням зазначеної категорії злочинів. Він показав, що у майже всіх випадках призначались різні види судових експертиз.

Серед загальновизнаних видів судових експертиз автором виокремлено ті, що найчастіше призначаються при розслідуванні злочинів пов`язаних із незаконним використанням бюджетних коштів у сфері охорони здоров`я. Об'єктами судово-медичної експертизи в злочинах, пов`язаних із незаконним використанням бюджетних коштів у сфері охорони здоров`я зазвичай є документи, а не особи.

Процесуальним підґрунтям їх призначення та проведення є ст. 242 КПК України, яка останнім часом неодноразово зазнавала змін. На сьогодні експертиза проводиться експертною установою, експертом або експертами, яких залучають сторони кримінального провадження або слідчий суддя за клопотанням сторони захисту у випадках та порядку, передбачених статтею 244 цього Кодексу, якщо для з'ясування обставин, що мають значення для кримінального провадження, необхідні спеціальні знання.

Зазначено, що для ефективної протидії злочинам, пов`язаних із незаконним використанням бюджетних коштів у сфері охорони здоров`я, використовують спеціальні знання у формі призначення судових експертиз, зокрема: економічних, товарознавчих, почеркознавчих, технічної експертизи документів, медичних, будівельно-технічних тощо. Кожна з них має певні організаційно-тактичні особливості, які необхідно враховувати задля збільшення доказової бази та дотримання процесуальних на досудовому слідстві.

***Ключові слова**: судові експертизи, розслідування злочинів, злочини в бюджетній сфері, галузь охорони здоров'я, досудове слідство.*

Problem statement. Crimes related to the illegal use of budget funds in the field of health care are committed by highly educated officials or officials and have their own specific nature. Successful investigation by pre-trial authorities requires additional knowledge in medicine, economics, etc. When it comes to the use of special knowledge, both by practitioners and scientists, particular attention is paid to the appointment of forensic expertise. Confirmation of this fact is the analysis of questionnaire data of a survey of practitioners of the National Police of Ukraine who are engaged in the investigation of the specified category of crimes. It demonstrated that almost in all cases different types of forensic expertise were assigned. The procedural basis is art. 242 of the Criminal Procedural Code of Ukraine which in recent years was amended several times. Currently, the expertise is conducted by an expert agency, expert or experts involved by the parties of the criminal proceedings or by an investigating judge at the request of the party of defense in cases and procedure provided for in Article 244 of this Code, if in order to clarify circumstances relevant to the criminal proceedings special knowledges are requested.

Analysis of publications that started solving this problem: use of special knowledge and the issue of the assignment and conduct of forensic expertise has been thoroughly re-

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searched by such well-known forensic scientists as: T.V. Averyanova, R.S. Belkin, A.I. Vinberg, G.I. Gramovych, A.V. Ischenko, N.I. Klimenko, V.O. Konovalova, U.G. Koruchov, V.K. Lysichenko, V.G. Lykashevich, E. D. Lyk'yanchikov, I.V. Pyrig, O.R. Rosyns'ka, M.V. Saltevs'kyy, M.Y. Segay, I.Y. Fridman, V.U. Shepit'ko, O.R. Shlyahov, M.G. Sherbakovs'kyy and others. Some issues of investigation of economic crimes were investigated by A.F. Volobuyev, G.A. Matusovsky, R.L. Stepanyuk, however, issues about types of forensic expertise to be assigned in the investigation of crimes related to illegal use of budget funds in the field of health care remain beyond scientific boundaries.

The article's objective. Among generally acknowledged types of forensic expertise are those that are most often assigned to investigate crimes related to the illegal use of budget funds in the field of health care.

Basic content. Crimes related to the illegal use of budget funds in the field of health care include crimes that are committed when drawing up, reviewing, approving and executing budgets, as well as exercising control over the implementation of the budget. These are crimes provided for in the Articles 191, 210, 211, 222, 364, 365, 366, 367, 368 of the Criminal Code of Ukraine. According to scientists, the most important in the cases of budget crimes are: forensic and economic expertise, examination of materials, substances and articles, technical examination of documents, handwriting expertise, examination of computer hardware and software, commodity, construction and technical expertise. In some cases, scientist provides expertise of special chemicals and expertise of video recording [4, p. 106].

The results of the study of criminal proceedings on the specified category of crimes indicate that in 92% – forensic expertise were appointed, in 86% product information expertise, 46% – handwriting expertise, 21% – technical examination of documents, 28% – technical and construction, 10% – medical, 9% are other types of expertise.

Usually all the expertise are multi-objective and require much time for preparation of materials and for their direct research. Therefore, it is advisable to use consultative form of special knowledges both during preparation of forensic expertise and during its assigning and conducting. So let us define organizational and tactical features of the assignment of each one.

During the appointment of forensic expertise (research of accounting, tax and reporting documents, study of documents on economic activity of enterprises and organizations, study of documents of financial and credit operations) on the crimes of the specified category the objects of the study are: contract between the supplier and the institution of health care, invoice, specification, act of acceptance of goods or services performed, tax reporting, project documentation (project, estimate, in conclusion), the procurement plan, the account of the funds of the supplier, documents on the origin of goods (disinfectants, medicines, medical equipment, medical products, medical furniture, etc.). The main objective in this case is to establish the amount of loss and who caused the loss. When investigating the misuse of budget funds, it is advisable to provide an audit act.

The objects of the handwriting expertise in the investigation of the above-mentioned crimes may already be investigated by other expertise. This may be a contract between a provider and a healthcare facility, a specification, an invoice, an act of acceptance or transfer of a product or services performed, which contain controversial signatures and manuscripts made on behalf of others. This fact requires the detective or criminal investigator, acting on the detective's instructions, to prepare the comparative material carefully. In such cases, experimental specimens which must be taken from both the person named in the document as the executor and the person, suspected in performing the disputed record or signature are of particular importance. In other case, if the person does not refuse to give samples for expert research, it is obligatory to select samples of his signatures on his own behalf and on behalf of the person named in the document as an executor. When assigning forensic expertise, the prosecution party usually tries to answer the main question: Is the signature or manuscript in the specified columns of the relevant document made by a certain person?

When there is a need to establish a method of making a document form, the sequences of intersected strokes in the document a technical expertise of documents is assigned. The issue of identification of prints remains relevant, although their availability is optional.

The objects of forensic expertise of crimes related to the illegal use of budget funds in the health care sector are usually documents, not persons. For example, these may be the conclusions of the medical and social expert commission. Medical and social expertise is carried out to persons applying for disability, in the direction of the medical-preventive health care institution after carrying out diagnostic, medical and rehabilitation measures in the presence of information confirming

persistent disturbance of the body's functions caused by illnesses, consequences of injuries or consequences of traumas that cause life-limiting effects. Medical and social expertise is carried out by medical and social expert commissions belonging to healthcare institutions [5]. A typical issue in such cases is the validity of establishing a disability group.

When investigating these crimes, it is advisable to appoint comprehensive expertise, which may include economic, construction, commodity, handwriting examination, etc.

As an example, let's mention the following fact. In 2018, in one of the health care institutions of Dnipropetrovsk region, in order to appropriate budget funds, hospital officials conspired with an individual entrepreneur agreed to renovate the building at an overpriced cost. Instead of developing the design documentation, the hospital officials made a defective act regarding which it was planned to carry out works on the reconstruction of the building with the use of materials that do not conform to state standard, namely, window blocks with an inappropriate indicator of the minimum allowable permissible value of the enclosing structure of residential and public buildings. Subsequently, under the results of bidding the abovementioned entrepreneur was recognized as a winner and made the supply of goods and services under much higher value. The USE staff collected materials, provided information to the Unified Register of Pre-Trial Investigationsand initiating a pre-trial investigation.

The investigator prepared a petition to a court for the appointment of a comprehensive examination. The court granted the request and made a decision on the appointment of a comprehensive product and construction and technical expertise to address the following issue:

1. What is the market value of metal-plastic window units with accessories that are actually installed on the site?

2. What is the actual cost of the construction work carried out at the site?

3. What is the difference between the stated cost in act # 1 of acceptance of completed construction works of form No. KB-2v and the actual cost of the completed construction works?

4. What is the actual cost of completed construction works on the site that meet the requirements of the State Security Standards (State Building Standards) and DSTU (State Standard of Ukraine), namely construction requirements, installation requirements, etc.?

The names of the expert specialties, depending on which specify the name of the assigned expertise, and a list of typical questions for each type of forensic expertise are set out in the scientific literature and normative legal acts. But it is worth asking only those questions that are directly necessary to investigate a particular criminal proceeding. Otherwise, the terms and cost of the examinations will be increased.

Conclusions. As a result, it should be mentioned that in order to effectively combat crimes related to illegal use of budget funds in the field of health care special knowledge in the form of forensic expertise, in particular: economic, commodity, handwriting, technical examination of documents, medical, construction, technical, etc are used. Each of them has certain organizational and tactical features that need to be taken into account in order to increase the evidence base and adhere to procedural pre-trial investigations.

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Summary

The scientific article explores the issues of determining the most important types of forensic expertise to be assigned in the investigation of crimes related to illegal use of budget funds in the field of health care. Regulatory acts and opinions of leading scientists on the subject were analyzed.

Keywords: *forensics expertise, crime investigations, budget crimes, healthcare, pre-trial investigation.*

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MEASURES OF CRIMINAL LEGAL NATURE FOR LEGAL ENTITIES: PREREQUISITES, GROUNDS AND CONDITIONS OF APPLICATION

Микола Крижановський. ЗАХОДИ КРИМІНАЛЬНО-ПРАВОВОГО ХАРАКТЕРУ ЩОДО ЮРИДИЧНИХ ОСІБ: ПІДСТАВИ ТА УМОВИ ЗАСТОСУВАННЯ. Визначено підстави та умови застосування заходів кримінального характеру стосовно юридичних осіб, а також передумови, підстави та порядок застосування заходів щодо подальшого кримінального провадження стосовно юридичних осіб. Проведено ознайомлення зі змістом окремих положень розділу XIV-I Загальної частини Кримінального кодексу України щодо застосування примусових заходів кримінального характеру стосовно юридичних осіб (штраф, конфіскація майна та ліквідація).

Розглянуто актуальні в цьому контексті питання та зроблено наступні висновки: 1) заходи кримінального характеру стосовно юридичних осіб розглядаються сукупно: а) примусові заходи кримінального характеру стосовно юридичних осіб (штраф, конфіскація майна, ліквідація); б) заходи, засновані на необгрунтованості здійснення подальших кримінальних проваджень щодо юридичної особи (звільнення юридичної особи від застосування заходів кримінального характеру); 2) застосування примусових заходів кримінального характеру по відношенню до юридичної особи можливо не тільки за наявності підстав, встановлених судом застосування таких заходів, але і за відсутності обставин, що перешкоджають прийняттю рішення про застосування таких заходів до юридичної особи, а також підстави звільнення юридичної особи від застосування

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примусових заходів кримінального характеру; 3) причинно-факторний комплекс реалізації заходу, що ґрунтується на необґрунтованості подальшого кримінального провадження стосовно юридичної особи, є сукупністю передумов та підстав, змістом яких є поєднання певної події та відповідної поведінки особи разом із констатацією певної обставини.

Ключові слова: *юридична особа, передумова, підстава, умова, застосування, заходи кримінально-правового характеру.*

Problem statement. Part 2 of the Article 4 of the Criminal Code of Ukraine (hereinafter referred to as the Criminal Code of Ukraine) declares that crime and punishment, as well as other criminal consequences of the act are determined by the law on criminal liability of Ukraine. Such criminal consequences of an act are the forcible consequences or those ones based on the unreasonableness of further criminal proceedings, measures of criminal nature in relation to legal entities.

In the Criminal Code of Ukraine, these other consequences are regulated in section XIV-I "Measures of Criminal Law on Legal Entities". The content of such forcible measures (fine, confiscation of property and liquidation) implies certain restrictions on the property or organizational legal nature. Measures, provided in Article 96-5 of the Criminal Code of Ukraine, are unreasonable to carry out further criminal proceedings against a legal entity due to the inability to sufficiently execute a preventive influence on a legal entity as a subject of criminal legal relations due to the expiration of limitation periods. The practical implementation of these measures of criminal nature in relation to legal entities establishes preconditions, grounds and conditions determined by law. There is no consensus in the doctrine of criminal law regarding the cause-and-effect implementation of measures of criminal and law nature. In this connection it would be desirable to draw the scientists' attention to the discussion regarding the definition of the preconditions, grounds and application of both compulsory conditions and those ones based on the unreasonableness of carrying out further criminal proceedings, measures of criminal nature in relation to legal entities.

Analysis of publications that started solving this problem. Investigations of measures of criminal nature in relation to legal entities have been in the sphere of attention of Grishchuk, Paseki, Panchenko, Provotorov. Some of the components were considered in the broader context of the study of the institute of criminal and law measures in the papers by Zaginy, Kozachenko, Mitrofanov, Knizhenko, Orlovskaya, Khavroniuk, Yashchenko and many other scientists. While giving due value to the scientific researches of the mentioned authors, it should be noted that many issues of the aforementioned problems remain to be solved and the solutions of some of them are not indisputable. Exactly such issues include the question of establishing the preconditions, grounds and application of both forcible conditions and those ones based on the unreasonableness of carrying out further criminal proceedings, measures of criminal nature in relation to legal entities.

The article's objective is to determine the application of prerequisites, grounds and conditions of both forcible and non-forcible measures, as well as those based on the unreasonableness of criminal proceedings and legal measures against legal entities.

Basic content. Familiarity with the content of certain provisions of section XIV-1 of the General part of the Criminal Code of Ukraine gives grounds to argue that the application of compulsory measures of criminal nature in relation to legal entities (fine, confiscation of property and liquidation) requires the legal enforcer to state the fact:

1) committing any of the crimes provided in Articles 109, 110, 113, 146, 147, Part 2-4, 159-1, 160, 209, 260, 262, 306, Part 1 and 2 , 368-3, Part 1 and 2 , 368-4, 369, 369-2, 436, 437, 438, 442, 444, 447 of the Criminal Code of Ukraine by an authorized person on behalf of and in the interest of a legal entity

2) committing any of the crimes provided for in Articles 258–258-5 of the Criminal Code of Ukraine by an authorized person on behalf of the legal person;

3) failure to fulfill the obligations imposed on an authorized person by the law or the constituent documents of the legal entity to take measures to prevent corruption which led to commiting any of the crimes provided in Articles 209 and 306, Part 1 and 2. 368-3, Part 1 and 2, 368-4, 369 and 369-2 of the Criminal Code of Ukraine.

Ponomarenko notes that the basis of application of these other measures of criminal nature for legal entities is related to certain behavior of individuals, since the legal entity is not recognized as the subject of a crime, that is, the subject capable of independently committing a criminal wrongful prohibition (crime) [1, p. 478]. In view of this, some scientists state that while committing a crime on behalf and in the interest of a legal entity, an authorized person may act even in joint paticipation with other criminal subjects (for example, an authorized per-

son involved in providing the unlawful benefit to a mediator), but in this case the authorized person must be his executor (coexecutor) [3, p. 298].

Therefore, criminal legal measures can be applied to a legal entity only in the presence of a certain (specifically defined by law) composition of the crime in the actions of an authorized individual. In this regard, the statement is worth supporting that the subject as per legal entity being proved in criminal proceedings has a specific legal nature in comparison with other types of subjects identified at the theoretical level. On the one hand, it is derivative, since the circumstances that make up its content begin to be established only in the presence of signs of a certain criminal offense in the actions of the authorized person of the legal entity, and their further proof automatically loses its meaning in case criminal proceedings against it are closed. On the other hand, the existence of grounds for criminal prosecution of an authorized person of a legal entity for crimes under Article 96-3 of the Criminal Code of Ukraine, is a prerequisite for proving additional, in comparison with Article 91 of the Criminal Procedure Code of Ukraine, to determine the type and size of a criminal-and-law measure applicable to a legal entity [4, p. 64, 112–112].

In the legal literature it is stated that the grounds to use the measures of criminal nature to a legal entity, provided in section XIV-I of the General part of the Criminal Code of Ukraine , are characterized by two aspects:

1) substantive and procedural. The substantive legal aspect is reflected in the provisions of Article 96-3 of the Criminal Code of Ukraine. The procedural aspect lies in the fact that the procedural basis for the application of crimina and law measures against legal entities is the conviction of a court against an authorized person who has committed a crime on behalf and in the interests of a legal entity [5, p. 8] Sometimes in the legal literature it is even stated that the procedural legal basis to use measures of a criminal nature to a legal entity is the entry into force of a guilty verdict of a court by which an authorized person is convicted for committing a crime on behalf (or on behalf and in the interests) of a legal entity Criminal Code of Crime [1, p. 480]. We cannot agree with this understanding of the procedural component of the application of criminal-law measures against a legal entity, since the procedural basis of such measures is not the conviction of a court against an authorized person of a legal entity, but the recognition of such an authorized person guilty of a crime and the commission of a crime (or) in the interest of the legal person. The verdict of the court is the procedural document in which the fact at the same time states that an authorized person commits a certain statutory crime and, as a consequence, the decision to apply a certain compulsory measure of criminal nature to such a legal entity . In this regard, it is hardly possible to agree that criminal law measures may be applied to a legal person after the entry into force of a conviction by a court of law, by which his authorized person is convicted of committing on behalf of and / or in the interests of a legal person. persons identified in the Criminal Code, because such a conclusion follows from the above doctrinal position. Hence the conviction of the court is not a procedural basis for the application of measures of a criminal nature in relation to a legal entity, but a procedural document in which they find their external manifestation of specific compulsory measures of a criminal nature in relation to a legal entity to be enforced in the event of such a sentence being enforced. together with the execution of punitive and other non-punitive measures of a criminal nature against an authorized natural person. By the way, the order of execution of judicially ordered criminal actions against legal entities is in the initial stages of scientific investigation and will surely be the subject of our further investigations.

But is it sufficient for a forcible measure to be imposed on a legal entity to establish solely the fact of the commission of an authorized person on behalf of and / or in the interests of a legal entity of a particular (specifically defined by law) crime? It seems that it is not. The fact is that, in the presence of the above grounds, compulsory measures of a criminal nature in relation to a legal entity may be applied to such a person only in the absence of circumstances that preclude the decision to apply such measures to the legal person, as well as grounds for the release of the legal person from enforcing the criminal measures [6, p. 246]. This point of view is supported by other researchers. The latter ones note that in the criminal proceedings the proof of commiting the crimes by an authorized individual provided in Article 96-3 of the Criminal Code of Ukraine, is not the sole (exclusive) prerequisite (basis) for bringing a legal entity to justice within the framework of the criminal law [4, p. 65].

It should be noted that circumstances which exclude the possibility of deciding on the application of some of the compulsory measures of criminal nature in relation to the legal entity, have already been the subject of scientific research of domestic scientists. Such circumstances constitute the facts provided in the Criminal Code of Ukraine, in the presence of which it is impossible or prohibited to apply measures of a criminal nature in the form of a fine or

liquidation (together with confiscation of property) in the case of commiting certain crimes by certain authorized persons. For example, according to Part 1 of Article 96-4 of the Criminal Code of Ukraine to legal entities belonging to the public sphere, such basic measure of criminal nature as a fine may not be applied in the case of commiting any crime provided by points 1 and 2 of part one of Article 96-3 of the Criminal Code Of Ukraine [8, p. 231-232].

As for such a condition for the application of compulsory measures of a criminal nature in relation to a legal entity as no grounds for exempting a legal person from applying the forcible measures of a criminal nature, it should be mentioned the following.

Exemption of a legal entity from applying of criminal – and-law measures in connection with the expiration of the limitation period (Articles 96-5 of the Criminal Code of Ukraine) can be evaluated only positively. Legislative regulation of the limitation period, which is associated with the impossibility of applying to the legal person compulsory measures of a criminal nature, due to the fact that eventually the commission of a socially dangerous act by an authorized person becomes non-essential. Moreover, long after the crime has been committed, it is difficult, if it is at all possible, to ensure the comprehensiveness and completeness of the investigation, since the evidence may be lost, the facts and circumstances surrounding the crime may be forgotten by witnesses [2, p. 344–345]. Finally, in the light of these circumstances, further pretrial investigation is simply inappropriate.

It should be noted that the practical implementation of the exemption of a legal entity from applying criminal and law measures against the legal entity in connection with the expiration of the limitation period (Articles 96-5 of the Criminal Code of Ukraine) requires the court to establish the prerequisites and grounds. Obviously, their absence is not a barrier to using the forciblemeasures against a legal entity. On the other hand, with their presence – the activity of the law enforcer, aimed at implementing the prescriptions provided by Article 96-6 – 96-9 of the Criminal Code of Ukraine, loses its meaning.

It should be noted that in the legal literature there is no consensus on the understanding of the cause and factor of exempting a legal entity from using of compulsory measures of criminal law nature. Thus, Mitrofanov notes that the substantive legal basis for the application of this type of release is a significant reduction of the public danger of the crime committed in connection with the expiration of a long time and the loss of public danger by a person who has prolonged law-abiding behavior after committing a crime [2, p. 345].

According to Yashchenko, the implementation of this measure of criminal influence is possible if there are, in the aggregate, prerequisites, grounds and conditions. The prerequisite for the release of a legal person from applying measures of criminal nature includes the substantive and procedural aspect. In the material aspect, such a prerequisite is the fact of the commission of a crime specified in Article 96-3 of the Criminal Code of Ukraine. In the procedural aspect a prerequisite is the solving of criminal proceedings against an authorized person by releasing from criminal responsibility under Article 49 of the Criminal Code of Ukraine or by releasing from punishment in connection with the expiration of limitation period under Part 5 of Article 74 of the Criminal Code of Ukraine, if the authorized person objected to releasing from criminal liability under Article 49 of the Criminal Code of Ukraine (Part 3 of Article 285 of the Criminal Procedure Code of Ukraine) and the guilt was nevertheless proved in full in the general procedure of criminal proceedings. The material basis for exempting a legal entity from the applying the measures of criminal nature is the expiration of statutory limitation periods. The conditions are the failure of the authorized person to re-commit any of the crimes specified in Article 96-3 of the Criminal Code of Ukraine, as well as the absence of the fact of the concealment of the authorized person from the pre-trial investigation officials and the court together with the fact of lack of information about the location of the authorized person [7, p. 301–308].

In our opinion, the cause and factor of the implementation of this other measure of criminal nature is a set of legal preconditions and established grounds. Such a prerequisite is, first of all, the proof of the commission by the authorized person in the interests and (or) on behalf of any of the crimes defined in Article 96-3 of the Criminal Code of Ukraine in the court . In this case there is a certain transformation of the grounds for applying measures of criminal nature to the legal entities into the prerequisite for exempting from applying such measures.

In addition, according Mitrofanov, the limitation period, provided in Article 96-5 of the Criminal Code of Ukraine, coincide with the terms of limitation of execution of the indictment against the authorized individual (Article 80 of the Criminal Code of Ukraine) and terms of bringing them to criminal responsibility (Article 49 of the Criminal Code of Ukraine) [2, with. 344], we are also inclined to support Yashchenko, quoted above, that the prerequisite of

this type of release is also the procedural aspect defined by him.

As for the actual ground for the release of a legal entity, both private and public, from applying of the foregoing compulsory measures of a criminal nature, we are inclined to believe that such a basis is a combination of a certain event and the relevant behavior of a person together with the statement of a particular circumstance. Such a definite event is the end of the terms defined in Part 1 of Article 96-3 of the Criminal Code of Ukraine. Their action commences from the day of committing any crime referred to Article 96-3 of this Code by the authorized person and ends with the verdict coming into the force. There are the following terms:

1) three years in the case of a petty crime ;

2) five years in the case of a misdemenour;

3) ten years in the case of a serious crime;

4) fifteen years in the case of a felony .

The second component of the grounds for exempting a legal entity from applying the measures of a criminal nature is the following type of post-criminal behavior of the authorized person, together with the statement of the available individual circumstance:

1) failure to conceal the authorized person who committed any crime specified in Article 96-3 of this Code on the purpose of evading criminal liability and the availability of information on the location of such authorized person;

2) not recommitting any crime from the list specified in Article 96-3 of the Criminal Code of Ukraine.

Conclusions. The foregoing allows us to draw the following conclusions:

1) measures of criminal nature in relation to legal entities are considered in the aggregate: a) forcible measures of criminal nature in relation to legal entities (fine, confiscation of property, liquidation); b) measures based on the unreasonableness of carrying out further criminal proceedings against a legal entity (exemption of a legal entity from the application of measures of a criminal nature);

2) applying the forcible measures of a criminal nature in relation to a legal entity is possible not only in the presence of the grounds established by the court apply such measures, but also in the absence of circumstances precluding the decision to apply such measures to the legal entity, as well as the grounds for releasing a legal entity from applying the compulsory measures of criminal nature;

3) the cause and factor complex of the implementation of the measure based on the unreasonableness of further criminal proceedings against the legal entity (Articles 96-5 of the Criminal Code of Ukraine) is a set of prerequisites (statement of the fact of the commission of a crime determined by law, as well as releasing an authorized person from criminal liability or punishing in connection with the expiration of the limitation period) and the grounds, the content of which is a combination of a certain event and the appropriate behavior of a person together with the statement of a particular circumstance.

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Summary

In accordance with the analysis of the legal provisions of the section XIV-1 of the Criminal Code of Ukraine, as well as doctrinal definitions about content, grounds and conditions of application of measures of criminal nature in relation to legal entities, the preconditions, grounds and application of both forcible and unreasonable measures for further criminal proceedings against legal entities are defined.

***Keywords**: legal entity, prerequisite, basis, condition, application, measures of criminal law nature.*

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CRIMINAL PROVISION OF AN EXAMINATION DURING THE INVESTIGATION OF CITIZEN'S LUGGAGE THEFT COMMITED AT THE AIRPORT

Анастасія Сенько. КРИМІНАЛІСТИЧНЕ ЗАБЕЗПЕЧЕННЯ ПРОВЕДЕННЯ ОГЛЯДУ ПІД ЧАС РОЗСЛІДУВАННЯ КРАДІЖОК БАГАЖУ ГРОМАДЯН, УЧИНЕНИХ В АЕРОПОРТУ. Наукова стаття присвячена висвітленню деяких аспектів проблемних питань розслідування крадіжок багажу громадян, учинених в аеропорту. Виокремлено наукові підходи до визначення поняття та структури криміналістичної характеристики кримінального правопорушення. Наголошено на значенні даної наукової категорії. Розглядаються особливості криміналістичного забезпечення проведення огляду для більш швидкого розслідування досліджуваної категорії кримінальних правопорушень. Автор зазначає, що огляд є однією з найбільш розповсюджених слідчих (розшукових) дій при розслідуванні крадіжок багажу пасажирів в аеропортах.

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Наголошено, що огляд належить до числа початкових, неповторних та незамінних слідчих (розшукових) дій. Правоохоронна практика свідчить, що дану слідчу (розшукову) дію не можна замінити іншими слідчими (розшуковими) діями, зокрема, допитами осіб, які є очевидцями злочинної події, оскільки жоден свідок не в змозі дати у своїх показаннях необхідного обсягу інформації, яку може виявити слідчий безпосередньо під час проведення огляду місця події, застосовуючи засоби криміналістичної техніки та допомогу спеціалістів. Під час огляду місця події оглядають усі об'єкти, які можуть мати відношення до злочину, залежно від конкретної слідчої ситуації, за внутрішнім переконанням слідчого. Тому інформативність слідчого огляду набагато вища, ніж, наприклад, одночасних обшуків чи слідчого експерименту за участю працівників аеропорту.

На перший план виходить обов'язкове виявлення та вилучення зазначеної інформації. Адже сліди вчинення суспільно-небезпечного діяння в місцях значного скупчення людей можуть бути досить швидко втрачені.

До огляду місця події вважаємо залучати наступні категорії осіб: працівники підрозділів кримінальної поліції (для охорони місця події, спостереження за поведінкою окремих осіб, обстеження прилеглої території, опитування очевидців, проведення оперативно-розшукових заходів); працівник НДЕКЦ; потерпілі; працівники патрульної поліції.

Співробітники правоохоронних органів, які розслідують крадіжки багажу громадян, учинених в аеропорту, повинні широко застосувати увесь арсенал загальних та спеціальних методів криміналістики, особливо техніко-криміналістичних засобів й методів роботи зі слідами та іншими речовими об'єктами, що дозволить ефективно та якісно проводити дану слідчу (розшукову) дію.

Значення огляду під час проведення досудового розслідування надзвичайно велике. Вказана слідча (розшукова) дія дозволяє слідчому безпосередньо сприймати місце події, об'єкти з метою виявлення слідів злочинної діяльності та з'ясування обставин події, що мають значення для кримінального провадження, скласти уявлення про механізм злочину та особу злочинця (працівника аеропорту), висунути слідчі версії та правильно визначити напрямки подальшого розслідування. Від своєчасності та якості проведення слідчих оглядів у багатьох випадках залежить успіх в розкритті, розслідуванні та профілактиці злочинів зазначеної категорії.

Ключові слова: *крадіжки, організація, тактика, слідчі (розшукові) дії, огляд, криміналістичне забезпечення.*

Problem statement. In most cases, committing criminal offenses against property is characterized by sufficient evidence. The conduct of the thefts of luggage by citizens at the airport is also characterized by the existence of an appropriate trace pattern. Therefore, the mandatory identification and deletion of this information is a priority. After all, the traces of committing socially dangerous acts in places of large crowds can be lost fairly quickly. Among the investigative (search) actions of the initial stage of the investigation, different types of surveys are important. Therefore, providing appropriate guidance on their preparation and implementation is clearly necessary for law enforcement practical units.

Analysis of publications that started solving this problem. Scientists such as Yu.P. Alenin, V.P. Bakhin, V.D. Bernaz, R.S. Belkin, V.K. Veselsky, A.F. Volobuev, V.A. Zuravel, A.V. Ishchenko, O.N. Kolesnichenko, V.V. Lysenko, V.K. Lisichenko, I.M. Luzgin, V.G. Lukashevich, E.D. Lukyanchikov, Y. Y. Orlov, M.A. Pogoretsky, M.V. Saltevsky, R.L. Stepaniuk, L.D. Udalova, K.O. Chaplynskyi, Y.M. Chornous, V.Yu. Shepitko, M.P. Yablokov and others. However, the features of forensic screening during the investigation of the baggage of civilians committed at the airport have not been fully investigated, taking into account the current CPC of Ukraine and current law enforcement needs.

The article's objective is to investigate the forensic provision of an overview when investigating the thefts of baggage of citizens committed at an airport.

Basic content. According to some scientists, the beginning of the investigation is often characterized by a large amount of organizational, technical and tactical work of the investigator, who, first of all, "must properly navigate the available information, evaluate it correctly, make a decision and implement it in accordance with the objectives of criminal justice [1, p. 19]. The conducted investigation of materials of criminal proceedings on the fact of theft of luggage of citizens at the airport, it was found out that at the initial stage such investigative (search) actions as inspection of the place of occurrence (73%) are most often carried out; review of things and documents (51%); interrogation of the victim (100%) and witnesses (84%); simultaneous interrogations of two or more interrogated persons (27%), etc.

We support the position of forensic scientists, who say that at the initial stage of the investigation, law enforcement officials have the following tasks:1) to find out the initial information about the theft and its verification, to nominate the initial investigative versions in the proceedings, to establish the facts to be investigated in the criminal proceedings;2) detecting, securing and preserving the traces of crime;3) identification of victims and witnesses;4) identification of

the suspect;5) identification of circumstances of a criminal event, deepening and clarification of versions, drawing up an investigation plan;6) search of the suspect and his detention, ensuring compensation for material damage [2, p. 393].Outlined investigative (search) actions are conducted to solve certain tasks. Among them is the overview of the scene. Speaking about the essence and definition of its concept, it should be noted that a certain procedural action was formulated as a study of a particular area or its separate area, premises or building in which the crime was prepared, where it was committed or where the criminal consequences occurred or its traces can be stored, and may also have place review of individual objects, documents, corpse [3, p. 528].In turn, V. Y. Shepitko notes that the review is an investigative (search) action, which consists in the direct perception of the object in order to identify traces and other material evidence, to clarify the circumstances of the event, as well as the circumstances that have value in the case [4, p. 217]. And other criminologists claim that it consists in the direct perception, investigation and fixation by the investigator or investigator of the situation of the scene, as well as in the identification, fixation, seizure of traces and material evidence for establishing within the limits of the nature and circumstances of the event and the perpetrators [5, p. 253].In this context, it is necessary to agree with K.O. Chaplynskyi opinion that a minimum period of time should pass between the receipt of initial information about the crime and the beginning of the investigative examination [6, p. 16]. And already, A. Vasilyev has provided such definition – it is an investigative action, consisting in the direct perception, investigation and fixation by the investigator of the situation of the scene, as well as in the detection, fixation, removal of traces and physical evidence for establishing within the possible limits of character and circumstances of the event and perpetrators [7, p. 253].It should be noted that the purpose of the review is to identify on-the-spot evidence and other forensically relevant information about a criminal event that will facilitate faster understanding of the forensic characteristics of the committed act, to put forward investigative versions and identify the main areas of investigation, to ensure the possibility of "hot" investigations criminal, stolen property, termination of further criminal activity, etc. [5, p. 147]. That is, based on the purpose of the review and formulated most of its definitions. For example, I.N. Yakimov pointed out that due to this procedural action the truth was established in the investigation of a criminal case [8, p. 101].

It should be noted that we share the position of E.P. Ishchenko, who defined the review as an immediate investigative action consisting in the direct perception, investigation and fixation by the investigator of the situation of the place, its traces and objects, their relationships and characteristic features of to find out the substance of the incident, the mechanism of the crime and other circumstances that are relevant for the proper resolution of the criminal case by the court [9, p. 206]. I.V. Soroka identified the following as one of the main tasks of the theft inspection:1) reproduction by the investigator of the picture of the event for the purpose of promoting the versions;2) identification and removal of traces of crime, tools and other objects that may be material evidence or relevant to the case;3) study and full display in the protocol of the review of the scene of the whole situation;4) identification of the immediate causes and conditions that facilitated (impeded) the commission of theft by minors [10, p. 90]. As E.P. Ishchenko notes, the review of the scene has two stages. The first includes investigator's actions prior to departure to the scene, and the second includes preparatory actions taken upon arrival. In the first stage, the investigator takes care of information-tactical and logistical support at the scene. He does his best to get the most complete information on what exactly and where the conditions are, what the conditions are for the review. At the same time it controls whether all urgent measures have been taken: to eliminate the harmful consequences of the event, to provide medical assistance to the victim, to the protection of the scene at the exit, which guarantees the trace of the offender, etc. [9, p. 209].Thus, V.V. Stepanov in the preparatory stage of the review allocates the following organizational and preparatory measures:- establishment of boundaries of the scene, in the process of which the nature of the actions is revealed;- taking into account the nature of the terrain and other factors, determine the order of spatial coverage of the event and movement of the survey participants;- solves the issue of organizing the work of the review participants, the distribution of their responsibilities;- Carrying out measures aimed at preserving the tracks at the scene;- solving the question of the use of technical means, which should be used at the scene [11, p. 90-91].Immediate departure to the place of theft, the optimal choice of tactical methods of examination allows the investigator to identify the offender at the initial stage of the investigation, to collect the initial data on the stolen property and on the basis of evidential and orienting information to form a verbal portrait of the alleged offender and to take measures to establish him. In his turn, E.I. Makarenko

emphasized that even a slight delay or inappropriate organization of initial investigative (search) actions and search activities can lead to a reduction of information that may be a crime. Thus, the analysis of investigative practice in cases of apartment thefts shows that quite often there are also untimely departure to the place of theft, and the formal holding of the mentioned measures, and the local (within one administrative district) nature of search work on the identification of suspects of theft [12, p. 37].

I.V. Soroka's interesting position is that some of the criminals (about 3%) return to the scene for the purpose of destroying traces or objects left behind, observing the actions of the investigator and finding out what information they possess, so and to continue their criminal activities. This is relevant not only for adult offenders, but also for minors who should not be underestimated. This is especially true when the minor is involved in the theft in conjunction with adult participants. In this case, the juveniles return to the scene, hoping that law enforcement agencies will not pay attention to them. This should also be taken into account not only by the investigator but also by the patrol officers who, upon arriving at the scene, may be the first to watch them from a certain distance from minors. The video capture with the help of a police officer's camera luggage, which may be caught by the juvenile offenders encountered on the patrol route by the police [13, p. 445]. In the context of the subject matter of our study, this claim may also be true, as airport thefts operate cyclically, returning to the crime scene again and again.

Among the preparatory actions for the inspection of the scene, we consider the most successful number of them: to obtain comprehensive information about the circumstances of the criminal offense; ensure the security of the scene (for example, by patrolling police forces not far from the crime scene, or the administration of the institution, etc.) and detain persons who are witnesses to the crime until the investigation team arrives; determine what measures have been taken to remedy the consequences of the criminal offense; arrange medical assistance for victims or persons who have committed an offense; determine the composition of the investigative-task force (if necessary, involve the necessary specialists); to ensure in advance that there are witnesses, if there is reason to believe that it will be difficult or impossible to attract them at the scene; to prepare the necessary scientific and technical means to ensure access to the site of the incident and to conduct the examination (forensic means, transport, communication, etc.); to decide on the use of a service dog; ensure the participation of the necessary participants in the conduct of this investigative (search) action [14, p. 217-218].Among the preparatory activities, in our opinion, the most important is to determine the circle of participants in the review of the scene. In particular, in order to conduct a review of the scene, V. D.Polivanyuk believes, depending on the specific investigative situation, that the following persons should be part of the FGN:- Compulsory participants – Investigator specializing in the investigation of criminal offenses of a particular category (the head of the IOG) operational staff;- Optional participants – forensic inspector, who knows the features of dealing with traces of crimes in this category; the inspector of the security or security service of the object under review [15, p. 245].Other scientists claim that the following categories of persons are obliged to join the IOG:- obligatory participants: investigator or other authorized person (head of the IOG), employees of criminal police units (to protect the scene, to monitor the behavior of individuals, to inspect the surrounding area, to interview witnesses, to conduct search operations), understood;- Optional participants: forensic inspector who works to identify and collect traces left at the scene; an employee of the FRCC or the Forensic Research Institute, upon request, to identify and remove individual traces of a criminal offense, if necessary; the inspector of the security or security service of the object under review [16, p. 55]. And, for example, B. Yu. Bystritsky thinks that the examination, at the discretion of the investigator, may involve victims, witnesses and detained minors. The victim's involvement in the examination is conditioned by the circumstances of the theft. Victims can determine which items have been moved. It is advisable to focus on these objects to find the traces of the hands of criminals. In addition, it is found out which items have disappeared, their characteristics, the available documents. As a result, the speed of obtaining guidance information is significantly increased, which ensures the speed of detection and investigation of theft. These individuals can be helpful in identifying the boundaries of the scene, identifying individual traces and objects, or the signs of their destruction. They may also draw the investigator's attention to certain traces and objects, their features and features, which they consider important for criminal proceedings [17, p. 169].

Considering the investigation of materials of criminal proceedings on the facts of theft of citizens' luggage at airports, it is obligatory to involve the following categories of persons in

the inspection of the scene:- employees of criminal police units (to protect the scene, monitor the behavior of individuals, survey the surrounding area, interrogate eyewitnesses, conduct search operations);- employee of FRECC;- the victims;- patrol officers.

Conclusion. To summarize, the review is one of the most common investigative (investigative) actions in investigating theft of passenger luggage at airports. The obligatory identification and deletion of the specified information comes to the fore. After all, the traces of committing socially dangerous acts in places of large crowds can be quickly lost. To review the scene consider the following categories of persons: criminal police officers (to protect the scene, monitor the behavior of individuals, survey adjacent territories, surveys eyewitnesses, conducting search operations); FRECC employee; the victims; patrol officers. A certain set of tactical techniques must be used to carry out the review effectively. This aspect will guide our further research.

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Summary

The scientific article deals with some aspects of investigating theft of luggage by citizens at the airport. The peculiarities of forensic support of the examination for faster investigation of the investigated category of criminal offenses are considered.

The author notes that the review is one of the most common investigative (search) actions in investigating theft of passenger luggage at airports. The obligatory identification and deletion of the specified information comes to the fore. After all, the traces of committing socially dangerous acts in places of large crowds can be lost fairly quickly.

We consider the following categories of persons to be involved in the inspection of the scene: employees of criminal police units (to protect the scene, to monitor the behavior of individuals, to inspect the surrounding area, to interview eyewitnesses, to conduct search operations); SRECC employee; the victims; patrol officers.

Keywords: *theft, organization, tactics, investigative (search) actions, examination, forensic support.*

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PROBLEM ASPECTS OF FINANCIAL AND ECONOMIC SECURITY IN THE CONDITIONS OF DEVELOPMENT CRYPT

Олена Паршина, Юрій Савченко, Богдана Поляновська. ПРОБЛЕМНІ АСПЕКТИ ФІНАНСОВО-ЕКОНОМІЧНОЇ БЕЗПЕКИ В УМОВАХ РОЗВИТКУ КРИПТОВАЛЮТ. Розглянуто аспекти фінансово-економічної безпеки і здійснено аналіз відомих в даний час криптовалют та широкий спектр тлумачень поняття «криптовалюта» офіційними органами різних країн; прогнозування розвитку криптовалют за рахунок формалізації факторів, що впливають на вартість криптовалют. Проаналізовано еволюцію криптовалюти і спрогнозовано її подальший розвиток, як потужний фінансовий інструмент на світовому ринку. Метою статті є аналіз аспектів фінансово-економічної безпеки через прогнозування розвитку криптовалют за рахунок формалізації факторів, що впливають на вартість криптовалют. Поява криптовалюти стала можливою завдяки криптографії і принцип обігу криптовалют заснований на технології блокчейн. Криптографія лише механізм, але не суть; механізм, якийне має жодного відношення ані до правової природи, ані до юридичного статусу криптовалют. Розглянута форма залучення інвестицій у вигляді продажу інвесторам фіксованої кількості нових одиниць криптовалюти, отриманих разовою або прискореною емісією. Звернено увагу, що за кількістю користувачів криптовалютами, Україна входить в топ-10 країн світу. Технологія блокчейн застосовується у державних реєстрах України. Віртуальна валюта – це величезна кількість обчислювальних потужностей та цифрових активів. На етапі технологічного розвитку людства криптовалюта здобуває стійкі позиції на міжнародному ринку. Стрімкий розвиток визиває подальший приріст потужностей та зацікавленість мас, але в кінцевому підсумку може призвести до краху. Суть роботи майнера полягає в пошуку з мільйонів можливих комбінацій одного єдиного правильного коду та необхідне спеціальне програмне забезпечення. Якщо цінова стабільність криптовалюти буде досягнута, то її можна буде використовувати у міжнародних транзакціях, а не лише для спекулятивної вигоди. Однак, це питання вже буде напряму пов'язано з легалізацією нової валюти та її визнанням центральними банками як засобу обміну, або зберігання вартості грошей. В спектрі різних тлумачень поняття «криптовалюта» вбачається певна закономірність: в тій чи іншій формі, але криптовалюти все ж таки визнаються засобами обміну, а у деяких випадках навіть засобами платежу. В сучасній час розвиток криптовалют почав в значній мірі впливати на фінансово-економічну безпеку держав.

Ключові слова: *криптовалюта, біткоін, ефіріум, лайткоін, неймкоін, майнінг, гроші, блокчейн.*

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Problem statement. Modern society is developing rapidly in scientific and technological progress. Many people are actively watching the emergence of a new payment method, the name of which is cryptocurrency. Cryptocurrency is introduced into daily circulation and supports the interest of people and entire states. This implementation generates market demand, under the influence of which the price of the product changes. Under the rush of influence, the rate of cryptocurrency is growing rapidly. In the financial market, the economy is increasing its partial ratio. No one can control and stop the development of cryptocurrency. Cryptocurrency is creating the conditions for the Internet revolution. There was a need to analyze the evolution of cryptocurrency and to predict its further development as a powerful financial instrument in the global market.

In modern times, the development of cryptocurrencies has begun to have a significant impact on the financial and economic security of states, prompting them to consider the problematic aspects of financial and economic security in the context of cryptocurrency development.

Analysis of publications that started solving this problem. Investors' interest in cryptocurrencies remains low. The significant impact on the world economy is not significant. However, in the future the situation cay change and the crypto economy will contribute to the development of the global economy. Blockchain technology plays an important role in enhancing the openness and performance of the global financial system and the economy as a whole.

In the late 90's of the twentieth century, the idea of creating cryptocurrencies at the time of a revolutionary period in the world of new technologies arose. It happened when computer technology became personal and during the mass spread of the Internet. The first concepts of virtual currencies emerged, the functioning of which was based on cryptography – the science of methods of encryption of information.

First of all, cryptocurrency ideologists sought to ensure the full independence of the new currency from the state, which would guarantee the cryptocurrency transaction participants the desired anonymity and invulnerability. Bitcoin, the first full-fledged cryptocurrency, emerged in 2008, when Satoshi Nakamoto, a Japanese (there is also a version that is not one person but a group of scientists under a pseudonym), came up with his own concept of a cryptocurrency system headed with bitcoin (BTC) [1, p. 95-115].

The article's objective is to analyze the aspects of financial and economic security by predicting the development of cryptocurrencies by formalizing the factors that affect the value of cryptocurrencies.

Basic content. Cryptocurrency is a type of digital currency, the issue and accounting of which are based on asymmetric encryption and application of various cryptographic security methods, such as Proof-of-work and / or Proof-of-stake. The functioning of the system is decentralized in a distributed computer network [2, p. 27, 15]. You need to use the computing power of your computer to get new coins. The essence of a miner's job is to search among, out of millions of possible combinations, one single correct code called a hash and get rewards for it. As of 2016, the award is 12.5 BTC ($ 122 593 thousand as of December 1, 2017), in 2020 its next change will occur [3]. For complex computations based on cryptocurrency systems, powerful graphics or specialized graphics card accelerators are used to provide high-speed sha-256 encryption. Mining requires special software. The software can be obtained from official cryptocurrency websites or from other open sources [4].

Consider some of the currently known cryptocurrencies.

The first of cryptocurrencies and the basis for building all other existing blockchain systems is Bitcoin (BTC). The first issue of Bitcoins is January 3, 2009. Bitcoin pricing began in 2010. At first it did not exceed a few cents for 1 BTC.

Each transaction is called bitcoin addresses and is used by means of virtual aliases correction [4]. The Bitcoin address looks like 1DSrfJdB2AnWaFNgSbv3MZC2m74996JafV. It consists of a string of letters and numbers beginning with "1" (number one). Transactions are irreversible. Cryptocurrencies are transmitted using blockchain technology, with each transaction being verified by at least five other system clients. Confirmation is for a small fee.

Through blockchain, you can track the movement of money. But it is almost impossible to trace the owner's connection with the wallet, which determines the high anonymity of cryptocurrencies.

Blockchain technology provides complete decentralization of data storage. A common transaction database is distributed between all nodes in the system. This ensures high security of information from external influences and force majeure.

Since the birth of bitcoin, more than 2,000 varieties of digital money have appeared on

the market. Most of them are just a fork of a bitcoin. That is, the basis for the creation of such currencies was the Bitcoin code. In the cryptocurrency system, one of the first types of digital money was Neymkoin.

Neymkoin (NMC) was released in mid-April 2011 based on a bitcoin code that has undergone minor changes. The maximum coin limit is 21 million units. The NMC price demonstrates relative stability at 50 cents for one Neymkoin. Number of coins purchased 12.6 million.

Lightcoin (LTC). This type of cryptocurrency is created without centralized administration and is also a bitcoin fork. By volume of capitalization, lightcoin is consistently among the top four crypto currencies.

Ethereum (ETH, Ethereum) is a blockchain-based open source platform that allows developers to create and deploy decentralized applications. The main advantage of ethereum over bitcoin is that the former provides support for various types of decentralized applications.

Ethereum occupies the second position after bitcoin in terms of market capitalization. Over the year, the cost of the Ethereum platform has more than doubled. Bitcoin and Ethereum compete in the digital currency market.

A novelty of Ethereum was the extension of a set of instructions in the full-featured JavaScript programming language [5].

The total capitalization of the cryptocurrency market is now $ 202.5 billion.

Ethereum has become a staging ground for various projects [6]. As a result, a form of investment attraction (ICO) appeared in the form of sales to investors received by a single or accelerated issue of a fixed number of cryptocurrency units, (fig. 1.).

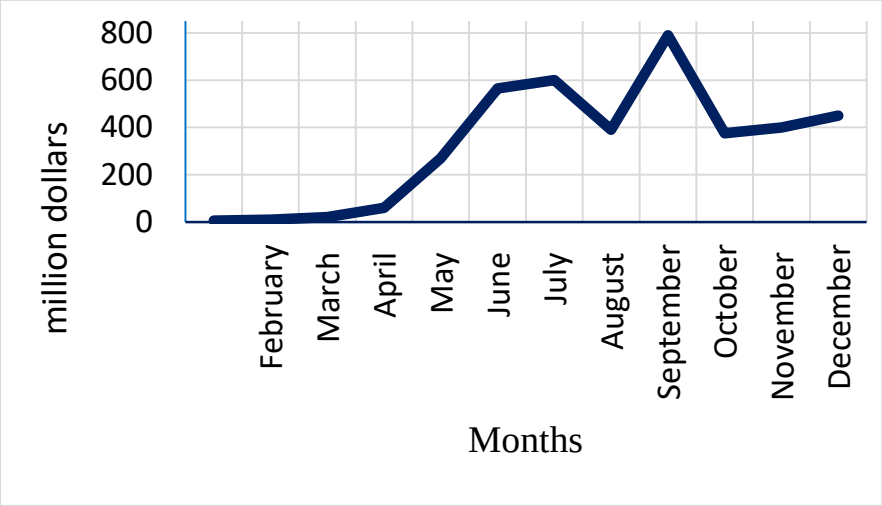

Fig. 1. Number of ICOs and volumes of funds raised in 2017.

From picture 1. We can see that the amount of funds raised is growing rapidly.

Due to ICO placement, Ukrainian companies created 25 different cryptocurrencies in 2017-2018, the amount of funds raised exceeded $ 100 million. The world has created 1.8 thousand cryptocurrencies by 2018. About it writes liga.net with reference to the message BRDO [7].

Ukraine is in the top 10 countries in the number of users of cryptocurrencies. Daily hryvnia cryptocurrency trading volumes reach $ 1.9 million [7]

In the near future, the appearance of cryptocards is planned. These cards will be able to be used as a regular credit card in stores. That is, use the cards to meet the daily needs of their owners. Cryptocards will look like regular plastic and debit cards, but the concept of calculations will be different. There are two options for making a payment by installing special terminals or using the created payment infrastructure.

Creating the foundation for stable cryptocurrency transactions enables the new currency to enter full-scale circulation and move to a new stage of belief evolution [8].

By July 2013, all cryptocurrency software except XRP (Ripple) was based on open source Bitcoin. Since July 2013, self-developed platforms have been launched that support cryptocurrency in addition to various crypto-infrastructure — stock trading, shops, messengers

and more. The following crypto platforms include: BitShares, Mastercoin, Nxt; other platforms are announced. The default cryptocurrency does not provide for forced refunds, but there are options for intermediary agreements, where the agreement or consent of all three or arbitrary two parties is required to terminate or cancel the transaction, the funds cannot be forcibly frozen or removed without access to the owner's private key, but participants agreements may voluntarily temporarily suspend funds as collateral. As a rule, there is an upper limit to the total emission. However, some cryptocurrencies, such as PPCoin, Novacoin, Sifcoin and others, do not have a fixed cap on the total amount of the issue and are possible to issue due to the accumulated accumulation and the issue through the obligatory destruction of a small fixed amount in each transaction. All cryptocurrencies currently in use are nicknamed — all transactions are public, but there is no binding to a specific person by default, but a user's identity can be established if additional information is known [9, p. 27]. Zerocoin is under development, where it is planned to replace the alias with anonymity [10].

As the newest electronic means of payment, cryptocurrencies do not have their legislative fixation in Ukraine, and therefore no regulatory definition [11, 12]. It is widely understood that cryptocurrencies are units of value stored on electronic devices, used as means of payment, and transacted with cryptography. The Verkhovna Rada of Ukraine has registered several bills on the circulation of cryptocurrencies, which demonstrate different approaches to the legal qualification of this institute. Draft Law of Ukraine No. 7183 "On the Circulation of Cryptocurrency in Ukraine" (hereinafter – Bill 7183) defines cryptocurrency as a program code (a set of symbols, numbers and letters), which is the subject of property rights, can act as a means of mines, information about which are transferred and stored in blockchain system as accounting units of the current blockchain system in the form of data (program code) [13]. The definition of cryptocurrency in such a way does not seem very successful because of the focus on the technical aspect, which pushes to the secondplan the economic and legal content of the concept (from a technical point of view, the category "program code" covers a fairly wide range of objects, most of which are not related to cryptocurrencies, including computer programs, databases, etc.).

Alternative Draft Law of Ukraine № 7183-1 “On Encouragement of the Cryptocurrency Market and Their Derivatives in Ukraine” (hereinafter – Bill 7183-1) proposes to define cryptocurrency as a decentralized digital value dimension, which can be expressed in digital form and function as a medium of exchange, storage or unit accounting based on mathematical calculations is their result and has cryptographic protection of accounting.

The debate on the legal nature of cryptocurrencies has not subsided with scholars: they are defined both as money and as means of exchange or settlement other than money, and as monetary surrogates and even commodities. The study of whether it is legitimate to consider cryptocurrencies a kind of money seems appropriate to begin by analyzing the current definitions of moneў. Article 192 of the Civil Code (Civil Code) of Ukraine, although called "Money (cash)", does not contain any definitions, only stating that the legal tender in the territory of Ukraine is the hryvnia and that foreign currency is used in cases and in accordance with the procedure established by law. According to the National Regulation (Standard) of accounting "General Requirements for Financial Reporting", approved by the order of the Ministry of Finance of Ukraine from 07.02.2013 № 73 cash (money) – cash, funds on accounts with banks and demand deposits. But the meaning of the concept of "money" these rules do not disclose. Other pieces of legislation also do not contain a definition, so fill in the gap.

Money is a measure of value, a common equivalent, a universal medium of exchange. These characteristics clearly correlate with the functions of moneў. According to K. Marx's theory, there are five of them [14]:

- a measure of value;
- exchange (circulation);
- means of accumulation (formation of wealth);
- means of payment;
- world money.

Modern economists add to this list other functions: ensuring the functioning of the state; consumption regulator; stimulation of scientific and technological progress and the like. But what is characteristic of modern society may be completely unnatural to the society of the ancient world or the Middle Ages. That is, certain functions of money begin to manifest themselves only under certain conditions, at a certain stage of social development. At the present stage, money exists in the material or intangible form.

Today, cryptocurrencies are not only an objective reality, but also a significant econom-

ic factor. As already mentioned, there is no consensus in the scientific community or at the level of governments of different countries as to which category should be classified as crypto-currencies.

Participants in the G-20 summit, held in Buenos Aires from March 19 to 20, 2018, deliberately withdrew from their use of the term crypto-currency, replacing it with crypto-assets, where it is explicitly emphasized: crypto-assets have key attributes of sovereign currencies. According to the summit participants, cryptocurrency is not a currency but an asset, so they use the term cryptocurrency as a more correct one. This position is not generally accepted even within the G20 itself. "

Countries are demonstrating different approaches to government-level legal qualification of cryptocurrencies. Within these countries, discussions do not cease, often leading to different interpretations of this institution by the departments of one country. In the United States, cryptocurrencies are viewed simultaneously as an analogue of money, as property, and as commodities, depending on the position of an institution. The peculiarity of the United States is the precedent system of law, which allows courts to actively participate in the legislative regulation of various issues, without excluding cryptocurrencies.

The problem of Bitcoin was ignored by US federal authorities. The head of the Federal Reserve System (US Federal Reserve) voiced the Fed's official stance on cryptocurrencies, saying "the cryptocurrency in no way intersects with the banking sector, and therefore the Fed has no authority to regulate it. The Federal Bureau of Investigation in its official currency reports The same is the case with the US Treasury Department's Financial Crimes Commission, with the US State Commission on Exchange Futures equating cryptocurrencies to commodities. yno allowed to start trading futures Bitcoin. komisiyï Chairman Christopher Giancarlo said that Bitcoin is a virtual currency, goods, which the Commission has never faced.

In Europe, approaches to cryptocurrencies are also not well established or unified. The European Central Bank (ECB) uses the term "virtual currencies", to which Bitcoin refers. The ECB has defined virtual currency as "the type of unregulated digital money" that is issued and usually controlled by its developers, used and accepted by members of a particular virtual community.

The Republic of Belarus has officially determined the status of cryptocurrencies. On December 21, 2017, the President of Belarus signed Decree No. 8 “On the Development of the Digital Economy”, which legalized the circulation of cryptocurrencies in the country. According to paragraph 4 of annex 1 to the aforementioned Decree, cryptocurrency is defined as bitcoin or other digital sign (token) used in the international trade as a universal medium of exchange. [15]

Conclusions. There is a wide range of interpretations of the concept of "cryptocurrency" by official bodies of different countries. There is a certain pattern in this variety in one form or another. However, cryptocurrencies are still recognized as a means of exchange and means of payment.

The emergence of cryptocurrency was made possible by electronic cryptographÿ. The principle of cryptocurrency circulation is based on blockchain technology. However, the above aspects have only the technical side of the issue. Cryptography is only a mechanism, not an essence. A mechanism that has nothing to do with either the legal nature or the legal status of cryptocurrencies. Cryptography has long been used to encrypt informatioñ. Cryptocurrencies are only a by-product in this matter. Blockchain technology is also used in state registers. An example of this is the State Land Cadastre of Ukraine. The National Bank of Ukraine announced the possibility of issuing e-hryvnia. Non-cash hryvnia will be based on blockchain technology. Understandably, the terminology of the two e-hryvnia bills would not fall under the sign of cryptocurrency, even if cryptography and blockchain technology were used, since one of the main features of the Bitcoin-based cryptocurrency is decentralization and lack of uniformity.

Virtual currency is a huge amount of computing power and digital assets. At the stage of scientific and technical process cryptocurrency gains a stable position in the international market. The rapid development causes a further increase in capacity and interest of the masses. It can eventually lead to a crash. If the price stability of the cryptocurrency is achieved, it can be used in international transactions, not just for speculative gain. However, this issue will already be directly linked to the legalization of the new currency and its recognition by the central banks as a means of exchange, or the preservation of value for money. In the modern times, the development of cryptocurrencies has begun to greatly influence the financial and economic security of states.

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Summary

The aspects of financial and economic security are considered and the analysis of currently known cryptocurrencies and a wide range of interpretations of the concept of "cryptocurrency" by official bodies of different countries are carried out; forecasting the development of cryptocurrencies for accounting for formalizing factors that affect the value of cryptocurrencies. The evolution of cryptocurrency has been analyzed and its further development projected as a powerful financial instrument in the world market. The purpose of the article is to analyze the aspects of financial and economic security by predicting the development of cryptocurrencies by formalizing the factors that affect the value of cryptocurrencies. The emergence of cryptocurrency was made possible by cryptographÿ and the principle of cryptocurrency turnover based on blockchain technology.

Keywords: *cryptocurrency, bitcoin, ethereum, lightcoin, nemkoin, mining, money, blockchain .*

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PROBLEMS OF INSTITUTIONAL AND LEGAL SUPPORT FOR OVERCOMING STRUCTURAL IMBALANCES IN UKRAINE'S DEVELOPMENT

Зоя Калініченко. ПРОБЛЕМИ ІНСТИТУЦІЙНО-ПРАВОВОВОГО ЗАБЕЗПЕЧЕННЯ ПОДОЛАННЯ СТРУКТУРНИХ ДИСБАЛАНСІВ РОЗВИТКУ УКРАЇНИ. Розглядаються проблемні питання забезпечення економічного зростання в країнах з ринковою системою, що розвивається: структурна незбалансованість; керована, неринкова фінансово-монетарна політика; втрачання можливостей розвитку реального сектора економіки; управлінська неспроможність державно-владних інституцій.

На високий рівень теоретичного узагальнення проблем в наукових публікація вказують фахівці, як на досягнення. Але дослідження різних аспектів структурної незбалансованості, взаємозв'язків між діями державно-владних інституцій з метою зменшити та вирівняти їх негативний прояв, залишаються актуальними та потребують додаткових наукових розробок.

Автор розглядає перешкоди на шляху економічного зростання країн та пропонують їх класифікацію залежно від їх впливу, походження та функціонального змісту. Серед ризиків, що перешкоджають та створюють небезпеку, наводять саме такі, як слабкість державних інституцій, історично сформовану слабку соціальну структуру. Досліджується в працях учених діаметральна протилежність інтересів впливових соціальних груп, безвідповідальність, що пов'язана зі станом правової культури в суспільстві, нефаховість та прорахунки інститутів, що утримуються на державні кошти та повинні забезпечувати впровадження ринкових змін.

Дослідження присвячене розробці концептуальних засад, принципів та підходів до моделювання систем економічного зростання в країнах з ринковою трансформацією. На базі проведеного аналізу репрезентативного масиву інформації розкривається взаємозв'язок між складовими, що створюють небезпеку економічному зростанню, сталому розвитку країн;

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доводиться їх повторюваність або типовість, що створює особливі умови для розробки механізмів запобігання перешкодам, загрозам, ризикам та методів управління ними.

Автор, використовуючи методи діалектики, наукової абстракції та системного підходу, з'ясовують зв'язки та ланцюги зв'язків, що характеризують галузеву незбалансованість та макроекономічні диспропорції та ведуть до них. Підкреслюється, що відкритість економіки сприяє підвищенню її ефективності, мобільності та конкурентоспроможності. Однак, враховуючи незрілість ринкових відносин та кризовий стан економіки, входження країни в міжнародний ринок потребує особливої уваги. Відкриваючи економіку, потрібно підвищувати рівень захисту та вимагати ефективності від вітчизняного виробника, фінансів, банківської системи, стратегічних галузей та підприємств.

Результати дослідження дозволили автору стверджувати, що наростаюча системна криза в соціально-політичній сфері держави мультиплікативно поширюється на систему забезпечення економічного зростання, яка втрачає свої функціональні можливості та потребує нових узгоджених та досконалих стратегічних пріоритетів розвитку та його інституційно-правового забезпечення, а також механізмів, інструментів та засобів трансформації ринкової системи.

Ключові слова: *економічне зростання, дисбаланси, розвиток реального сектору, інструменти фінансово-монетарної політики, узгоджені пріоритети розвитку.*

Problem statement. For the sustainable development of countries with a developing market system, significant structural impediments are structural imbalances of the economy, troubled government, non-market financial and monetary policies, and the absence of real sector growth policies. These obstacles become especially evident with the transition of countries to a competitive stage of the market economy, with the implementation of European integration and international cooperation programs.

It is the imbalances in the reform of the sectors, the structural imbalances, the poor public administration that are pushing the country back to decline and impoverishment, turning it into a "banana republic", into a raw material appendage.

The imbalance has a negative impact on economic processes, leading to large-scale use of corruption schemes and oligarchic lobbying in public authorities. Disproportions are a significant threat to economic growth and the national security of countries embarking on market reforms. The countries are weak because they have not overcome the contradictions of their historical past.

Analysis of publications that started solving this problem. The problems of large-scale market reforming of the economy of Ukraine and countries with a developing market system have been investigated by various scientific schools, domestic and foreign scientists. The theoretical and methodological foundations of structural and sectoral imbalances, public administration and sustainable economic development were explored in their writings by Joseph Stiglitz [6, 10], Henry Farrell [7], Karl Polanyi [8], P Harrod [17], Sergei Guriev [27, 28] and other scholars. Among domestic economists, scientific studies of these problems have been conducted by Bogdan Danylyshyn [5], Zinoviy Varnaliy [12], Victor Kozyuk [29], Viktor Prisnyakov [31], Ruslan Leshchenko [30], Yuri Saveliev [2], Olga Solovyova [32], Andriy Novak [25] and others. They belong to the development of important aspects of macroeconomic problems related to the imbalances in the development of the market economy of countries, political populism and corruption, the quality of public administration.

Despite the considerable and high level of publications on sustainable development issues in transition economies, the issues of imbalance, managed monetary and real sector development remain relevant and require further research for Ukraine and other transition economies. The problem of overcoming the non-market "manual" management of macroeconomic indicators and financial and monetary policy instruments is urgent. This is the problem of the "patching of holes" policy in the country's budget, the problem of solving crises, not their prevention.

Most often, researchers at the global level of development of countries highlight socio-economic imbalances in the following areas:

- GDP size and non-uniformity of this indicator for different countries of the world;
- the difference in the level of income of the population;
- the difference in the standard of living of the population – the income of the population, the availability of education and medical care, the levels of political and economic freedoms, life expectancy, etc .;
- external debt and its wide spread across countries;
- exports / imports and the fact that some countries have had a positive foreign trade balance for many years, while others have a negative balance;

Other imbalances include exchange rate imbalances, migration flows, tax rates, economic freedoms and others.

The article's objective is to find out the reasons for the imbalance in monetary and real

sector growth policies in emerging market economies; in developing directions for improving the quality of public administration in such countries in order to ensure their economic growth.

Among the objectives of the study, the following should be mentioned:

- substantiation of the necessity to adjust the monetary and monetary policy of the real sector of the country;
- identification of links and linkages characterizing sectoral imbalances and macroeconomic imbalances;
- estimation of the depth of existing contradictions in the countries by different methods;
- development of measures to improve the quality of public administration, based on an assessment of the depth of disparities and contradictions in countries with a developing market system;
- development of ways to achieve macroeconomic equilibrium in conditions of economic instability in the country.

Basic content. The Ukrainian economy has such a peculiarity as a tendency to be exposed to external crises and economic conditions, which is caused by its low competitiveness. Among the reasons for this situation are technical backwardness, inefficiency of government, fiscal policy pressure, structural imbalance of development.

S.M. Mochernyi, Y.S. Larina, OA Ustenko and S.I. Yuri points out that the practice is typical when the state itself, through its unprofessional decisions, promotes corruption, shadowing the economy, offshore and capital outflows and resources. They define the shadow economy as a type of economic activity aimed at obtaining illicit income, evading state and public control and paying taxes on exports and imports [1, p. 447].

The factors of imbalance disorganize, lead to lagging countries with a transitional market economy, to the formation of a backward social structure of society. The implications of this in the transition economy are well known. The domination of pseudo-public and pseudo-private corporations leads to disparities in the dynamics of prices, the finances of the country. As a result, the national economy becomes a field of non-economic rivalry between corporate and bureaucratic structures, into the sphere of collision of their power and regulatory influences.

In countries with transformational economies, imperfect market mechanisms are:

- manual control of macroeconomic indicators and financial regulators;
- unprofessionality and miscalculations;
- political and oligarchic lobbying;
- mismatch of interests between social groups and their lack of motivation;
- strategic irresponsibility, only an anti-crisis approach without taking into account future actions.

If we take Ukraine, with all the positive achievements, statistics show that the economy is still shaky (Table 1).

Thus, Y. Saveliev stresses that the growth of macroeconomic indicators in Ukraine is not enough to close the gap in living standards with Western Europe.

Table 1

Indicators of nominal gross domestic product, consumer expenditures, exports and imports of goods and services in Ukraine in 2005-2018

Year	Nominal GDP for the year	Consumer costs		Gross Exchanging		Exports goods and services		Import goods and services	
	million UAH	million UAH	%	million UAH	%	million UAH	%	million UAH	%
2005	441452	337879	76.5	99876	22.6	227252	51.5	-223555	-50.6
2006	544153	424060	77.9	134740	24.8	253707	46.6	-269200	-49.5
2007	720731	558581	77.5	203318	28.2	323205	44.8	-364373	-50.6
2008	948056	758902	80.0	264883	27.9	444859	46.9	-520588	-54.9
2009	913345	772826	84.6	155815	17.1	423564	46.4	-438860	-48.0
2010	1082569	914230	84.5	199918	18.5	549365	50.7	-580944	-53.7
2011	1316600	1105201	83.9	282474	21.5	707953	53.8	-779028	-59.2
2012	1408889	1269601	90.1	257335	18.3	717347	50.9	-835394	-59.3
2013	1454931	1350220	92.8	228474	15.7	681899	46.9	-805662	-55.4
2014	1566728	1409772	90.0	220968	14.1	770121	49.2	-834133	-53.2
2015	1979458	1715636	86.7	303297	15.3	1044541	52.8	-1084016	-54.8
2016	2383182	2018854	84.7	512830	21.5	1174625	49.3	-1323127	-55.5
2017	2982920	2552525	85.6	618914	20.7	1430230	47.9	-1618749	-54.3
2018	3558706	3196756	89.8	667953	18.8	1608890	45.2	-1914893	-53.8

Source: Compiled by the State Statistics Service of Ukraine [4]

Ukraine has not lost its Soviet heritage in economics, politics, and society. Ukraine's socialist legacy is greater than in the Baltic States or Poland.

This should be taken into account when planning further development steps. Especially when it comes to restrictive factors and pressure on the state [2, p. 214]. Ukraine, which seeks to reach the level of EU countries, has a chance.

Researches by sociologists Ronald Inglehart and Christian Welzel (Ronald Inglehart, 2015) indicate their confidence in the modernization of Ukrainian society. They believe that the interventions of the national government, local authorities, international organizations, civil society will have a positive impact on modernization, governance, promotion and economic growth.

The successes of developing countries are an example of such interventions. But such interventions should not be limited to economic policy alone. The state is not the exclusive source of such interventions. Society plays an important role, the self-organization of capable, motivated and competent participants.

In 2018, Ukraine's economy has grown the most over the past seven years. In comparison with 2017, the real gross domestic product increased by 3.3% in comparison with 2017 (Fig. 1). The nominal GDP amounted to UAH 3558.7 billion, and the GDP per capita amounted to UAH 84190.

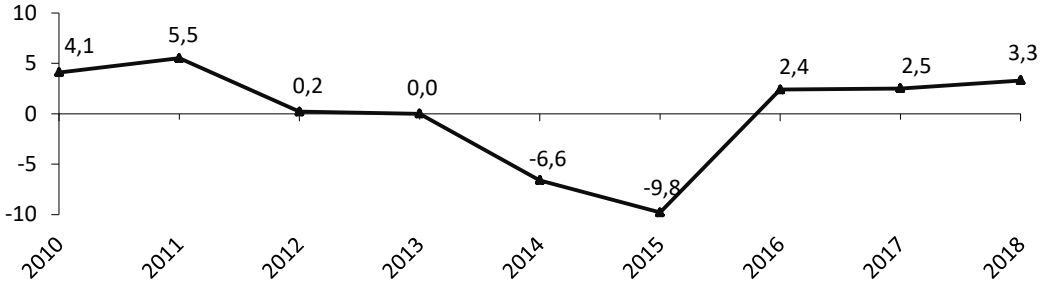

Fig 1. **Real GDP change in Ukraine in 2010-2018 (% of previous year)**
Source: According to the State Statistics Service of Ukraine [4]

According to B. Danylyshyn and NBU specialists, due to the tight monetary policy required to reduce inflation and the restrained fiscal policy caused by the repayment of large amounts of public debt, real GDP growth can slow down to 2.5% [5].

Nobel Laureate Joseph Stiglitz (Joseph Stiglitz, 2008) wrote: “Many former communist countries have turned to capitalism for the most part, but some have opted for a distorted market economy. They replaced their god Karl Marx with a new one – Milton Friedman. But the new religion does not serve them well ”[6, p. 125]. The absence of that overwhelming force in the market is confirmed every time in practice.

Speaking about his book, The Power of Market Fundamentalism: A Critique of Karl Polanyi (Harvard, University Press, 2014), Henry Farrell argues that the ideas of Carl Polanyi, author of The Great Transformation, a classic of 20th-century political economy, are crucial if you want to understand the recession and its consequences [7]. Representatives of neoclassical economic theory believe that market principles are dominant not only in the economy, but in all other spheres of life. However, Polanyi (John, December 2010) convincingly argued that even in the system of economic life, market principles were almost never dominant ... Government activity is not an "interference" with the autonomous sphere of economic activity. There is simply no economy without government rules and institutions [8].

The state in Ukraine still plays a significant and special role. At the present stages of civil society, its individual elements play the role of anti-development institutions. They are turning into powerful public coalitions that deal with the allocation of significant state resources. They manage to influence state decisions at the expense of state sources and to exist at the junction of the state and civil society. Nobel laureate J. Buchanan (J. Buchanan, 1986) wrote that the existence of such antistructures has dramatic consequences. Distributive coalitions (oligarchic groups, predatory elites, state institutions) artificially inhibit development [9, p. 217]. In the world economy, imperfect market reforms and defenseless globalization have struck. No country, region, or bloc is unstable. It will not continue in the future, Stiglitz warns, unless the rules governing macroeconomics and globalization are rewritten [10, p. 268].

Table 2

Dynamics of GDP growth of countries at market prices and its forecast parameters for 2020-2021 (USD 2010 prices)

Year	Ukraine	Poland	Turkey	EU
2016	2,4	3,1	3,2	1,9
2017	2,5	4,8	7,4	2,4
2018	3,3	5,1	2,6	1,9
2019 (forecast)	2,7	4,0	1,0	1,6
2020 (forecast)	3,4	3,6	3,0	1,5
2021 (forecast)	3,8	3,3	4,0	1,3

Source: Compiled by Global Economics Prospects Report, Worldbank [11]

There are positive trends in Ukraine. However, real growth is not significant. The main reason for the slow growth is the lack of strategy.

The characteristics of the quality side of economic growth are complemented by a comparison of economic growth with population growth. For example, Ukraine has recently been characterized by slow economic growth and insufficient domestic production, and increased inflationary pressures. Accordingly, the increased interest rate, which reaches 15-17% per annum, which impedes economic development accordingly (Table 3). Further stability of the economy is not able to be "guided" only by the discount rate and the currency intervention. Governments are not always professionally involved in government to minimize shocks.

In addition, the economy is observed:

- insufficient investment, problems with timely use of money by financial institutions and other funds for infrastructure projects;
- the share of non-performing loans in the Ukrainian economy reached 54%;
- compensation to individual enterprises in the form of benefits, subsidies, etc.

In 2018, we have struggled with the results of non-market price increases, turbulence in foreign markets and a decline in investor interest in Ukraine. At the same time, the relative stability of the hryvnia was observed, during the year the dynamics of replenishment of gold and currency reserves was positive.

Table 3. **Indicators of economic growth and population growth in Ukraine in 2014-2018**

Key Indicators	2014	2015	2016	2017	2018	2019 forecast	2020 forecast
1	*2*	*3*	*4*	*5*	*6*	*7*	*8*
GDP, billion UAH	1 567	1 979	2 385	2 983	3 483	3 918	4 348
GDP, real, apc	-6,6	-9,8	2,4	2,5	3,0	2,3	2,6
Consumption, real, rvs	-6,2	-15,2	2,0	7,1	3,5	2,1	2,1
Gross fixed capital accumulation, real, apc	-24,0	-9,2	20,4	18,2	14,0	8,0	8,0
Industrial production, real, apc	-10,1	-13,0	2,8	0,4	1,7	2,2	2,4
Agricultural production, real, apc	2,2	-4,8	6,3	-2,7	8,0	0,0	3,0
Population at the beginning of the year, million people	45,5	45,3	45,2	45,1	44,9	44,8	44,7
Unemployment based on ILO methodology %	9,3	9,1	9,3	9,5	9,0	8,5	8,0
Consumer Price Index, ac	24,9	43,3	12,4	13,7	10,0	6,8	6,0
Producer price index, ac	31,7	25,5	35,7	16,5	16,0	10,0	9,0
Exports of goods and services, apc	-19,9	-26,9	-3,9	17,1	10,0	4,5	4,3
Imports of goods and services, apc	-28,1	-29,3	4,5	19,2	14,5	2,8	3,4
Current account balance,% of GDP	-3,5	1,8	-1,4	-2,2	-4,3	-3,8	-3,5
Direct investments, million USD USA	299	3 012	3 268	2 593	2 300	2 500	2 500
Money base, apc	8,5	0,8	13,6	4,6	6,0	5,0	4,0
International reserves of the NBU, mln. USA	7 533	13 300	15 539	18 808	19 000	18 000	17 000
Official exchange rate, average for the year,	11,89	21,84	25,55	26,60	27,30	29,50	31,00
Rate for loans in national currency, at the end of the year,% per annum	16,6	20,4	15,2	17,5	22,0	20,0	18,0

* apc – *annual percentage change*

Source: Based on Economic Analysis and Trends: Forecast for 2018-2020, ICPS, 2018 [20]

At the same time, asymmetry in foreign trade and insufficient lobbying of national interests remained. According to the State Statistics, the negative balance of the foreign trade balance of Ukraine in 2018 amounted to $ 3.45 billion. For comparison, for the same period of 2017 the negative balance of the foreign trade balance was $ 1.11 billion [21]. The introduction of medium-term planning has added to the predictability of the Ukrainian economy. It is difficult to apply such an approach in the realities of Ukraine. Especially without reducing the vulnerability to internal and external shocks. Accordingly, any plans can be easily "spoiled" in a turbulent environment. In addition, most indicators of Ukrainian plans are set manually and depend on the "mood" of the government, that is, they are static rather than dynamic. They do not automatically change based on formula calculations and depending on the situation. Indicators do not guarantee the timely updating of plans, they do not guarantee their relevance and independence from government decisions.

The following scenarios remain:

The baseline scenario is most likely. According to him, the transitional government will not make significant changes and implement reforms. The Ukrainian economy will continue its stagnant development trend. Under such conditions, there will be no opposition from interested parties and the government will be able to fulfill its functions.

In the case of a negative scenario, there may be a blockage of transitional government decisions, uncertainty in intentions and no time for maneuver. Ukraine risks not even getting an IMF tranche and not paying its debts. This could result in a financial crisis in the country.

However, every year Ukraine is gaining experience and its development can be extremely fruitful. Measures such as the fight against corruption, the reform of the judiciary, the modernization of the education system, the development of the financial sector, the improvement of the investment climate by reducing the regulatory burden on business and the implementation of transparent and equal rules of the game are needed to support the real economy.

The main initiative is to go from business to state support. It is necessary to create national and regional 4.0 platforms, following the example of EU countries, bringing together government institutions, businesses and scientists. The task is to perform forecast growth indices of the country (Table 5).

Table 5. **Indices of industrial production, exports and consumer expenditures in Ukraine in 2013 and 2017-2019 (%)**

Indicator	**2013**	**2017**	**2018**	**2019 (forecast)**
Index of industrial production	99,0	97,1	95,0	84,6
Index of goods and services exports	46,9	47,9	45,3	51,5
Consumer expenditure index	92,8	85,6	89,8	85,5

Source: [26]

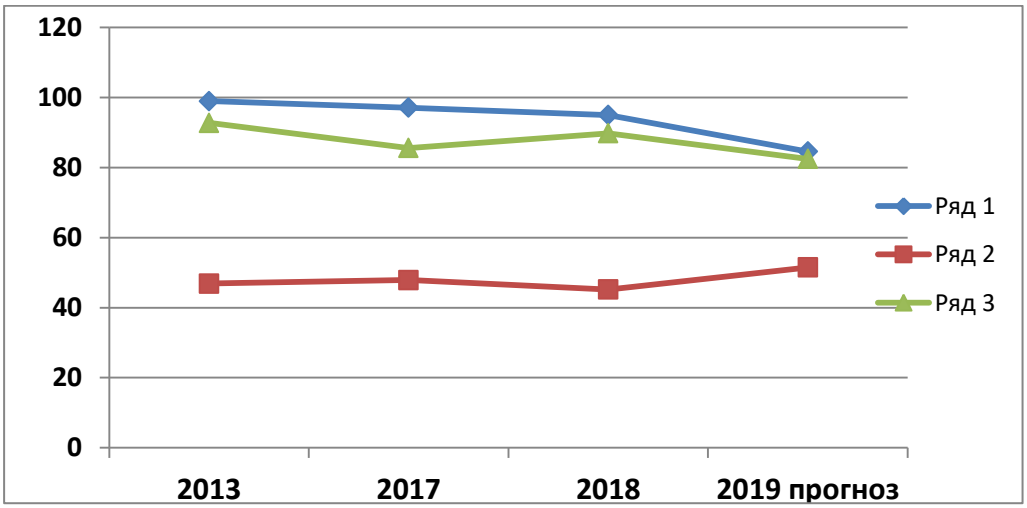

Fig. 2. **Indices of industrial production, exports and consumer spending in Ukraine in 2013 and 2017-2019**

Source: [26]

The index of industrial production is defined as the ratio of the current volume of production to the volume of industrial production in the previous period. Given the limited budget financing, there are no plans to launch large-scale new state aid programs for industrial enterprises in the form of tax breaks or direct subsidies. Instead, it is urgent to analyze the effect of pre-existing benefits and to draw conclusions about their appropriateness. If there is a positive effect of state aid on the development of the industry, assistance should be provided in accordance with the following principles: it should arrive on time and at the address.

Ukraine has managed to improve its budget deficit situation. Today, the budget deficit is at 2% of GDP, which is quite reasonable. Anti-corruption institutes have been established in the country, including the National Anti-Corruption Bureau and the Anti-Corruption Court. In many countries neighboring Ukraine, such institutes have not yet been established. Ukraine has managed to create a transparent system of public procurements online, Transparent, which really saves money. Ukraine has reformed corporate governance in some large state-owned companies. The banking sector was cleaned by closing about half of the banks with venture capital.

Along with the currency strength indicator, an important competitiveness of the economy and the level of exports. Ukraine has failed to raise the level of development of processing and high-tech industries. The Government worked on the development of an Industrial Development Strategy for two years, but the document was not finally adopted. The country is still determining what public administration really needs to develop the real sector as a basis for economic growth.

Impact on economic development has deep factors. First of all, the impact on the balance of the economy at the stage of reform development is in the mechanism of resource allocation. “The essence of the mechanism for allocating scarce resources,” explains S. Guriev, 2018, “is that individual institutions of the economic system, using certain advantages of their position (high concentration of production and capital, corporate power), do not have the ability to consciously influence production parameters even on a local, limited scale [28].

Among the most serious consequences of the functioning of corporate mechanisms of resource allocation can be noted the divergence of the country, which has occurred in recent years, into strongly and weakly corporatized "sectors". In practice, there is a steady shift in prices, financing, lending in favor of a highly corporatized sector, and the cause of such a shift is not only monopoly, which gives this sector significant advantages in the market, but also imbalance in the distribution of corporate and state power, which creates an institutional «advantage the first sector over the second ”[28].

It is the "potential difference" resulting from the divergence of the economy of the two "sectors" that becomes, in the current context, the main source for polarizing social structures and relationships. The immediate effects of the polarization of the economic space, which plays a significant role in creating an environment for structural imbalances and the shadow economy, should be intensified by the struggle for income redistribution, which is unevenly distributed at all levels.

Conclusions. The solution to the problems of state regulation of economic processes in developing market countries is based on the disclosure of the mechanisms of reforming their economies. The seriousness of the problems, both for Ukraine and for other countries with a transformational transition economy, determines the same mechanisms for reforming the economic system, political system and public administration system.

Improving methodological tools for assessing the level of economic development of the country requires taking into account the balance in the system of indicators of macroeconomic development. Reforming economic systems is determined first by political changes, and then by economic ones. The process of transformational change in the economy of the countries is dependent, secondary. It is governed from above by state-power structures. The low interest of the citizens and the peculiarities of their motivation are a consequence of the fact that the power structures do not create the conditions for the modern needs of the motivation to change in general.

The situation today is that state corporations, industry monopolies, individual oligarchs and power structures have a special influence on the economic development of the country. Because of this impact, the opportunities given to countries during certain periods of their historical development are lost. Strong political groups, oligarchs, "predatory elites" dictate their terms. They influence the directions of use of financial resources, the development of sectors, segments, industries.

Fundamentals of economic theory argue that conditions for the growth and modernization

of the economy are created in the real sector. Stagnation of industry as a major element of the national economy largely causes the weakening of the national economy as a whole. It should be borne in mind that this implies the need to align monetary policy priorities with those of a balanced sectoral development at the state level and to ensure that they are complied with.

In countries where the share of the processing sector is low, commodity exports are subject to oligarchic influence. Funds exported through commodity exports are most often a source of funding for development programs for countries. Therefore, there is a need to bring macroeconomic and monetary development priorities closer to those of the real economy. The impact of the imbalance crisis in countries is exacerbated by the weak growth of raw materials processing enterprises and the extension of value chains and the lack of domestic producers in value chains.

An urgent need to accelerate the economic growth of countries with a transformational economy in the current circumstances is to introduce a maximum degree of economic freedom for actors participating in the sectoral markets, with the maximum requirement of their social responsibility. This demand should change the situation with the spread of socio-political populism, which to date has a significant impact on the Ukrainian economy and the economy of other countries.

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Summary

The article deals with the problems of ensuring economic growth in emerging market economies: structural imbalances; STATE-managed, non-market financial and monetary policy; loss of opportunities for the development of the real sector of the economy; administrative failure of state-owned institutions.

Despite the significant amount and the high level of theoretical synthesis of these problems in existing scientific publications, their research remains relevant and requires additional scientific developments.

The author has considered the obstacles on the way of economic growth of countries, proposing their classification depending on their influence, origin and functional content. Among the impeding risks are precisely those such as weak state institutions, historically formed weak social structure, diametrically opposed interests of influential social groups, non-professionalism and miscalculations, etc.

The research is devoted to the development of conceptual foundations, principles and approaches to modeling the systems of economic growth in countries with market transformation. On the basis of the analysis of a representative mass of information, the relationship between the components that threatens economic growth, sustainable development of the countries is revealed; their repeatability or typology, which creates special conditions for the development of mechanisms for preventing obstacles, threats, risks and methods of managing them.

The author, using the methods of dialectics, scientific abstraction and the systematic approach, find out links and chain of links that characterize sectoral imbalances and macroeconomic imbalances and lead to them.

The results of the study allowed the authors to argue that the growing systemic crisis in the socio-political field of the state multiplicatively extended to the system of providing economic growth, which loses its functional capabilities and requires new and consistent strategic development priorities and its institutional and legal support, as well as mechanisms, instruments and means of transforming the market system.

Keywords: *structural imbalances, real sector development, financial and monetary policy instruments, institutional and legal measures, development priorities.*

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STATE REGULATION OF FINANCIAL AND ECONOMIC SECURITY OF THE COUNTRY AND ITS IMPROVEMENT

Ольга Кубецька, Яна Палешко, Тетяна Остапенко. ДЕРЖАВНЕ РЕГУЛЮВАННЯ ФІНАНСОВО-ЕКОНОМІЧНОЇ БЕЗПЕКИ ДЕРЖАВИ ТА ЙОГО УДОСКОНАЛЕННЯ. Авторами сформовано визначення категорії «економічна безпека держави». Розглянуто питання забезпечення фінансово-економічної безпеки держави через розгляд нормативно-правових актів з метою вивчення рівня їх актуальності та пріоритетності, для забезпечення стабільного економіки розвитку держави, що надасть можливість мінімізувати ймовірність настання загроз національним інтересам і національній безпеці держави. Нормативно-правові акти авторами згруповано за напрямами діяльності держави (макроекономіка, наука і техніка, енергетика, фінанси, соціальна політика, зовнішня та внутрішня політики та ін.). Авторами визначено зміст категорій «внутрішні загрози» та «зовнішні загрози» країни. Виділено рівні поділу нормативно-правових актів забезпечення регулювання фінансово-економічної безпеки держави. Авторами наведено основні пропозиції, щодо вдосконалення нормативно-правового регулювання фінансово-економічної безпеки, а саме: пропонується пожвавлення соціального діалогу між законодавцем та суспільством з метою скорочення нерівності соціального та економічного характеру; пропонується перегляд кожної галузі законодавства не в сукупності, а окремо для приведення їх у відповідність до вимог Європейського Союзу у подальшому та ін.

Ключові слова: *держава, регулювання, нормативно-правові акти, економічна безпека, загрози.*

Problem statement. In the conditions of market economy, the economy of our country requires the formation of its own environment of the existence of institutions on the regulation of financial and economic security and, as a result, formation of an appropriate legal framework on the issue.

No country, in particular, our state regardless of its economic development, is immune to the aggression of another state, first of all, in economic understanding. Therefore, in the conditions of modern globalization the question of regulation of financial and economic security, both on the national and international legislative levels, is becoming extremely acute.

Analysis of publications that started solving this problem. The issue of state regulation of financial and economic security of the country has been researched by such Ukrainian

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scientists as: R.G. Maistro, T.V. Polozova [1], M.V. Kyryku, L.M. Akimova, Z.S. Varnalii, I.P. Shulha etc.

However, the scientific literature review makes it possible to claim that some theoretical issues, in particular, the regulatory framework of the financial and economic security of the country and its improvement requires its constant examination and clarification.

The article's objective is the identification of the adequacy and timeliness of the current regulatory and legal support of the financial and economic security of the country in face of modern challenges, the formation of proposals for its optimization.

Basic content. The economic security of the country is a state of the national economy, in which economic stability to internal and external threats is maintained, and the needs of an individual, society, and the country are met through the formation of effective legislation.

Internal threats can be described as weakening of innovations, ineffective management system of the state economy, etc. That is, threats that can be managed and controlled (eliminated or whose negative impact can be reduced, etc.).

External threats are those that cannot be influenced by the state, but the state is forced to respond and adapt to them (fluctuations of the foreign exchange rate; excess of capital outflow over its inflow; large volume of public debt, etc.).

Table 1

Regulatory and legal framework for the regulation of financial and economic security of the country (in directions)

Direction	Types
1	2
MACROECONOMICS	The Law of Ukraine "On National Security of Ukraine", the Law of Ukraine "On Prevention of Corruption", the Law of Ukraine "On Principles of State Anti-Corruption Policy in Ukraine (Anti-Corruption Strategy) for 2018-2020", the Law of Ukraine "On Prevention and Counteraction of Legalization (Laundering) of Crime, Terrorist Financing and the Proliferation of Weapons of Mass Destruction ", the Law of Ukraine "On the Legal Regime of Emergency", the Law of Ukraine "On the State Bureau of Investigation", the Law of Ukraine "On National Police", the Law of Ukraine "On the Licensing System in the Field of Economic Activity", the Law of Ukraine "On Privatization of State and Communal Property", the Law of Ukraine "On Management of State Property Objects", the Law of Ukraine "On State Program of Civil Aviation Security", the Law of Ukraine "On Stimulating the Development of Regions", the Law of Ukraine "On Natural Monopolies", the Law of Ukraine "On Protection against Unfair Competition", the DECREE "On the Strategy of Sustainable Development "Ukraine – 2020", the DECREE "On the National Security and Defense Council of Ukraine", the DECREE "On Approval of the Instruction on the Organization of Non-public Investigative (Search) Actions and Use of Their Results in Criminal Proceedings", the DECREE "On Approval of the Instruction on Organization of Interaction of Pre-trial Investigation Bodies with Other Bodies and Units of the National Police of Ukraine in Prevention, Detection and Investigation", the DECREE "On Approval of Methodological Recommendations for Calculating the Level of Economic Security of Ukraine", the ORDER "On the Concept of Economic Security of Consumer Cooperation of Ukraine", the ORDER "On Approving the List of State Property Objects of Strategic Importance for the Economy and Security of the State", the PROVISIONS "On Approval of the Regulations on the State Audit Service of Ukraine".
FINANCES	The Law of Ukraine "On Banks and Banking", the Law of Ukraine "On Securities and Stock Market", the Law of Ukraine "On Accounting and Financial Reporting in Ukraine", the Law of Ukraine "On Financial Services and State Regulation of Markets for Financial Services", the Law of Ukraine "On Insurance", the Law of Ukraine "On Mortgage Bonds", the ORDER "Concept of national security in the financial sphere".
EXTERNAL AND INTERNAL POLICIES	The Law of Ukraine "On the Principles of Domestic and Foreign Policy", the Law of Ukraine "On Foreign Economic Activity", the Law of Ukraine "On Customs Tariff of Ukraine", the Law of Ukraine "On Cross-Border Cooperation", the Law of Ukraine "On Regulation of Commodity Exchange (Barter) Operations in the Field of Foreign Economic Activity".

Direction	Types
1	2
INVESTMENTS	The Law of Ukraine “On Investment Activity”, the Law of Ukraine “On Joint Investment Institutions”.
SCIENCE AND TECHNOLOGY	The Law of Ukraine “On Innovative Activity”, the Law of Ukraine “On Scientific and Scientific and Technical Activity”, the Law of Ukraine “On Priority Areas of Science and Technology”, the Law of Ukraine “On Higher Education”, the Law of Ukraine “On Science Parks”, the Law of Ukraine “On Priority Areas of Innovation Activity in Ukraine”.
ENERGETICS	The Law of Ukraine “On Energy Saving”, the Law of Ukraine “On the Natural Gas Market”, the Law of Ukraine “On Oil and Gas”, the Law of Ukraine “On Business Associations”, the Law of Ukraine “On Restoration of Debtor's Solvency or Bankruptcy”, the Law of Ukraine “On Development and State Support of Small and Medium Entrepreneurship in Ukraine ", the Law of Ukraine "On Farming", the Law of Ukraine "On Holding Companies in Ukraine".
DEMOGRAPHICAL POLICY	The Law of Ukraine "On Childhood Protection", the Law of Ukraine "On Ensuring Organizational and Legal Conditions of Social Protection of Orphans and Children Deprived of Parental Care", the Law of Ukraine "On Immigration".
SOCIAL POLICY	The Law of Ukraine "On Indexation of Monetary Income of the Population", the Law of Ukraine "On Employment", the Law of Ukraine "On Non-state Pension Provision", the Law of Ukraine "On Labor Protection", the Law of Ukraine "On Compulsory State Pension Insurance", the Law of Ukraine " On State Social Assistance to Low-income Families», the Law of Ukraine "On the Basics of Social Protection of Persons with Disabilities in Ukraine", the Law of Ukraine "On Compulsory State Social Insurance in Case of Unemployment", the Law of Ukraine "On Amendments to Some Legislative Acts of Ukraine on Reforming Compulsory State Social Insurance and Payroll Legalization»
FOOD POLICY	The Law of Ukraine “On Agreements on Product Distribution”, the Law of Ukraine “On State Support for Agriculture of Ukraine”, the Law of Ukraine “On Grain and Grain Market in Ukraine”, the Law of Ukraine “On Baby Nutrition”, the Law of Ukraine “On Milk and Dairy Products”, the Law of Ukraine “On drinking water and drinking water supply”, the Law of Ukraine “On Basic Principles and Requirements for Food Safety and Quality”.

The regulatory framework for regulating financial and economic security in general, and foreign economic security in particular, for today, as a whole, is created from several levels of legal acts: international legislative acts and national ones, such as: the Constitution of Ukraine, statutory and sectoral laws, by-laws, as well as some political and legal documents of a declarative nature. Legislation development and enforcement, that is, legal regulation – is one of the most important functions of the state, which, in fact, determines the role of the state in the market economy.

The grouping of normative legal acts according to the spheres of state functioning, which influence the level of security of the country as a whole, is presented in table 1 and in fig. 1.

In the Law of Ukraine "On the Basics of National Security of Ukraine" of June 19, 2003, in the list of threats to the national security of Ukraine, in particular, in the economic sphere, among other things, in regulatory and legal framework the following are outlined:

- weakening of state regulation and control in the sphere of economy;
- instability in the legal regulation of relations in the sphere of economy, including the financial policy of the state;
- lack of an effective financial crisis prevention program;
- predominance in the activity of management structures of personal, corporate, regional interests over national ones.

The analysis of the current normative legal acts of ensuring the regulation of the financial and economic security of the state allows to distinguish three basic levels (fig. 1):

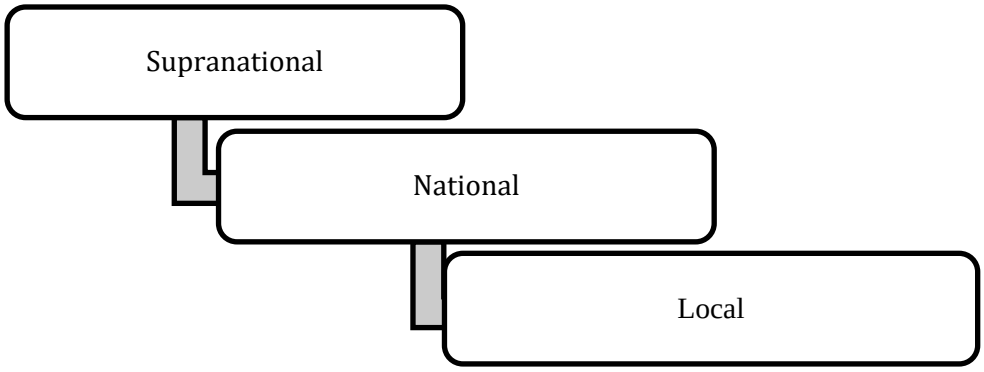

Fig. 1. Levels of normative legal acts separation on ensuring of state financial and economic security regulation

The main methodological and practical basis for regulating economic security is the Constitution of Ukraine, which states that its norms are norms of direct action:

- the provisions of Art. 17 of the Constitution of Ukraine, according to which the functions of ensuring the economic security of Ukraine are directly defined as one of the most important functions of the state;

- Art. 13 of the Constitution of Ukraine guarantees the equality of all subjects of property rights before the Law and provides rights protection of subjects of property and economic rights;

- Art. 42 provides protection of competition in business activity, restricts monopoly activity.

The constitutional principles of foreign economic activity have been developed in the Law of Ukraine "On the Principles of Internal and Foreign Policy". In Art. 2 paragraph 3 of the abovementioned Law of Ukraine is included into the range of principles of foreign economic policy, in particular:

- mutually beneficial cooperation between states;

- honest fulfillment of international commitments;

- priority of generally recognized norms and principles of international law over norms and principles of national law;

- timeliness and adequacy of measures, aimed to protect national interests, citizens and legal entities from real and potential threats to Ukraine.

Among the basic principles of our country's foreign economic policy in this Law, we can distinguish, in particular, those concerning the sphere of ensuring the foreign economic security of Ukraine, namely:

- ensuring national interests and security of Ukraine;

- use of international potential for the establishment and development of Ukraine as a sovereign, independent, democratic, social and legal state, its sustainable economic development;

- supporting the development of trade, economic, scientific, technical and investment cooperation of Ukraine with foreign countries;

- integration of the Ukrainian economy into the world economic system, expansion of international cooperation in order to attract foreign investment, new technologies and management experience in the national economy and in the interests of its reform, modernization and innovative development, etc.

In the Law of Ukraine "On the Basics of National Security of Ukraine" national security is defined as the protection of vital interests of the individual and the citizen, society and the state, which ensure sustainable development of society, timely detection, prevention and neutralization of real and potential threats to national interests.

The law also sets priorities for national interests, including: creating a competitive, socially oriented market economy and ensuring a constant increase in the standard of living and well-being of the population; integration of Ukraine into the European political, economic, legal space; development of equal mutually beneficial relations with other countries of the world in the interests of Ukraine (Art. 6), threats to the national interests and national security of Ukraine (Art. 7) and the main directions of the state policy on national security in the economic field.

The National Security Strategy of Ukraine defines the principles, priority goals, objectives and mechanisms of securing the vital interests of the individual, society and the state against external and internal threats.

Therefore, the domestic law reflects international legal standards. State institutions of the formation of normative legal acts (legislative field) are the bodies of legislative and executive power, as well as the President of Ukraine.

Improvement of legislation lies in the activity of law-makers in changing the state of the current legislation, which is carried out through the use of appropriate legal means and law-making technique; the result of such activity is the proper quality of legislation and the aim is the effectiveness of legislation [2].

The aforementioned normative legal acts of ensuring the financial and economic security of the state require: some improvement in terms of quality and efficiency; resolving the issue of revitalizing social dialogue between the legislator and society as an instrument through which social and economic inequalities can be reduced; review of each sector of legislation not in aggregate but separately to bring them in line with the requirements of the European Union in the future.

Conclusions. Thus, having considered the normative legislative acts of financial and economic security regulation at the state level, we come to the conclusion that the solution of this problem is possible only through applying a comprehensive approach that will allow to ensure the security of economic interests of all economic entities at various levels through optimization of legislation and its refinement as a key form of expression of such function of the state as regulation.

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Summary

The authors have formulated the definition of the category "economic security of the state". The issue of ensuring the financial and economic security of the state through the consideration of normative legal acts is considered with the purpose of studying the level of their relevance and priority, for ensuring a stable economy of the state development, which will allow to minimize the likelihood of occurrence of threats to national interests and national security of the state. The legal acts are grouped according to the directions of activity of the state (macroeconomics, science and technology, energy, finances, social policy, foreign and domestic policies, etc.). The authors define the content of the categories "internal threats" and "external threats" of the country. The levels of division of normative legal acts are provided for ensuring the regulation of financial and economic security of the state. The authors have presented the main proposals for improving the regulatory and financial regulation of financial and economic security, namely: the revitalization of social dialogue between the legislator and the society in order to reduce inequalities of social and economic character; it is proposed to review each sector of legislation not in aggregate, but separately to bring them in line with the requirements of the European Union in the future, etc.

Keywords: *state, regulation, regulations, economic security, beyond-thunderstorms.*

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FEATURES OF LATENCY OF ECONOMIC CRIMES IN UKRAINE

Людмила Рибальченко, Олександр Косиченко. ОСОБЛИВОСТІ ЛАТЕНТНОСТІ ЕКОНОМІЧНИХ ЗЛОЧИНІВ В УКРАЇНІ. Розглянуто основні ознаки економічних злочинів в підприємницькій діяльності, які становлять загрозу економічній безпеці держави. Досліджено латентний характер злочинів економічної спрямованості, який обумовлює необхідність і пріоритет пошукової діяльності, в тому числі і в рамках оперативно-розшукових заходів. Виявлено, що шахрайство є явищем, яке формується складною взаємодією обставин економічного, психологічного та соціального порядку, в також тісно пов'язано з кіберзлочинністю. Досліджено методи їх виявлення, визначено основні напрямки щодо розкриття латентних злочинів в сфері регіональної економіки.

З'ясовано, що тіньова економіка є однією з основних складових, яка перешкоджає конкурентоспроможності, підвищенню рівня життя населення та економічному розвитку країни. Зростаючий рівень тіньової економіки відображає корупційну складову державних органів, рівень злочинів в економічній та політичній сферах. Процеси, що відбуваються в сфері фінансово-економічних відносин, призводять до того, що держава все більше втрачає контроль над економікою і сферою фінансів.

На сьогоднішній день, найбільш поширеними видами економічних злочинів та шахрайства є незаконне привласнення майна, шахрайство у сфері закупівель, шахрайство у сфері управління персоналом та кіберзлочини, які пов'язані з економічною діяльністю. Україна в усьому світі вважається однієї із самих проблемних країн у сфері кіберзлочинів. Хоча українські організації застосовують сучасні інформаційні технології і методи для виявлення шахрайства та його моніторингу, але все ж таки вони відстають від інших країн світу.

Незважаючи на збільшення витрат на боротьбу з економічними злочинами та шахрайством, багато українських організацій все ще не проводили профілактику шахрайства, а лише реагують або захищаються при наявності факту шахрайства. Високий ризик економічних злочинів чи шахрайства вказує на те, що необхідно протидіяти і вживати ефективніші заходи протидії шахрайству, поки воно не стало системним.

Ключові слова: *економічні злочини, безпека підприємництва, тінізація економіки, шахрайство, кіберзлочини, латентність економічних злочинів, загроза економічній безпеці.*

Problem statement. Providing of economic security is an important constituent on the way of development and becoming of the state. Especially actual are threats of criminal character in the sphere of regional economy, where traditionally a swindle, appropriation and peculation, illegal enterprise, criminal bankruptcies, tax crimes etc., behave to the crimes of economic orientation. Characterizing criminality in an economic sphere, it is necessary to mark about its high degree of latents. Latent character of crimes of economic orientation stipulates a necessity and priority of searching activity, including within the framework of operational search events.

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Establishment of fact of violation of legal interests, for example, at plundering of the state budget a task is near-term in the sphere of counteraction to the economic crimes, and their exposure or exposure of their signs is not only the task of the state in the person of her organs but also necessary measure in relation to providing of safety for the different subjects of economic activity.

Analysis of publications that started solving this problem. A financial swindle was investigated as home as foreign scientists: A. Volobuev, O. Dolzhenkov, I. Kozachenko, D. Nikiforchuk, M. Shumilo et al. V. Glushkov, O. Kopan, O. Kostenko, M. Miller, V. Shakun et al, investigate the problems of economic criminality.

The aim of work is to research of growing threat to economic security of country in a fight against economic crimes and swindle and consideration of events on counteraction to the economic crimes and swindle, what organizations can apply, to show a swindle out of shade.

The article's objective. One of the most pressing problems of our time that creates the real threat of realization of the economic converting into Ukraine, the factor of social destabilization is a proof increase of criminal displays in the field of economics, increase in the structure of economic criminality of part of grave crimes, excrescence of the organized crime and corruption.

Basic content. The shadow economy is one of the main components that hinder competitiveness, raising the standard of living and economic development of Ukraine. The level of the shadow economy reflects the corruption component of government bodies, the level of crime in the economic and political spheres. The objective reality is that neither society nor the state can ensure proper registration of the crime.

Therefore, latent crime today has the following types: natural, artificial, hidden and unknown. Hidden (latent) crimes in the economic sphere, as well as crime in general, have a negative impact on the economy of the country; impede the development of foreign economic relations, the dynamics of joint economic activity, and the flow of foreign investment. In terms of damage, a particular group of economic crimes is the abuse of credit and monetary relations.

The processes taking place in the sphere of financial and economic relations lead to the fact that the state is increasingly losing control over the economy and the sphere of finances. According to the World Economic Crime and Fraud Survey in 2018, 48% of Ukrainian organizations were affected by economic crime and fraud cases (in 2016 – 43%). For comparison, the global average of economic crimes is 49%. Bribery and corruption remain a major economic crime for many years, with a negative impact of 73% of Ukrainian victims.

By far, the most common types of economic crime and fraud are: misappropriation of property, procurement fraud, personnel management fraud and cybercrime related to economic activity. Ukraine is considered one of the most problematic countries in the field of cybercrime worldwide.

With the development of modern information technologies, on the one hand, they act as a threat to the organization, on the other they become its means of protection. Although Ukrainian organizations use modern information technologies and methods to detect and monitor fraud, they are still lagging behind the rest of the world. Many domestic organizations are not yet sufficiently protected against cyber attacks. Only one third of organizations in Ukraine have been found to have a cyber defense program.

From 2016 to 2018, the share of bribery and corruption in Ukrainian enterprises increased from 56% to 73%. Comparing the value of this indicator with the global level of bribery and corruption, it is almost three times less than in 2018 in Ukraine and is 25%. Only the proportion of misappropriated property has declined, and all other economic crimes have increased, including fraud in personnel management from 4% in 2016 to 33% in 2018.

In 2018, 56% of fraud cases were committed by employees of the organization and belonged to their senior management (in 2016, there were 27%), 36% of cases were committed by a third party (that is, agents, suppliers and clients with whom the organization has regular and profitable 8% abstained. In 70% of the employees, the main reason that prompted them to commit fraud was the ability to commit fraud, meaning there was no fraud protection. 33% of employees received a bribe for fraud [1].

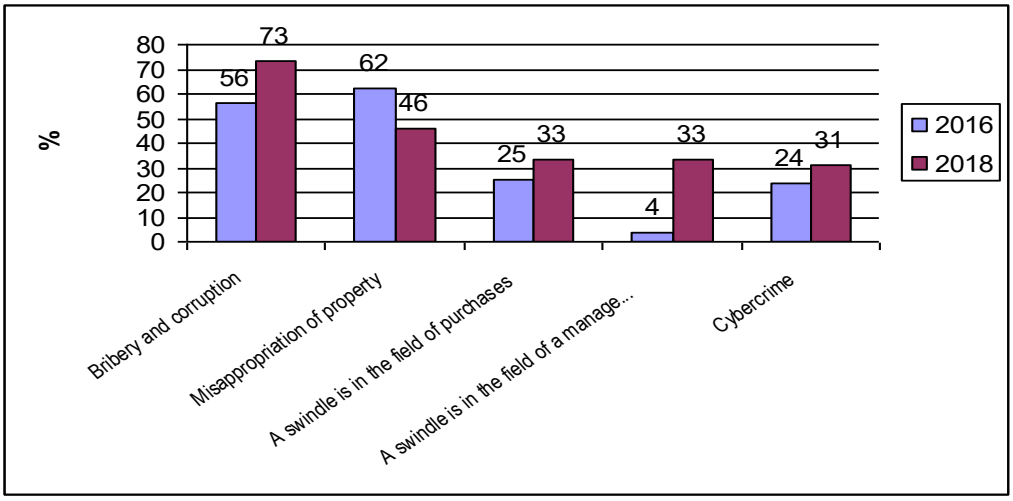

Fig. 1. Economic crimes at Ukrainian enterprises

Reduction of cases of misappropriation of property in 2018 is a consequence of the effectiveness of strengthening control in domestic organizations and increasing the funds for its prevention (Fig. 1).

Every third domestic organization received a bribe offer (33%). Of concern is the fact that 23% of organizations predict that bribery and corruption, among other types of economic crime and fraud, will be the largest of all financial losses.

According to the Corruption Perceptions Index 2018, Ukraine has improved its performance by 32 points and ranked 120th out of 180 countries (in 2017 – 30 points, 130th) (Fig. 2). Among its neighbors, Ukraine managed to bypass only Russia, which ranks 138th with 28 points, Poland – 60, Slovakia – 50, Romania – 47, Hungary – 46, Belarus – 44, Moldova – 33 points [2]. In 2019, Ukraine has lost its position and is already 123rd on this indicator.

External fraud is carried out at the enterprise by contractors or third parties, and internal fraud is carried out by employees of the enterprise itself. Internal fraud has a greater impact on the business, given the loss of reputation and clients where they are being stolen. In 2018, 33% of Ukrainian organizations have experienced procurement fraud, which is 11% more than in the world. This phenomenon can be explained by the inefficient choice of suppliers with whom contracts for payment for their goods and services are concluded.

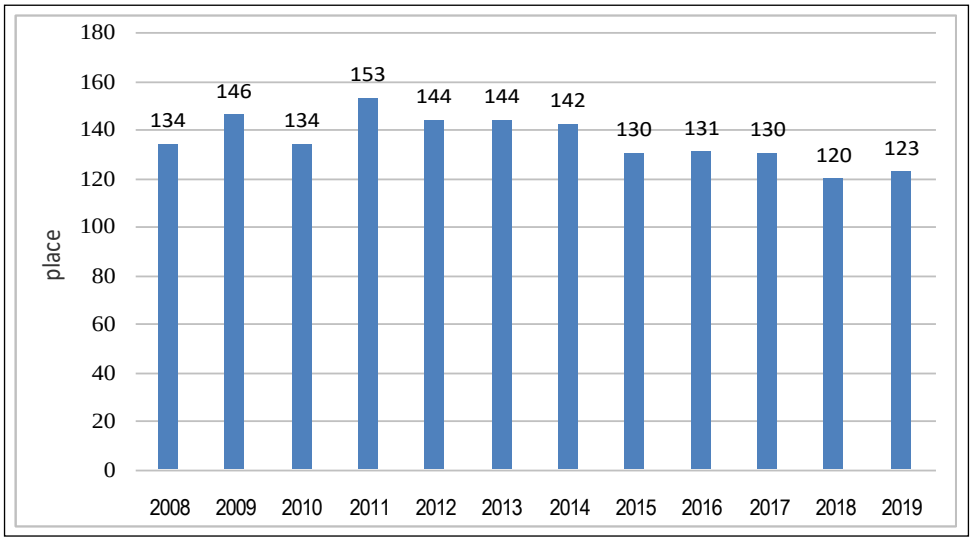

Fig. 2. Ukraine's place in the international corruption perception rating

The number of cybercrime related to economic activity is increasing every year and carries a high risk for both commercial and public sector organizations. The rise in this crime from 24% in 2016 to 31% in 2018 indicates new threats to organizations with advanced information

technology technologies, including malware, phishing, network scanning, and password-picking (such as "brute force" "based on a complete batch). It is this type of economic crime that needs to be given the utmost attention to reduce the effects of cybercrime.

Despite the increasing cost of combating economic crime and fraud, many Ukrainian organizations have not yet implemented fraud prevention, only responding or defending them in the presence of fraud.

The high risk of economic crime or fraud indicates that it is necessary to counteract and take more effective anti-fraud measures until it becomes systemic.

Cyber attacks have become widespread worldwide. Organizations and governments around the world suffer from cyber-attacks by state-sponsored hackers for political or ideological reasons and committed by terrorist organizations.

The consequence of cyber attacks is: breach of government activity, theft of personal data and intellectual property, the collection of information on the structure of information systems and software, the acquisition of data for remote access to important infrastructure.

The major economic crimes and frauds that organizations suffer from as a result of cyber attacks include: breach of business processes (51%), extortion (38%), infringement of intellectual property rights (19%), attacks with a political motive (19%), misappropriation property (13%), insider attack (4%). The most common cyber attack technologies are: malware (35%), phishing (13%), network scanning (5%), password attack (5%), and middleman attack (3%) [1].

In order to overcome the systemic problem of fraud committed by top management of organizations, it is necessary to develop control mechanisms that take into account the possibility that the management will be able to circumvent them, or to collude in one direction or another. Fraud is the result of the intersection of a person's personal choices with a disruption of the organization's systems and controls, so it is crucial to remember that a sense of security is often misleading.

Conclusions. Detecting and preventing economic crime or fraud is a complex task that requires finding a balanced set of measures that involves technology and human resources, and build on a clear understanding of the incentives for fraud and the circumstances under which it is committed.

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Summary

The article deals with the main features of economic crimes in entrepreneurial activity, which threatens the economic security of the state. The latent nature of crimes of economic orientation is investigated, which determines the necessity and priority of search activity, including in the framework of operational-search activities. It is revealed that fraud is a phenomenon that is formed by a complex interaction of the circumstances of economic, psychological and social order, and is also closely related to cybercrime. The methods of their detection are investigated, the main directions of disclosure of latent crimes in the field of regional economy are determined.

Keywords: *economic crimes, business security, shadow economy, fraud, cybercrime, latency of economic crimes, threat to economic security.*

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ENSURING ENTERPRISE ECONOMIC SECURITY

Людмила Рибальченко, Едуард Рижков. ЗАБЕЗПЕЧЕННЯ ЕКОНОМІЧНОЇ БЕЗПЕКИ ПІДПРИЄМСТВА. Досліджено сучасний стан розвитку підприємства, складові економічної стабільності та стійкості, а також підходи до забезпечення його рівня економічної безпеки. Визначено основні завдання щодо ефективного та стратегічного управління системою економічної безпеки підприємства та проблеми впливу на його діяльність економічних ризиків. Проаналізовано збитки, що сталися на підприємствах, в наслідок дій професійного шахрайства в Україні та світі.

Сучасний етап соціально-економічного розвитку характеризується значними політичними, економічними, соціальними та екологічними змінами, стрімким розвитком науково-технічного прогресу, що проникає у всі сфери життєдіяльності людини. Кризові явища, що наростають в державі, посилюють невизначеність економічного становища та вимагають від суб'єктів господарювання посилення уваги до питань власної економічної безпеки, виявлення та нейтралізації можливих загроз, небезпек та ризиків, здатних негативним чином вплинути на стан та результати їх діяльності.

Правильно побудована система забезпечення економічної безпеки дозволить проводити постійний моніторинг за діяльністю організації з метою виявлення загроз і профілактики в діяльності конкурентів, а також дозволить побудувати ефективну методику боротьби з виникаючими проблемами. В даний час існує ряд можливих загроз безпеки і для того, щоб правильно їх оцінити, необхідно проводити профілактичну роботу і боротьбу з подібними проблемами з метою побудови ефективної системи забезпечення економічної безпеки комерційної структури.

Для забезпечення економічної безпеки підприємства необхідно застосування комплексного підходу, враховуючи виробничі, ринкові та правові ознаки, контроль всіх змін, які відбуваються в ході діяльності компанії, а також використання системи моніторингу, за допомогою якої можливо аналізувати всі зміни, які можуть вплинути на діяльність підприємства, без якого неможливо створити повноцінний підхід по забезпеченню економічної безпеки підприємства, економічної безпеки регіону та національної економічної безпеки.

***Ключові слова**: економічна безпека, стабільність підприємства, система моніторингу, економічний стан, загроза економічній безпеці.*

Problem statement. The current stage of socio-economic development is characterized by significant political, economic, social and environmental changes, rapid development of scientific and technological progress, which penetrates into all spheres of human life. Crisis phenomena that are growing in the country exacerbate the uncertainty of the economic situation and require economic entities to increase attention to issues of their own economic security, identify and neutralize possible threats, dangers and risks that may adversely affect the state and performance of their activities.

Analysis of publications that started solving this problem. Famous economists such as A. Galchinsky, V. Geyets, S. Mocherny, V. Muntian, I. Alexandrov have devoted their work to the study of economic security issues, both at the level of the national economy and at the

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level of individual economic entities. , V. Bogomolov, T. Klebanova, G. Pasternak-Taranushchenko, A. Baranovsky and others. However, in spite of the considerable scientific achievements in this field and in view of the multifaceted and growing weight of this problem in the current economic conditions, the issue of ensuring the proper level of economic security of domestic economic entities, timely identification and diagnosis of sources of danger still needs to be increased attention.

The article's objective is to study the security system of the enterprise, identify possible threats to its activities and approaches to ensure management of the economic security of the enterprise.

Basic content. The economic security of the enterprise is the prevention of all threats to the activity of the business entity, the efficient use of resources to ensure the sustainable functioning of the commercial structure. Properly designed economic security system will allow constant monitoring of the organization's activities in order to identify threats and prevention in the activities of competitors, as well as to build an effective method of dealing with emerging problems. Currently, there are a number of possible security threats and in order to properly assess them, it is necessary to carry out preventive work and combat similar problems in order to build an effective system for ensuring the economic security of the commercial structure [1].

The Law of Ukraine 2469-VIII of 21.06.2018 "On National Security of Ukraine" defines the mechanisms of leadership in the field of national security and defense, the standardization of the structure and composition of the security and defense sector, the management system, the introduction of a comprehensive approach to planning in the field of national security and defense to ensure sustainable and effective civilian democratic oversight of security sector bodies and entities [2].

In our view, in order to set up an effective economic security system, each company needs to create a specialized service that deals with both external and internal threats, develop and implement preventative measures to protect the enterprise, collect and store information about partners, to inspect employees of the organization, to protect information, to protect the territory and property of the company, as well as to carry out all necessary operations.

Important tasks of economic security of the enterprise are: assessment of risks of the enterprise and their analysis; avoidance of possible risks and forecast of the state of enterprise protection; protection of confidentiality of information and trade secrets; effective and strategic management of the enterprise's economic security system. The latter include: protection of trade secrets and confidential information, information security, internal and external security, competitive intelligence, personnel, industrial, financial, tax and security, and others.

Corporate fraud is one of the pressing problems of our time. According to statistics, 5% of profits are lost annually by global companies due to the dishonest actions of their employees. In Ukraine, this figure is even higher – in various cases it reaches 10-15%. It is only the losses that have been made public by the companies [3]. The key risks that provoke fraud in 2019 are: lack of internal controls; self-removal of the owner from direct management of the company; lack of business performance measurement criteria; the owner's personal reluctance to take fraud measures; emphasis on cash when conducting financial transactions.

The world's largest anti-fraud organization, ACFE, has investigated that in 2018 in Eastern Europe, as well as in Central and Central Asia, 86 of the largest cases of professional fraud are misappropriation of assets, accounting for 83% of all violations. These cases resulted in a loss of $ 150,000. Fraud schemes were the least widespread, accounting for 10% of all cases, and corruption schemes occurred in 60% of cases and resulted in an average loss of $ 300,000. The organizations that are victims of professional fraud include: private companies – 50% (losses of US $ 115 thousand), public companies – 43% (losses of US $ 155 thousand), governmental ones – 1; non-profit – 2%, others – 3% [4].

Fig. 1 shows the number of occupational fraud cases (86) in Eastern Europe, as well as in Western and Central Asia in 2018. There are 3 such cases in Ukraine, which is less than the average of 4.3 of all cases.

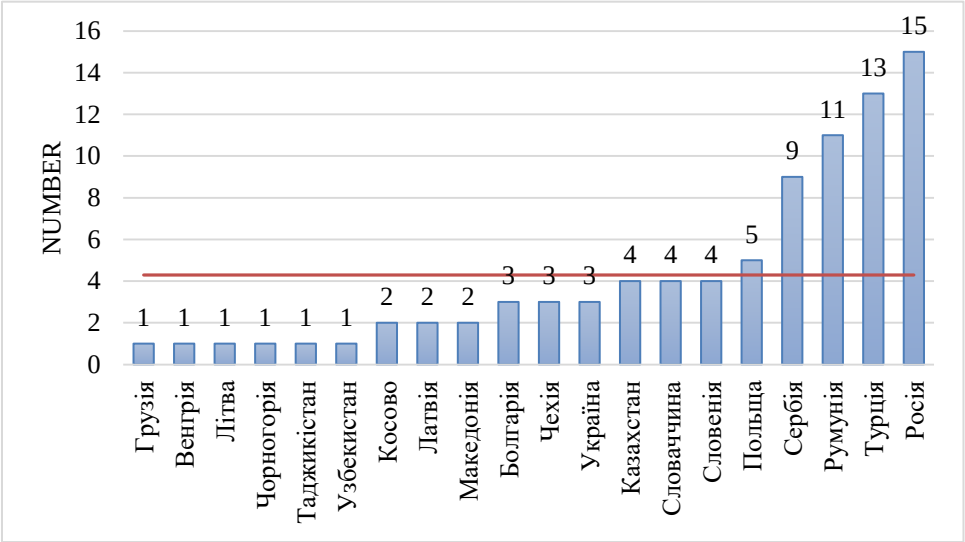

Fig. 1. The number of professional fraud cases in Eastern Europe, as well as in Western and Central Asia in 2018

Most cases of professional fraud are in Serbia (9), Romania (11), Turkey (13) and Russia (15). Let's see how the size of your organization is associated with the risk of professional fraud. In Fig. 2 shows that the largest percentage of cases in Eastern Europe, as well as in Western and Central Asia, belongs to enterprises in which the number of employees ranges from 100 to 999 (32%). These organizations suffered the largest losses of $ 1 million. Organizations with 1,000 to 9999 employees make up 31% of the cases, with an average loss of $ 30,000. Large organizations, with more than 10,000 employees, accounted for 26% of all cases, suffering an average loss of $ 275,000.

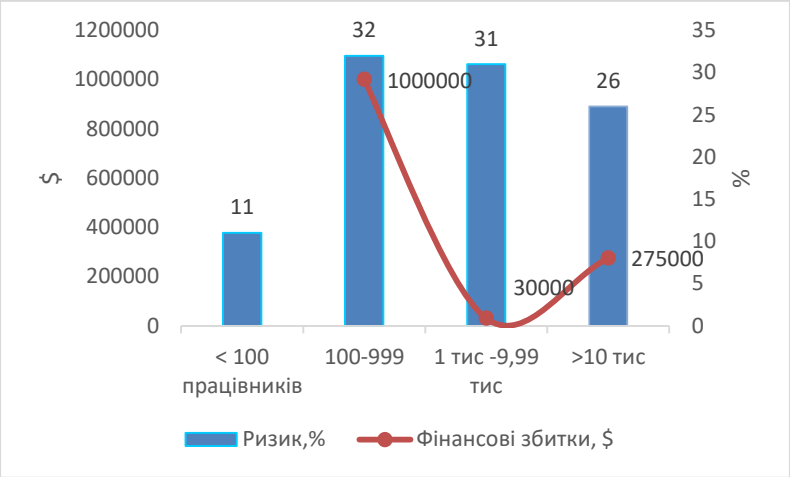

Fig. 2. Dependence of the amount of losses on the number of employees in the company

The largest share of economic crimes at Ukrainian enterprises in 2018 belonged to bribery and corruption, 73%, which increased compared to 2016 and amounted to 56%. For comparison, the global level of bribery and corruption is 25%.

The level of economic crime or fraud in 2019 (61.5%) increased compared to 2016 (43%) and even slightly exceeded the global level of 60.3% (Fig. 3).

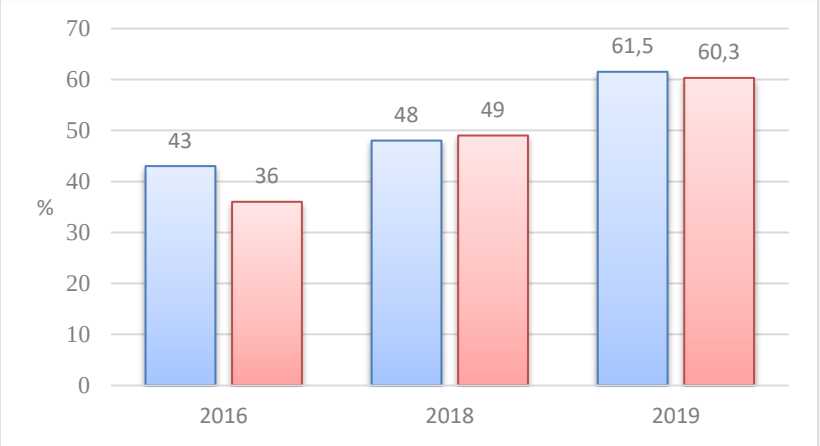

Fig. 3. Cases of economic crime or fraud in Ukraine (blue) and in the world (red) in 2016-2019

According to world statistics, 6.3 billion US dollars are lost annually as a result of economic crime and fraud. Businesses lose about 5% of their profits as a result of fraud. By the level of corporate fraud, Ukraine is in 5th place in the ranking of countries in the world.

Conclusions. Thus, to ensure the economic security of the enterprise requires the application of a comprehensive approach, taking into account production, market and legal characteristics, control of all changes occurring in the course of the company's activities, as well as the use of monitoring system, which can analyze any changes that may affect activity of the enterprise, without which it is impossible to create a full-fledged approach to ensuring the economic security of the enterprise, the economic security of the region and national economic security.

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Summary

The article deals with current state of enterprise development, components of economic stability and sustainability, as well as approaches to ensuring its level of economic security. The main tasks of effective and strategic management of the economic security system of the enterprise and problems of influence on its activity of economic risks are determined. The losses incurred at the enterprises as a result of professional fraud in Ukraine and in the world are analyzed.

***Keywords**: economic security, enterprise stability, monitoring system, economic condition, threat to economic security.*

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STATISTICAL METHODS OF ESTIMATING ECONOMIC SECURITY OF ENTERPRISES

Світлана Тютченко. СТАТИСТИЧНІ МЕТОДИ ОЦІНКИ ЕКОНОМІЧНОЇ БЕЗПЕКИ ПІДПРИЄМСТВ. В статті представлені статистичні методи та способи розрахунків показників, які дозволяють зробити висновки про спроможність підприємства протистояти зовнішнім та внутрішнім загрозам, забезпечити його стійке функціонування та перспективний розвиток.

Проаналізовано дослідження зарубіжних та вітчизняних науковців в питанні визначення методів оцінки безпеки на рівні підприємств та організацій.

Існуючі методи та способи розрахунків показників дозволяють проаналізувати та зробити висновки про здатність підприємства протистояти зовнішнім та внутрішнім загрозам.

Автором запропоновано використання статистичних методів для аналізу стану економічної безпеки підприємств з метою забезпечення його стійкого функціонування та перспективного розвитку. Важливим є використання матричного статистичного діагностичного аналізу, суть якого зводиться до зображення системи найважливіших показників діяльності підприємства у вигляді квадратної матриці, елементами якої є індекси використання потенціалу підприємства. Комплексна оцінка ефективності виробничо-господарської діяльності проводиться на основі узагальнюючого показника рівня ефективності за формулою средніх арифметичних індексів цільових елементів матриці. Запропоновану методику можна приміняти для визначення рівня економічної безпеки протягом аналізованих періодів та розробляти шляхи його підвищення .

Крім того, в статті запропонованj методи, які базуються на основних законах статистичного аналізу визначення економічних ризиків, які впливають на рівень безпеки підприємства. В основі методів лежить принцип ідентифікації внутрішніх та зовнішніх загроз функціонування підприємства. Вони дозволяють визначати характеристики та динаміку зміни показників економічної безпеки підприємства.

Ключові слова: *економічна безпека підприємства, фінансове становище, фінансова стійкість, ефективність діяльності, статистика, ризики.*

Problem statement. Improving the economic security of an enterprise is one of the most important functional areas of management, since its level affects the economic and social and security of the whole country.

Expanding economic ties with European countries has identified the problem of ensuring the economic security of domestic enterprises. The current economic conditions are characterized by the impact of negative factors caused by the global financial and economic crisis, a high level of dependence on imports of food and raw materials, market transformations, which increase the uncertainty of the development of business processes.

Successful functioning of enterprises depends on their flexibility, adaptation to changes in the environment, availability of economic security system, which provides the enterprise with self-preservation, prevention of external and internal threats and creation of conditions for sustainable functioning and development. Economic security is based on the economic sustainability of the enterprise and implies its ability to self-finance its activities.

Analysis of the publications that started solving this problem. The study of economic security of the enterprise was engaged in by foreign and domestic scientists, namely: V. Ponomareva, E.A. Oleynikova, A. Kozachenko, S.M. Ilyashenko, T.B. Kuzenko, et al. [5, p. 17]. There is a large number of developed scientific methods of security assessment at the level of enterprises and organizations. This article proposes the use of statistical methods to

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analyze the economic security of enterprises.

The article's objective. In order to ensure the sustainable development of the enterprise, it is necessary to determine the level of economic security, and on its basis to select the tools that allow efficient use of available capital and contribute to improving the quality of management, constant updating of technologies and improvement of the information base. Therefore, an urgent scientific task is to find and develop approaches, to select the necessary criteria and methods for assessing economic security.

The basis of economic security of the enterprise consists of: availability of necessary afunds, their rational placement and effective use, financial relations with other legal and natural persons, solvency and financial stability.

Basic content. Economic security of the enterprise is a complex characteristic, which means the level of protection of all types of potential of the enterprise from internal and external threats, which ensures its stable functioning and effective development. The content of this concept contains a system of means that ensure the competitiveness and economic stability of the enterprise [1, Article 12].

The economic security of enterprises depends first and foremost on the ability to generate the competitive advantages that underlie profitable, effective activity. Therefore, economic security is directly related to such a category as the economic efficiency of the enterprise.

There is no universal measure of activity appraisal, as different enterprises and industries may use different criteria. Therefore, efficiency can be determined from the point of view of meeting certain requirements in terms of financial results, business processes, consumer efficiency, innovative activity, which together will allow to make a balanced system of indicators, to reflect the results of entrepreneurial activity of the enterprise.

The most accurate results in the analysis of different areas of activity of the company gives a diagnosis of the financial condition of the company, which is conducted according to the financial statements. Financial condition as a whole is a multidimensional characteristic of all internal processes and results of operations in monetary form.

However, for a more accurate and general financial and economic analysis of the enterprise's activity, it is necessary to study and investigate the correlation of indicators in dynamics, as it gives an opportunity to estimate the pace of development of the economic entity and allows to determine to what extent it approached the highest level of resource use and efficiency of activity. Changes in dynamics can be study by comparing statistical relative and absolute values, analyzing types of dynamics, analyzing trends and relationships between statistics.

In our opinion, the economic security assessment of an enterprise includes two main components: a comprehensive assessment of the financial stability of the enterprise and the level of its development. Therefore, for a comprehensive assessment of the financial stability of the enterprise, we propose a statistical method for determining the efficiency of production and economic activity on the basis of the general indicator of the level of efficiency by the formula of arithmetic indices of the target elements of the matrix.

It is very important to use matrix statistical diagnostic analysis, the essence of which is to depict the system of the most important indicators of enterprise activity in the form of a square matrix, the elements of which are the ratio of the selected indicators by the column of the matrix to the indicator by row. The input parameters on the row are active and on the column are passive. The set of elements of this matrix is an interdependent system of characteristics of the enterprise. The elements of the matrix that are under the main diagonal are the characteristics of utilizing the potential of the enterprise. If they are more than one, there is an increase in resource efficiency and profitability of the enterprise, which, in turn, contributes to improving the economic security of the enterprise [4, p. 34].

$$I_0 = \frac{2*\sum_{i=1}^{n} \sum_{j=1}^{n} x_{ij}}{n^2-n} \qquad (1)$$

Therefore, the general index matrix will have the form presented in Table 1.

Table 1 – General view of the index matrix

	Yj					
X*i*	Profit	Revenue	Spending	Current assets	Fixed assets	Number of employees
Profit	1					
Revenue	C_{12}	1				
Spending	C_{13}	C_{23}	1			
Current assets	C_{14}	C_{24}	C_{34}	1		
Fixed assets	C_{15}	C_{25}	C_{35}	C_{45}	1	
Number of employees	C_{16}	C_{26}	C_{36}	C_{46}	C_{56}	1

The indices of development of the organization are given in the table divided into six orders, each of which characterizes the analytical side of activity: 1 – correlation of results (C12); 2 – cost effectiveness (C13, C23); 3 – profitability of resources (C14, C15, C16); 4 – return on resources (turnover of working capital – C24, fund return – C25, labor productivity-C26); 5 – resource costs (C34, C35, C36); 6 – progressive ratio of resources (C45, C46, C56) [3, p. 22].

The dynamic matrix model allows to determine the influence of factors on the change of the estimation parameters of the enterprise activity, ie the target elements of the index matrix. If the index is much larger than one, then we can conclude that the level of efficiency of the enterprise. The proposed methodology can be applied to determine the level of economic security during the analyzed periods and to develop ways to improve it.

In addition to the above method of assessing the level of security of the enterprise, there are approaches based on the basic laws of statistical analysis of the definition of economic risks. The methods are based on the principle of identifying internal and external threats to the enterprise. Types and degree of risk are determined on the basis of calculations of indicators by statistical and probabilistic methods, based on the principle of comparing the magnitude of losses from the activity of the enterprise with the levels of its risk.

The methods of multivariate statistical analysis include: correlation, regression, factor, cluster. They allow you to determine the characteristics and dynamics of changes in the economic security of the enterprise.

The most common tools for the statistical method of risk calculation are:

- average or mathematical expectation ($\bar{X}$) of a random variable;
- dispersion (σ ^ 2);
- standard deviation (σ);
- coefficient of variation (V).

For a limited number (n) of possible values of a random variable, its average value is determined by the formula [5, Article 32]:

$$\bar{X} = \sum_{i=1}^{n} X_i * p_i \ , \qquad (7)$$

where X_i is the value of a random variable;

p_i is the probability of a random variable.

Important characteristics that determine the degree of variability of a possible result are:

variance, which is defined as the weighted average of the squares of the deviations of the partial results from the mean values:

$$\overline{\sigma^2} = \sum_{i=1}^{n} (X_i - \overline{X})^2 * p_i \ , \qquad (8)$$

standard deviation:

$$\sigma = \sqrt{\sigma^2} = \sqrt{\sum_{i=1}^{n} (X_i - \overline{X})^2 * p_i} \ , \qquad (9)$$

coefficient of variation, which is calculated as the ratio of the mean square deviation to the mean and shows the degree of deviation of the values obtained:

$$V = \frac{\sigma}{\bar{X}} \ , \qquad (10)$$

Using the coefficient of variation, you can compare the deviations of the features expressed in different units of measurement.

The calculation of the economic security indicators of the enterprise is an important element for rapid response to possible deficiencies in the management of the enterprise, which can be an obstacle to effective confrontation of external and internal threats of the enterprise and prompt elimination of risk situations. This is a prerequisite for a stable economic development of a manufacturing enterprise that operates in a changing and unstable environment.

Conclusions. Analysis of scientific developments of domestic and foreign scientists give grounds for determining the economic security of the enterprise as a state of the most effective use of all its resources to prevent internal and external threats, ensuring stable functioning in the present and in the future.

In this article the author proposes and substantiates the use of statistical methods for assessing the economic security of an enterprise. These methods and models can be used to evaluate and develop the security concept of any enterprise.

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Summary

The article presents statistical methods and methods of calculating indicators that allow to make conclusions about the ability of an enterprise to withstand external and internal threats, to ensure its stable functioning and future development.

***Keywords**: economic security of the enterprise, financial situation, financial stability, efficiency of activity, statistics, risks.*

PSYCHOLOGICAL AND EDUCATIONAL ASPECTS OF MODERN PROFESSIONAL ACTIVITIES

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GENDER FEATURES OF ANTICIPATION OF LEGAL SPECIALISTS

Олег Агарков, Олексій Шевяков, Ірина Бурлакова, Ігор Шрамко. ГЕНДЕРНІ ОСОБЛИВОСТІ АНТИЦИПАЦІЇ ФАХІВЦІВ ПРАВНИЧОЇ СФЕРИ. У статті визначено основні підходи до вивчення явища антиципації. Досліджено поняття антиципаційної здатності. Виявлено відмінності між поняттями передчуття та інтуїцією. Схарактеризовано специфіку роботи фахівців правничої сфери. Розглянуто особливості антиципаційної спроможності представників різних професійних груп фахівців правничої сфери, а також залежно від статі респондентів. Підкреслюється, що, крім професійних якостей, фахівець в правничій сфері має особисті властивості, однією з яких є антиципація, що є інтеграційною властивістю, ступінь, глибина та прояв якої залежать від її рівня. Емпіричне дослідження передбачення фахівців правничої сфери виявило найважливіші зв'язки між параметрами взаємних очікувань один та параметрами очікувань зі стратегіями передбачуваної поведінки. Встановлено гендерні відмінності фахівців правничої сфери, а саме: чоловіки більшою мірою мають схильність до «Рефлексивного подолання», «Стратегічного планування» і «Превентивного подолання», аніж жінки.

Ключові слова: *передчуття, антиципаційна здатність, інтуїція, експерти, долаюча поведінка*

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Problem statement. The relevance of psychological research on the peculiarities of anticipation in legal professionals is due to the need to improve the system of professional selection and professional development of staff with a focus on those components of anticipation, which are key, as well as to prepare, plan and conduct measures to support and develop specialists, the need to transfer them from one positions for another, designing new types of work in accordance with modern requirements.

At present, the specifics of legal professionals are marked by the growth of information and emotional burdens, the complication of interpersonal relationships. All this contributes to the formulation of increased requirements for employees. These requirements are of great importance because this type of activity is related to work in stressful situations, when a specialist needs to evaluate the situation, make a decision, keeping adequate behavior when solving problems.

In the theoretical approaches to the study of the problem of anticipation, it can be noted that in many studies, the processes of prediction act as a function of highly organized processes of conscious activity of the subject. Without anticipation, neither the formulation of the purpose of activity, nor the allocation of tasks, nor the planning, nor the current regulation is possible, since the processes of anticipation permeate all elements of human activity.

Analysis of publications that started solving this problem. A review of the psychological literature on the problem of anticipation (anticipation ability) allows us to formulate the following approaches to investigate this phenomenon:

- structural-level approach (B.F. Lomov, E.M. Surkov). Antipathy is a form of anticipation reflection of reality, covering a wide range of manifestations of the cognitive, regulatory and communicative functions of the psyche;

- psycho-physiological approach (P.K. Anokhin, T.F. Basilevich, N.A. Bernstein, V.M. Rusalov). The researchers' focus is on the natural prerequisites and neurophysiological mechanisms of anticipation ability;

- cognitive-behavioral approach (J. Bruner, D. Miller, W. Nisser). In describing anticipation within this approach, the concepts of probabilistic expectation, schemes, hypotheses are used;

- genetic approach (T.K. Akopova, L.A. Regush, E.A. Sergienko, A. Yu. Chmut and others). It presents studies of predictable behavior, different types of prognostic activity at different age stages of human development;

- clinical approach (V.D. Mendelevich, I.M. Feigenberg). Within the framework of this approach the peculiarities of the development of anticipation in norm and pathology are studied, the attention of researchers is focused on the problem of the relationship between personality traits (psychological health of the individual) and anticipation;

- personality-activity, where anticipation acts as a property of the individual and is implemented in a specific activity (the works by K.A. Abulkhanova-Slavskaya, B.G. Ananiev, A.V. Brushlinsky, L.S. Vigotsky, B.F. Lomov, L.A. Regush, E.N. Surkov, etc.);

- situational approach (R. Nisbett, L. Ross). Psychologists have dealt with the problems of predicting social reality with ordinary people in everyday life, they have shown the enormous role of social context and parameters of a particular situation in prediction.

The article's objective is to identify gender peculiarities of the anticipation ability of legal professionals.

Basic content. One of the most well-known modern views on anticipation is the concept of V. Mendelevich, who says that the concepts of "anticipation" and "anticipation ability" are synonymous. However, he identifies a separate term "anticipation ability (prognostic competence)", which characterizes as an indicator of the level of development of anticipation ability and defines as "the ability of a person with a high probability to predict the course of events, to predict the development of situations and their own reactions to them, to act with a temporal-spatial» [3].

The author draws attention to the following features of anticipation ability: it is a property, a stable characteristic of the individual, which demonstrates the level of development of anticipation capabilities; it is the ability to efficiently predict objective and subjective phenomena; it includes a system of knowledge and actions that contribute to effective forecasting; it is "a system of primarily internal means of constructing and regulating prognostic activity" [4]; it defines the "state" and describes the system of internal resources of the person, contributing to the efficiency of prognostic activity (properties of the nervous system, temperament, cognitive processes, intelligence, affective, volitional and behavioral characteristics of the person) [3-4].

There is also ambiguity in the differences between the notions of anticipation and intui-

tion. However, it should be noted that these concepts differ significantly. The great psychological dictionary gives us the following definition: "Intuition (intuition from Lat. Intueri – watch carefully, carefully) – the thought process consisting in finding the solution of the problem on the basis of search landmarks, not logically connected or insufficient to obtain a logical conclusion . The intuition is characterized by the speed (sometimes instantness) of the formulation of hypotheses and decision making, as well as the lack of awareness of logical grounds" [1]. The main distinguishing feature of intuition is that "a person does not realize how and from which he has some knowledge" [2].

The next stage of our study is to identify the peculiarities of anticipation ability according to V. Mendelevich in different professional groups and taking into account the gender factor [4]. Consider the features of anticipation ability in representatives of different professional groups (Table 1), as well as depending on the gender of the respondents (Tab. 2), according to the method of "Anticipation ability test (predictive competence)" (TAS (PC)).

The study used mathematical processing, which included: descriptive statistics; multiple comparison method with Schaeff correction for occupational group metrics; multiple variance analysis by sex factor [5].

The conducted research has shown, that as a whole on sample above average expressed "Personally-situational" anticipation ability (except for group of specialists with experience more than 20 years: they have a figure slightly below average and means insolvency in this aspect).

Table 1

Indicators of anticipation ability in different professional groups of legal professionals (according to TAS (PC))

		Characteristics		
		Personally situational	**Spatial**	**Temporal**
Development of professional consciousness	M	170,41	49,62	40,65
	Δ	12,44	8,71	6,19
Specialists with experience up to 10 years	M	172,13	49,91	42,48
	Δ	16,67	9,45	7,87
Experts with 10-20 years experience	M	172,15	49,94	40,44
	Δ	10,80	9,04	5,50
Specialists with more than 20 years' experience	M	165,14	48,68	39,64
	Δ	10,66	7,48	5,98
Significant group differences: Specialists with experience up to 10 years and Specialists with experience of 10-20 years	Average difference	-	-	-
	Values	-	-	-
Significant group differences: Professionals with up to 10 years of experience and Professionals with over 20 years of experience	Average difference	-	-	-
	Values	-	-	-
Significant group differences: Specialists with 10-20 years experience and Professionals with more than 20 years experience	Average difference	**7,01**	-	-
	Values	**0,041**	-	-
Note: Significant differences are highlighted in **bold**, and differences in the statistical trend level are *italicized*				

Note that the indicators on the other two scales – "Spatial" and "Temporal" as a whole in the sample below average: i.e., the sample is spatial and temporary anticipation, but except for professionals who work less than 10 years (although their average is very close to the average scale value).

The multiple comparison method with the Schaeff correction revealed significant differences ($p < 0.05$) between the representatives of the professional groups "Experts with 10-20 years of experience" and "Experts with experience of more than 20 years" on the indicators of the scale "Personally-situational" anticipation ability: they higher in people with 10-20 years experience.

Table 2

Indicators of anticipation ability in legal professionals, taking into account the gender factor (by TAS (PC))

Characteristics	Men		Women		Difference Value	
	M	**δ**	**M**	**Δ**	**F**	**Value**
Personally-situational	171,13	9,89	169,77	14,37	-	-
Spatial	55,43	6,51	44,48	7,03	**68,36**	**0,0000000000004**
Temporal	41,79	5,79	39,65	6,40	*3,66*	*0,058*

Note: Significant differences are highlighted in **bold**, and differences in the statistical trend level are *italicized*

That is, they have a greater communicative level of anticipation than professionals with more than 20 years of experience; they are better able to predict people's reactions to various environmental actions and changes in the environment.

Table 2 shows that the representatives of both articles have such an aspect of anticipation ability as "Personally-situational" expressed above average, and means the personality-situational anticipation ability of the sample members.

Indicators on the Spatial scale in men are above average (motor dexterity, motor anticipation ability), and in women – below average. Indicators on the timing scale of the representatives of both sexes are below average (chronorrhythmologic failure, temporary anticipation failure), but in men the average is very close to the average of the scale.

Analysis of variance revealed significant differences ($p < 0.01$) between men and women on the Spatial scale and differences in the level of statistical tendency ($p < 0.1$) on the Temporal scale: they are more pronounced in men. That is, men are more capable of predicting the movement of objects in space and displaying motor dexterity, as well as more accurate timing than women.

In general, we can note the following features of anticipation ability in different professional groups of legal professionals: in general, throughout the sample there are high scores on the scale "Personally-situational" anticipation ability, but it should be noted that representatives of the professional group "Experts with 10-20 years of experience ”In this aspect are more savvy than professionals with over 20 years of experience. With regard to gender differences, the following can be noted: men are more likely to have a "Spatial" and "Temporary" anticipation capacity than women.

Next, we consider the indicators of coping behavior according to the method of A. S. Starchenkova [6] in different professional groups of specialists in the legal sector (Tab. 3) and taking into account the gender factor (Tab. 4).

The conducted research has shown that at experts who are at a stage of development of professional consciousness, expressiveness of various proactive coping strategies at experts of legal sphere is in accordance with the norm [6]. In this case, it is impossible to distinguish the most and least expressed indicators, because each scale has different ranges of acceptable values.

Multiple comparison method with Schaeff correction revealed significant differences between representatives of professional groups "Experts with 10-20 years of experience" and "Professionals with experience of more than 20 years" on the indicators of the Scales "Proactive Overcoming" ($p < 0.05$) and "Reflexive Overcoming" ($p < 0.01$): they are higher in people with 10-20 years experience.

That is, they are more likely than goalkeepers, more than 20 years of experience, to target, to develop resources that facilitate the achievement of goals, to cope with difficulties by assessing possible stressors, thinking about alternatives, comparing their potential effectiveness.

Also, multiple comparisons with the Schaeff Amendment revealed differences in the level of statistical trend ($p < 0.1$) between the Professionals with 10+ years of experience and the Professionals with 20+ years of experience on the Strategic Planning scale: higher in people, with less than 10 years' experience. That is, for the representatives of this professional group of respondents to a greater extent than for professionals with more than 20 years of experience, it is typical to overcome life difficulties by thinking through an action plan with hierarchical goals.

Table 3

Indicators of coping behavior in different professional groups of legal professionals

		Characteristics					
		Proactive Overcoming	**Reflexive Overcoming**	**Strategic planning**	**Preventive Overcoming**	**Instrumental Support Search**	**Emotional Support Search**
Development of professional consciousness	M	42,15	29,61	10,93	28,05	18,39	12,95
	δ	5,11	5,09	2,73	4,43	4,52	3,26
Specialists with experience up to 10 years	M	41,74	29,91	11,91	29,00	20,13	14,65
	δ	3,96	6,27	2,64	3,95	4,48	2,85
Experts with 10-20 years experience	M	43,19	30,47	10,84	27,94	17,79	12,37
	δ	5,86	5,05	2,84	4,82	5,06	3,42
Specialists with more than 20 years' experience	M	40,18	27,46	10,32	27,54	18,29	12,82
	δ	3,37	3,35	2,42	3,85	2,62	2,80
Significant group differences: Specialists with experience up to 10 years and Specialists with experience of 10-20 years	Average difference	-	-	-	-	-	**2,28**
	Value	-	-	-	-	-	**0,011**
Significant group differences: Professionals with up to 10 years of experience and Professionals with over 20 years of experience	Average difference	-	-	*1,59*	-	-	-
	Value	-	-	*0,072*	-	-	-
Significant group differences: Specialists with 10-20 years experience and Professionals with more than 20 years experience	Average difference	**3,01**	**3,01**	-	-	-	-
	Value	**0,025**	**0,009**	-	-	-	-

Note: Significant differences are highlighted in **bold**, and differences in the statistical trend level are *italicized*

In addition, the multiple comparison method with the Schaeff correction revealed significant differences ($p < 0.05$) between the professional groups "Professionals with up to 10 years of age" and "Professionals with 10-20 years of experience" on the scale "Search for emotional support": in humans with less than 10 years' experience, scores higher. That is, for them, more than for those who have 10-20 years of experience, it is typical to overcome stressful situations by sharing feelings with others, finding sympathy.

Table 4

Indicators of coping behavior of legal professionals with regard to gender factor

Features	**Men**		**Women**		**Value of differences**	
	M	**δ**	**M**	**δ**	**F**	**Value**
Proactive Overcoming	43,23	5,23	41,20	4,85	-	-
Reflexive Overcoming	32,21	4,33	27,32	4,61	**35,68**	**0,00000003**
Strategic Planning	11,98	2,47	10,00	2,64	**8,98**	**0,003**
Preventive overcoming	30,60	2,85	25,80	4,36	**28,45**	**0,0000005**
Instrumental Support Search	18,19	3,80	18,57	5,09	-	-
Emotional Support Search	12,58	2,76	13,27	3,64	-	-

Note: Significant differences are highlighted in bold, and differences in the statistical trend level are italicized.

Analysis of variance revealed significant differences (p <0.01) between men and women on the scales “Reflexive Overcoming”, “Strategic Planning”, and “Preventive Overcoming”: all of them are more pronounced in men. That is, men are more likely to build a well-thought-out plan with a hierarchy of goals, to evaluate potential stressors and potential problems, to anticipate a possible outcome, and to prepare actions to counteract these stressors and problems than women.

In general, we can note the following features of coping behavior in different professional groups of professionals in the economic sphere: the representatives of the group "Experts with experience up to 10 years" more than the experts with experience of more than 20 years expressed an indicator of the scale "Strategic Planning", as well as greater to the extent that the group "Experts with 10-20 years of experience" expressed the indicator "Search for emotional support"; in the group "Experts with 10-20 years of experience" to a greater extent than in professionals with experience of more than 20 years, the indicators of the scales "Proactive overcoming" and "Reflexive overcoming" are expressed.

Regarding gender differences, legal professionals may note the following: men tend to be more “Reflexive”, “Strategic Planning” and “Preventive” than women.

Conclusions. Therefore, any profession, except physical and psychological characteristics, has at its core personal qualities that contribute to the successful activity of man. First of all, it should be attributed to professions where the object of professional activity is the other person and the interaction depends on the qualities of each.

In addition to professional qualities, a specialist in the legal sphere has personal properties, one of which is anticipation, which is an integrative property, the degree, depth and manifestation of which depend on its level. An empirical study of the antithesis of legal practitioners has identified the most important links between anticipation parameters and anticipation parameters with predictive behavior strategies.

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Summary

The article identifies the main approaches to the study of the phenomenon of anticipation. The concept of anticipation ability is investigated. The differences between the concepts of foreboding and intuition were identified. The specific work of legal professionals is characterized. The features of anticipation ability of representatives of different professional groups of legal professionals, as well as depending on the gender of the respondents, are considered. Indicators of overcoming behavior in different pro-

fessional groups of legal professionals and with gender are analyzed. It is established that every profession, in addition to physical and psychological characteristics, has at its core personal qualities that contribute to a successful human activity. First of all, it should be attributed to professions where the object of professional activity is another person and their interaction depends on the qualities of each. It is emphasized that, in addition to professional qualities, a lawyer in the field of law has personal properties, one of which is anticipation, which is an integrative property, the degree, depth and manifestation of which depend on its level. An empirical study of legal practitioners' foresight has identified the most important links between mutual expectation parameters and expectation parameters with predictive behavior strategies. Gender differences of legal professionals have been identified, namely that men tend to be more "Reflexive", "Strategic Planning" and "Preventive" than women. Women are less likely to build a clear plan with a hierarchy of goals, assess possible stressors and potential problems, with predictable outcomes and prepare actions to counteract these stressors and problems.

***Keywords**: foreboding, anticipation ability, intuition, experts, overcoming behavior*

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COMMUNICATIVE STRATEGIES FOR THE DEVELOPMENT OF THE EDUCATIONAL SPACE IN THE CONTEXT OF BECOMING AN INFORMATION SOCIETY

Олена Марченко. КОМУНІКАТИВНІ СТРАТЕГІЇ РОЗВИТКУ ПРОСТОРУ ОСВІТИ В УМОВАХ СТАНОВЛЕННЯ ІНФОРМАЦІЙНОГО СУСПІЛЬСТВА. Глобалізація комунікації, що набирає обертів із зростанням можливостей Інтернету, радикально змінює внутрішню структуру і зміст освітнього простору, спонукає до пошуку нових комунікативних стратегій. Під впливом новітніх досягнень у галузі інформаційно-комунікативних технологій глобалізується й освітній простір. Відкритість освітніх систем, збільшення потоків інформації, інтенсифікація обміну студентами, викладачами, інноваційним досвідом між різними у змістовому та структурно-організаційному плані педагогічними системами забезпечили можливість оновлення цих систем. Адже у взаємодії якісно відмінного формується уявлення про специфіку системи, її актуальність, локалізованість у просторі. Усе це стає інструментом для конституювання нового глобального освітнього простору.

Зазначено, що в інформаційному суспільстві, де аудіовізуальна інформація і комунікація набувають все більшого поширення, змінюється характер культури, усталені норми співжиття людей, їх світоглядні орієнтири. У такому суспільстві формується новий освітній простір, розвиток якого безпосередньо залежить від того, в якій мірі країна, соціальна група або окремий індивід мають доступ до новітньої інформаційно-комунікативної системи. Серцевиною такого освітнього простору стає вже не просто людина, а "людина мережі". У будь-якій країні доступність інформації відносна і залежить від політичного устрою. Саме з проблемою доступності інформації пов'язаний характер освітнього простору, його змістова наповнюваність. Якщо для держави пріоритетом є підвищення освітнього рівня нації, то на відповідному рівні відбувається й інформаційне та технологічне забезпечення освіти.

Взаємодія у глобальному вимірі інформаційного суспільства об'єднує різні локальні освітні середовища та забезпечує використання здобутків інноваційних освітніх проектів однієї країни в освітньому просторі інших територіальних структур. Це створює подібні освітні ситуації на теренах різних країн, що, в свою чергу, сприяє результативності освіти як інтегрального явища.

***Ключові слова:** освіта, стратегія, глобалізація, комунікація, інформаційне суспільство.*

Problem statement. In the processes of globalization in the 21st century, the dominant tendency is the increasing role of communication as a way of regulating the interaction of individuals, groups and communities. The development of technological means of communication, on the one hand, brings together different cultures, provides new opportunities for socialization

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of the individual in the educational space. The notion of "educational space" most accurately reveals the specificity of the dynamic development of education in culture, as it emphasizes the mobility of the "borders of education", its open nature.

At the same time, virtualization of communication processes, increasing the influence of interpretation schemes on the feelings and moods of the masses, creates favorable conditions for manipulation of public consciousness. Thus, the problem of distinguishing communication processes in the modern educational space, which is becoming more relevant. The need for communication management in the educational space of a certain type necessitates the need to study an appropriate communication strategy, which manifests itself in meaningful planning and implementation of social interaction.

Analysis of publications that started solving this problem. The communication strategy is a conceptually designed in technology worldview "intention", which involves the choice of a particular communication space, type of interaction, and therefore, one or more discursive dimensions, which builds the discourse of communication. The study of the nature and functional characteristics of communicative strategies at different times was carried out by L. Vygotsky (the concept of internalization of social experience), K. Levin (theory of group dynamics), K. Howland (theory of persuasion) and other researchers who substantiated social and discursiveness.

The most important for the understanding of information and communication technologies as a kind of interaction between the subjects of education are the studies of M. McLuen [1] and Y. Habermas [2], who distinguished the true and imaginary existence (in the Russian. The analysis of numerous researches on the problems of education in the conditions of formation of information space convinces the necessity to reject the idea ofthe development of educational space as a linear process [3]. The spatial perception of modern education contributes to a critical and comprehensive understanding of the impact of information technology on the essence of the educational process itself.

The article's objective is to provide a description of modern educational space and identify the main factors affecting its formation.

Basic content. For introduction to the problem, it is necessary to characterize the two most general and fundamental (both in the history of philosophical understanding of communication and from the standpoint of modern researchers) strategies in the study of communication processes.

The starting point of the theory and methodology of the first type of "subject-centered" strategies is the subjects and their activities. This class of theories includes not only monologues, including "pragmatic-instrumental", models of communication, but also various forms of "dialogism" in philosophical studies of communication, including those where the point of reference is not "I" but "Others". So, we can talk about both individual and collective, institutional or historical "subjects".

The opposite strategies can be described as "system-structural" or "functional" communication models. Their supporters declare their desire to completely eliminate the "subject" and all hermeneutic issues, to replace the subjects with "functions». In this approach, the subject of research is not the activity and consciousness of person, but the system of established ways and forms of interaction, "discourses", practices, and other "supra-individual structures" that exist and function in this society.

The philosophical development of communicative issues and the emergence of theories of social communication began in the era of "philosophical classics." In the West, this era was the evolution of German philosophy in the period from I. Kant to K. Marx. Kant first spoke of the existence of grounds "to recognize, in addition to his existence, the existence of all other beings" as "purely metaphysical", that is, one that is decidedly considered without recourse to experience [4, p. 143-144]. In Kant's thinking about the existence of other thinking individuals as moral subjects, it was not about the actual interaction of subjects and their consciousness, but only about the mental orientation of the subject to "possible others".

There are some reasons to assert that the universal theory of communication of philosophical rank was first introduced in Marxism. Communication is conceived by K. Marx as a network of multilevel interactions between individuals in the processes of reproduction of social life, in particular material production. The subjects of communication and the communicative processes themselves (their specific content, types, forms, methods and means of communication) have thus acquired a social and historical significance. The spread of Marxism was decisive for active development in the period from the second half of the nineteenth century to

the middle of the twentieth century.

However, social and quantitative theories, which underpin "subject-centered" communication strategies, were predominant in both the quantitative and the degree of influence over the period. Most theories are from existential and phenomenological to pragmatic and positivist, like all forms of hermeneutics and philosophical theories of understanding that have embodied this model in a variety of ways.

"System-structural" or "functional" strategies of philosophical understanding of communication have become widespread after the so-called "structuralist revolution", which is associated with the writings of K. Levi-Strauss. Recognition of the right to exist by "non-subjective" social structures, "discourses" and "life practices" that do not have an "author-creator" has led to the fact that self-sufficient and self-replicating systems have taken the place of interacting entities. In the context of such prerequisites, J. Derrida and M. Foucault, with all the differences between their ideas, appeared to be in solidarity in the desire to "get rid of" the subject. As a consequence, a self-contained "text" appears, in which both the author (artist, writer) and the recipients (the audience) are merely its functions.

It should be noted that the possibility of system-structural (supposedly irrelevant, but actually functional) strategies for the study of communicative processes has no clear connection with "post-structuralist" or postmodern constructs. Illustrative in this regard is the theory of social systems of N. Luman [5], in which society, the social system of the highest level, appears as a communication supersystem that carries out autopoiesis and does not envisage as living elements individuals.

Thus, in the two strategies of philosophical comprehension of the process of communication, one is subject-centered and functional where two opposite theoretical and methodological attitudes are revealed, which have defined the whole history of socio-philosophical thought. The first is "singularism" or "social atomism", which proceeded from the primacy of individuals and their activities in relation to society, the second is a social "universalism", which posited the primacy of society over the individual. Their symbiosis seems futile, and taken separately, these theories are two extreme forms of reductionism.

The similar is the situation with "subject-centered" and "system-structural" strategies in theories of communication. The absolutization of one of them is unacceptable, given the one-sided philosophical understanding of communication processes. However, each of them captures really existing structures and mechanisms of social interaction in the educational space of a certain type – "soft" or "hard".

We consider the priority in the development of the social consciousness a subject-centered strategy for the study of social interaction, for a rigid – a system-structural or functional strategy.

In an information society, where audiovisual information and communication are becoming more widespread, the nature of culture changes, the standards of coexistence of people, their worldviews are set. In such a society, a new educational space is formed, the development of which depends directly on the extent to which a country, social group or individual has access to the latest information and communication system. The core of such an educational space is no longer just a person, but a "network person".

In any country, the availability of information is relative and depends on the political order. The problem of accessibility of information is related to the nature of the educational space, its content content. If the state is to prioritize raising the educational level of the nation, then information and technology support for education is at an appropriate level. According to K. Popper, in an open society, free discussion is legitimate in the first place, and the results of public debate affect politics, then , it has institutions that promote the will of those who do not seek benefits" [6, p. 125]. Therefore, pluralism, which takes place in active dialogue, is a sign of an open space of education.

The communication strategies inherent in it are manifested in the following characteristics:

- each participant in the communication process is treated as an equal interlocutor with the right to an active position;
- all arguments are presented openly;
- participants do not need intermediaries and can expect to continue communication;
- there are no anonymous participants in the communication process.

If the state seeks to tightly control the entire spectrum of information, using manipulative communication strategies, the educational space becomes "closed" in nature, and the functioning of its internal structural elements is fully subject to the basic, strategic goals of the

state. Accordingly, activity, as an essential characteristic of the subject, is not required in such a system. An individual becomes an object without the right to be an active subject in his or her self-identification and determination of his or her own attitude to the existing order of things.

The decisive factors for communicative strategies are:

- lack of equal status of communication participants;
- inadmissibility of the dialogue (participants of the communicative act are either not informed about the decisions made, or are informed through mediators);
- arguments are replaced by motives of individuals or communities;
- the discussion turns into a confrontation where the accuser acts as an anonymous person.

In the first case, the educational space is characterized by us as "soft", in the second it develops under the "hard" scenario. It should be noted that in both cases, the educational space is a highly heterogeneous entity, manifested in the parallel functioning of not only publicly available public educational institutions, but also elite universities, colleges, schools whose education is inaccessible to most of society. This structuring of the educational space reflects the objective stratification of the population by income level, both within the country and in the international dimension.

Conclusion. The modern educational space is characterized by openness and mobility, openness; educational situations develop on the principle of non-linearity, which opens new opportunities for humans and, at the same time, creates new risks. The person from the object of manipulation turns into a conscious subject, who forms his own life strategy. At the same time, understanding a person as the central entity that initiates and organizes the process of their education requires rethinking the initial principles of interaction with other subjects in the educational space.

Interaction in the global dimension of the information society brings together different local educational environments and enables the use of the achievements of innovative educational projects of one country in the educational space of other territorial structures. This creates similar educational situations in different countries, which contributes to the effectiveness of education as an integral phenomenon.

The modern educational space is formed under the influence of interrelated factors: first, new educational technologies that open up unrestricted access to information; Thus the educational space is formed "from below" and "from above". Its borders are constantly expanding, which is explained by the expansion of the world of culture. It is natural that among the various factors that stimulate the deployment of the educational space, social needs are leading, which ultimately determine the nature of communication strategies. Identification and justification of the most appropriate for modern society type of communication strategies requires a systematic and holistic study of the models of interaction of subjects of educational space, their genesis and technologies of implementation.

In the context of a new media situation, where subjectivity is formed predominantly outside the traditional process of self-identification in the encounter with the Other, communicative strategies are increasingly relevant, based on the dialogical nature of pedagogical interaction in the educational space. The emergence and active development of new technologies destabilize educational communication, not so much by depersonalizing the teacher's personality, but also by changing the mode of knowledge verification and transforming those axiological foundations that are "cementing" for the education system. That is why at the stage of becoming an information society the anthropological orientation of education, the ascent to individuality, self-improvement on the basis of the project-technological culture of thinking and activity are actualized. The humanization of education in the true sense of the word is possible only in dialogical interaction is personally meaningful, imaginative, emotional, intellectual reflection of a person by another person.

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Summary

The globalization of communication, which is gaining momentum with the growth of the Internet, radically changes the internal structure and content of the educational space, prompts the search for new communication strategies. The educational space is globalizing under the influence of the latest advances in information and communication technologies. Accessibility of educational systems, increase of information flows, intensification of exchange of students, teachers, innovative experience between pedagogical systems in terms of content and structured plan provided the possibility of updating these systems. After all, in the interaction of qualitatively different is formed an idea of the specifics of the system, its relevance, localization in space. All this becomes a tool for the constitution of a new global educational space.

***Keywords**: education, strategy, globalization, communication, information society.*

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ADAPTATION OF STUDENTES TO SELF-EMPLOYED PHYSICAL TRAINING CLASSES IN THE CONDITIONS OF HIGHER EDUCATION

Володимир Приходько, Віктор Богуславський, Дмитро Діщенко. АДАПТАЦІЯ КУРСАНТІВ ДО САМОСТІЙНИХ ЗАНЯТЬ З ФІЗИЧНОЇ ПІДГОТОВКИ В УМОВАХ ЗАКЛАДУ ВИЩОЇ ОСВІТИ. Особливість самостійних занять з фізичної підготовки полягає в тому, що лише самоусвідомлення потреби фізичного вдосконалення і фізичного розвитку може стати дієвим стимулом для формування мотивації до виконання фізичних вправ, підвищення фізичної підготовленості і готовність до своєї професійної діяльності. Формування свідомого

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відношення курсантів до самостійних занять потребує цілеспрямованих кроків як з боку науково-педагогічних працівників кафедри (враховуючи потреби і інтереси курсантів), так і самих курсантів (бути активними учасниками навчального і спортивного процесів).

Метою дослідження є вдосконалення змісту самостійних заняття з фізичної підготовки з урахуванням диференційованого підходу у дозуванні фізичних навантажень курсантів для підвищення рівня їх розвитку фізичних якостей у позанавчальний час. Для досягнення поставленої мети нами використовувалися наступні методи дослідження: аналіз та узагальнення літературних джерел, анкетування, педагогічне тестування, методи математичної статистики.

У статті обґрунтовано ставлення курсантів до самостійних занять, як домінантної форми з фізичної підготовки, проведено аналіз динаміки показників і підсумки тестування їх рівня фізичного розвитку і фізичної підготовленості. При побудові самостійних занять з фізичної підготовки ураховували диференційований підхід у дозуванні фізичних навантажень, відмічається поступове збільшення навантажень, що забезпечує відповідність функціональним можливостям організму курсантів. У досліджуваних курсантів відбулися достовірні позитивні покращення одержаних результатів. Дано методичні рекомендації по організації самостійних занять з фізичної підготовки.

Ключові слова: *курсанти, фізична підготовка, самостійні заняття, диференційований підхід, фізичні навантаження.*

Problem statement, analysis of publications that started solving this problem. According to the Instruction on the Organization of Physical Training in the National Guard of Ukraine, physical training is the main subject of combat and special training of servicemen in the National Guard of Ukraine and should provide the necessary level of their physical readiness to perform tasks on purpose [1].

Insufficient level of physical fitness makes it difficult for students to successfully acquire military and professional skills, since the level of development of their physical qualities depends on their adaptive capacity to physical activity, and in particular to the conditions of military-vocational training [2, 3].

Studies of many scientists (T.Y.Krutsevich, 2008; II Marionda, 2009; VM Platonov, 2015) strongly show that physical training has significant opportunities in improving the efficiency of professional activity, the success of training of future specialists, in strengthening their health and performance. Given the variety of tools offered, scientists point out the importance of developing strength, strength and general endurance, static endurance of the trunk muscles for servicemen [7, 8].

Physical training of cadets of higher education consists of the following types of physical training – general, special, independent physical training, mass sports work and training sessions in sports sections by sports [9, 10].

Independent physical training is one form of physical culture that aims at improving the general condition of the human body, its training and ability to withstand the negative effects of the environment by performing simple and complex exercises, helps in the correction of body shape and weight and allows to consolidate the achieved results [11].

Independent physical training classes play an important role in the training of specialists, as it is a conscious physical and sports activity aimed at self-improvement, realization of oneself as a person.

The effectiveness of solving the problems of independent physical training depends heavily on the quality of its organization, as an important management component. This determines the need for the cadets to acquire a certain degree of specialized knowledge, skills and methodological skills in the field of independent physical training and further use as intended in future professional activity [2].

A necessary prerequisite for a conscious attitude towards physical training is the appropriate motivation for cadets to participate in self-improvement. Self-study should be inextricably linked to the Physical Education and Specialized Physical Education curriculum [12, 13].

It should be noted that without the necessary basic level of general physical fitness it is not possible to achieve significant success in all, without exception, professionally applied types of training, including in mastering the techniques of physical influence, self-defense and melee combat. Because of this, general physical training should become one of the main components of self-employment.

Today, both students and cadets of higher educational establishments have a low level of physical fitness, low motivation, do not show interest in the content of the classes, they have an unformed value attitude to independent exercise in physical culture and sports [11, 14].

Analyzing the requirements of educational and professional activity of the military units of the Ministry of Internal Affairs, it can be noted that in order to perform the tasks effectively, the system of special physical training should be aimed at the development of general and strength endurance and ability to act in difficult, dangerous and unexpected situations [15].

Thus, it is urgent to adapt the cadets to independent physical training classes in order to increase their level of development of physical qualities in extra-curricular time, which in the future are capable of performing high-level destination tasks.

The article's objective is the adaptation of cadets to independent physical training classes, taking into account the differentiated approach in the dosing of physical activities to increase their level of development of physical qualities in extra-curricular time.

Research methods: analysis and generalization of literary sources, questionnaires, pedagogical testing, methods of mathematical statistics.

Organization of research. The research was conducted during the 2018/2019 academic year with first year students of Dnipropetrovsk State University of Internal Affairs at the faculties: training specialists for preventive activity units (youth – n = 20), training specialists for pre-trial investigation bodies (youth – n = 20), legal security (young men – n = 20) and training specialists for criminal police units (young men – n = 20), which identifies the motivation for independent physical training in extra-curricular time.

Basic content. The physical fitness of the cadets can be effective thanks to a properly planned system of training and training that provides an increase in the level of development of physical qualities. At independent physical training classes for cadets used a differentiated approach to training facilities and methods, dosing training exercises, increased the role of special exercises. As noted by scientists, the orientation of training exercises is conditioned by a measure of action on the development of one or another physical quality [16, 17].

We find that the dominant motivational priorities for independent physical training for 80.4% of students and students are "improving physical fitness" and 70.2% – "improving health". While a number of other motivational priorities were significant for a small number of respondents. The satisfaction of personal ambitions was indicated by 10.7%, the correction of body weight – 5.1%, the improvement of social status and the acquisition of strong-willed character qualities – by 3.3%.

The most attractive types of motor activity of the first-year cadets proposed were sports games and self-employment in the gym, which was indicated by 38.3% and 36.6% of the respondents respectively. The following activities are much less popular with cadets: athletics, named by 11.6% of the respondents, table tennis – 6.6%, swimming and chess – 1.6%. Only 0.7% of respondents did not wish to exercise at all and go to sports sections.

According to the survey, 29.3% have low levels of theoretical knowledge, 37.8% – lack of free time, 49.6% – their own laziness, reasons that prevent cadets from practicing physical culture independently and leading a healthy lifestyle. The low level of theoretical knowledge significantly reduces the interest of cadets in various forms of physical and fitness activities.

Interviews of cadets who have expressed a desire to do physical fitness on their own indicate that almost all respondents (91.2%) rate their classes as an important element of the lifestyle necessary for self-fulfillment. 78.9% of them stated that self-study with metered load forms such character traits as confidence, courage, perseverance. 74.6% of those polled believe that they will have a "desire for leadership".

The data of the previous researches became the basis for the development of a differential approach to the dosage of physical activity at independent physical training classes. The tasks of the independent classes were to: promote health, maintain and increase working capacity during training; to form motivational-value attitude to systematic independent classes in physical training, healthy lifestyle, physical perfection and self-education; to acquire practical skills and exercises in the exercise of power orientation; strengthen the muscular system, thereby promoting the harmonious cultivation of physical qualities.

The organization of self-contained physical training classes had the following planning algorithm: determination of the initial level of physical fitness of the cadets, who started self-employed physical training classes, determination of the maximum permissible and optimal parameters of physical exertion at the classes, selection of adequate methods of pedagogical control.

In each class, each muscle group was trained using 2-3 exercises in 1-2 approaches 8-9 times. The value of burdens was 30-50% of the maximum. After adaptation to loads increased the number of exercises, approaches, the amount of burdens to sustainable adaptation. Planning

the power load was carried out taking into account the individual characteristics of the type of body and level of fitness.

In order to evaluate the effectiveness of independent physical education classes, the dynamics of levels of physical development, physical fitness, motivation and interest of cadets during the academic year were analyzed in the framework of a pedagogical experiment. The results of the study indicate a positive shift in the overwhelming number of indicators studied.

Statistically significant differences were determined in the indicators of the physical development of cadets who systematically attended independent training in physical training: heart rate (HR) at rest was 76.7 ± 0.5 beats / min before the experiment, after – 71.6 ± 0.45 bpm ($p = 0.05$, 10.7%); vital capacity of the lungs (VC) up to 3.85 ± 0.03 l, after 4.35 ± 0.03 l. ($p = 0.05$, 9.5%); Brush dynamometer up to 43.7 ± 0.3 kg, after – 48.9 ± 0.6 kg ($p = 0.05$, 12.5%); the Stange sample before the experiment 46.8 ± 0.7 s, after 57.3 ± 0.6 s ($p = 0.05$, 9.7%); Gencha sample up to 22.8 ± 0.6 s, after 27.6 ± 0.3 s ($p = 0.05$, 8.8%).

The results of the studies show that after the pedagogical experiment, there were positive changes in the overwhelming number of physical fitness indicators.

Comparison of indicators of endurance, which was carried out using the test "Flexion and extension of the arms in the emphasis lying" shows that the increase was 7.80 ± 0.8 times ($p = 0.05$, 27.4%). Analysis of the speed-strength endurance indicators using the test "Lifting the torso in the saddle in 1 minute" allowed to establish an increase – by 6.8 ± 1.2 times ($p = 0.05$, 15.6%).

The results of our studies confirmed the data obtained by A.M. Oderov [9] and Korzh NL. [11] that the differentiated technique of development of power abilities is characterized by orientation of training loadings and character of means of development of physical qualities.

The effectiveness of the proposed method of improving the fitness of cadets based on the use of a differentiated approach is confirmed by the improvement of the level of strength and speed-endurance.

The study of the manifestation of the explosive force in the test "Long jump from place" shows that the cadets improved their performance by 13.7 ± 0.7 cm ($p = 0.05$, 7.4%). The results of the "Run 100 m" test showed that significant improvement of speed indicators occurred in cadets by 1.06 ± 0.2 s ($p = 0.05$, 6.3%).

This is consistent with the data of L.P. Matveeva (2010) and A.M. Odera (2014) where the increase is due to a better manifestation of speed-power qualities and an increase in muscle strength [8, 9].

When determining the level of flexural development in the "Tilt the torso forward from sitting position" test, the indicators improved by 2.6 ± 0.4 cm ($p = 0.05$, 9.7%).

The analysis of the results of the motives that motivate the cadets to self-train, indicates that a significant number of cadets have become more aware of their own health and fitness. For them, the main motives, according to the questionnaire answers, are "health promotion" – as indicated by 85.0% of cadets; 80.2% of those polled believe it is important to improve their sports form; 30.6% of respondents named “personal enhancement” as the main motive, 15.6% – first of all, focused on meeting their “ambitions”. During the survey, 86.3% of cadets indicated that regular self-study physical training changed their lives for the better.

The analysis of scientific works (LP Matveeva, 2010; IG Bondarenko, 2011) confirm the results of our research and show that one of the directions of improving the fitness of the cadets in the first year of study is the formation of basic physical training based on the predominant development of strength, of speed and coordination abilities [8, 16].

The results of the obtained data confirmed the efficiency and practical importance of the algorithm of cadets' adaptation to the independent physical training classes developed by us, taking into account the differentiated approach in the dosing of physical activities for increasing the level of their development of physical qualities in extra-curricular time, as well as through the use of physical and equilibrium exercises. and volume.

Conclusions.

The analysis of the scientific and methodological literature shows that the preparation of cadets for the fulfillment of their professional duties is always relevant, and is of particular importance in the present day. Professional activity occurs under the influence of considerable physical and psychological stress, and one of the effective ways of solving the problem is the adaptation of cadets to independent physical training.

The analysis of the cadets' questionnaire shows that there is a low interest in independent

physical training. The main reasons for cadets to exercise independently and to lead a healthy life-style are the lack of theoretical knowledge and free time, as well as their own laziness.

The algorithm of independent physical training lessons is developed where maximum permissible and optimal parameters of physical activity corresponding to their individual physical, functional and mental features are determined.

The use of a differentiated approach to physical activity, which was used in independent physical training classes, provided for the solution of the main task in the first year of study – the adaptation of cadets to independent physical training classes, which led to an improvement in their indicators of physical development and physical fitness.

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Summary

The article substantiates the attitude of the cadets to independent classes as the dominant form of physical training, analyzes the dynamics of indicators and results of testing their level of physical development and physical fitness. When constructing independent physical training classes, they took into account the differentiated approach in the dosing of physical activities, a gradual increase of the loads is observed, which ensures compliance with the functional capabilities of the body of cadets. The studied cadets experienced significant positive improvements in the results obtained. Methodical recommendations for the organization of independent physical training classes have been given.

***Keywords**: cadets, physical training, self-study, differentiated approach, physical activity.*

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THE IMPLEMENTATION OF THE INTEGRATIVE APPROACH IN THE PROCESS OF TRAINING FUTURE LAW ENFORCEMENT OFFICERS IS THE URGENT REQUIREMENT OF MODERNITY

Лідія Маркіна, Олена Третьякова. РЕАЛІЗАЦІЯ ІНТЕГРАТИВНОГО ПІДХОДУ В ПРОЦЕСІ ПІДГОТОВКИ МАЙБУТНІХ ПРАВООХОРОНЦІВ – НАГАЛЬНА ПОТРЕБА СУЧАСНОСТІ. Здійснено аналіз проблем і шляхів їх вирішення в процесі підготовки сучасних правоохоронців у сфері гуманітарних наук. Виявлено об'єктивні взаємозв'язки між навчальними дисциплінами; розуміння єдності визначеного кола знань, способів дії і пізнавальних підходів; формування системи знань, які потребують комплексного застосування у процесі правоохоронної діяльності. Охарактеризовано дидактичний ефект інтеграції психологічних та правових знань. Доведено, що у теперішній час спостерігається посилення тенденції інтеграції правових і лінгвістичних знань. Обґрунтовано, що цей процес зумовлений необхідністю створення досконалих законодавчих актів у країні; нагальністю правового регулювання проблем мовної політики; необхідністю уникнення різнотипного тлумачення нормативних актів; потребою вдосконалення сучасної правничої терміносистеми; системним застосуванням методів лінгвістики в ході криміналістичних експертиз; актуальністю вдосконалення метамови юридичної науки.

Розглянуто питання підвищення якості лінгвістичних знань правоохоронця у таких аспектах:1) соціолінгвістичний: мова, як суспільне явище; специфіка правової функції мови; літературна мова і соціальні діалекти; 2) прагматичний: особливості слововживання в юридичних текстах, поняття юридичного дискурсу; 3) термінологічний: загальне поняття терміна і терміносистеми; специфіка юридичної термінології; етимологія й семантика базових термінів; класифікації та стратифікації юридичних термінів сучасних іноземних мов; 4) стилістичний особливості наукового стилю у правовій сфері; 5) лексикографічний: можливості застосування словників різних типів у професійній діяльності правника; порівняльний аналіз дефініцій у юридичних енциклопедичних і лінгвістичних словниках; 6) герменевтичний: поняття лінгвістичного тлумачення текстів законодавчих і підзаконних актів; розмежування систематичного, історичного, цільового і лінгвістичного способу тлумачення змісту правової норми; 7) психолінгвістичний: співвідношення мовної та правової поведінки особи; істина й неправда в словесній картині світу; 8) криміналістичний: лінгвістичні вимоги до підготовки матеріалів на експертизу; можливості застосування мовних знань для ідентифікації особи за її мовленням: деонтологічний: правова комунікативна деонтика юристів різних країн; 9) компаративний: лінгвістичні аспекти правової компаративістики; діахронна компаративістика правових текстів. Окреслено шляхи та подані рекомендації щодо розробки підходів інтеграції права и мови. Акцентовано увагу на змістовної інтеграції пізнавальної діяльності майбутніх правоохоронців, забезпечення комплексного підходу до мети та завдань професійного навчання, орієнтації на різнобічну глибоку професійну підготовку. Доведено, що систематична реалізація принципу інтеграції допомагає вирішити протиріччя між предметним навчанням і необхідністю системного використання міжпредметних знань в процесі правоохоронної діяльності.

Ключові слова: *правоохоронна діяльність, лінгвістика, міждисциплінарні зв'язки, інтегрування, психологія, мовленнєва компетентність, освіченість.*

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Problem statement. The process of training modern law enforcement officers is carried out in conditions of intensive integration of scientific knowledge. Implementation of the integrative approach allows building educational and professional activities of future law enforcement officers on the systematic basis. Integration is the condition of didactic reflection in the individual consciousness of the applicant of higher education of objective interrelations between educational disciplines; understanding of unity of the certain circle of knowledge, ways of action and cognitive approaches; formation of system of knowledge which require complex application in the course of law enforcement activity.

Analysis of publications that started solving this problem. The problem of training and education of specialists of different specialties attracted great attention of researchers at different times and in different countries. Ancient philosophers and statesmen – Confucius, Cicero, Caesar wrote about the moral, moral and mental state of the "representative of the law". The French lawyers who drafted the "Napoleon Code" noted the need for comprehensive training of judges and prosecutors. (D'alembert) Modern Ukrainian researchers V. G. Kremen, V. M. Nagayev in their works suggest ways to modernize the current educational process, the integration of various disciplines in order to improve the educational level of specialists.

The article's objective is to find out the ways of integrity different disciplines during training of future law enforcement officers.

Basic content. More and more attention has been paid to the problem of integration of Humanities in recent years. This is explained, on the one hand, by returning to anthropological approaches in science. And on the other, understanding, it is the necessity of complex interdisciplinary research. It can be stated that today "legal statistics", "legal psychology", "philosophy of law" and others have achieved the certain status. They are rapidly developing scientific fields.

The pedagogical effect of integrative processes is that the pedagogical functions of the discipline are expanded; it is possible to streamline interaction with other academic disciplines in terms of ensuring the deeper assimilation of knowledge and skills, the formation of concepts. These concepts have the universal character; they are used in mastering the content of various disciplines.

Future law enforcement officers have the capability to use the clue concept of "psyche" in terms of the solution of multi-level teaching and professional tasks systematically. They may carry on it on the basis of correlation between educational disciplines "Psychology", "Social psychology," "Public psychology," "Legal conflictology", "Legal psychology" on the principle of coordination.

Studying of subjects "Effective communication", "Stress resistance", "Tolerance and non-discrimination in the work of patrol officers" is provided. These disciplines have direct links with psychological knowledge. They are put into practice during the selection of candidates for the new patrol police at the courses of primary professional training of employees of patrol service units, [5].Classes are held in the form of specialized trainings, business games using interactive methods, and they have the clear professional orientation.

In the process of integration of psychological and legal knowledge, interpenetration, consolidation, unification of knowledge are carried out, there is the gradual change of individual didactic elements, which are included in the large number of connections and relationships.

It ought to be emphasized that at present there is the growing trend of integration of legal and linguistic knowledge. This process is due to the number of reasons, namely:

- the need to create perfect legislation in the country. They should meet the requirements of many sciences, and first of all legal and linguistic, more effectively justify the legal norms; use linguistic knowledge in the process of law enforcement activity;
- urgency of legal regulation of language policy problems;
- the need to avoid different types of interpretation of legal regulations;
- the need to improve the modern legal term system;
-systematic application of linguistics methods in the course of forensic examinations, etc.;
- the relevance of improving the natural semantic language of legal science.

It should be noted that the problem of integrative relations of linguistics and law has not arisen recently. As the history of the state and law testifies, only at the stage of functioning of Customary Law there was no need for written reproduction and legislative consolidation of the legal norm. With the emergence of the state with the establishment of a fundamentally new type of legal relations, the need for textual law, although at the empirical level appeared.

Already before the drafters of the "Laws of Hammurabi"," Laws of the Twelve tables", "Russian truth" the question of the choice of language means, the creation of the first legal cli-

chés arose. It was necessary of such sign forms which were understandable to all native speakers, i.e. the primary foundations of legal hermeneutics are created which were on the verge of jurisprudence, linguistics and logic.

So it can be taken into account that the movement from casuistry to legal norms, from the historical stages of legal ignorance to the level of pre-law and to the level of understanding the need for written-fixed legal norms was accompanied by certain developments in the linguistic and legal sphere. Already at this stage of development of mankind it became obvious that without language the right could not exist, after all the speech materialized will of the ruler, fixed legal relations in all spheres of human life. Among all known sign systems, language is the main means of information transmission, communication and nomination and reference of objects, phenomena and events.

Thus, the creation of legislative acts is not possible without knowledge of linguistics, basic rules of legislative style, and means of transmission of legally significant information, arguments, and rules of judicial debate.

M.V. Lomonosov aptly said about the need to integrate linguistics and law: "Dubious Jurisprudence without grammar"[4, p. 443]. Regardless, a lot of questions in this perspective about the language competence of lawyers are present.

Without any doubt, there is no need for law enforcement officers to have the level of linguistic knowledge which is provided for philologists, but it is advisable today to talk about knowledge of such aspects as:

1) *social linguistics*: language as the social phenomenon; specificity of the legal function of language; literary language and social dialects; *2) pragmatic*: features of word usage in legal texts, the concept of legal discourse; *3) terminological*: the general concept of the term and terminological system; specificity of legal terminology; etymology and semantics of basic terms; classification and stratification of legal terms of modern foreign languages; 4) *stylistic:* features of scientific style in the legal sphere;

5) lexicographic: possibilities of application of dictionaries of various types in professional the lawyer's activity; the comparative analysis of definitions in legal encyclopedic and linguistic dictionaries; 6) *hermeneutics*: the concept of linguistic interpretation of texts of legislative and bylaws; differentiation of systematic, historical, purposeful and linguistic ways of interpretation of legal norms; 7) *psycholinguistic*: correlation of linguistic and legal behavior of the person; truth and untruth in the verbal picture of the world; 8) *criminalistic*: linguistic requirements for the preparation of materials for examination; the possibility of using language knowledge to identify the person by her/his speech: deontological: legal communicative deontics of lawyers in different countries; 9) *comparative*: linguistic aspects of legal comparativistics; diachronic comparativistics of legal texts.

At first point of view, this is too complicated approach, but even Ferdinand de Saussure drew attention to the unequal possibilities of different languages. Some of them can express what others are unable to express "'… there are some languages for which the expression "sitting in the sun" is impossible." He pointed out the inferiority of one language or another, no, to its otherness. That is why it is believed that working in the legal field requires consideration of all the above aspects in order to achieve the main goal of their professional activities.

The question of the law enforcement officer's development of speech culture deserves special attention today. Language is the highest cultural value of society. These values are "the integration basis for any small or large social group, culture, nation, humanity as a whole." [2, c. 3-5].

The level of speech development has always been considered as the level of development of human intelligence and morality, so the definition of ways of mastering it at a high professional level, the development of a means of improving is the urgent problem of pedagogical, linguistic and legal sciences.

The profession of the policeman requires awareness, primarily with legal and military terminology, and also requires knowledge on branch business documentation. However, first of all, it is necessary to master the state language.

The state language is usually called the main language of the state recognized by the Constitution or the law, which satisfies the needs of society in official communication and acts as one of the symbols of state national and cultural sovereignty.

The official language in the scientific literature is understood as the government language recognized by the law, obligatory for legislative and state executive authorities, judicial proceedings, education.

Article 10 of the current Constitution of Ukraine states " " the State language in Ukraine is the Ukrainian language"" It means that the Ukrainian language is the language of acts of public authorities and management, the language of record-keeping and documentation, the language of legal proceedings, administrative proceedings. Notarial record-keeping, prosecutorial supervision, language of international treaties and agreements, education, language of mass media (television, radio, press), language of communication (post, telephone), language of official names of state and public bodies, economic bodies, economic societies, etc.

The hypothesis of linguistic relativity of Sepir – Whorf is known that language is not just the means of expression and design of thoughts – it determines the course of our thoughts. As a result, cultures that differ in languages are formed and other ideas about the world. Therefore, the Chinese not only speaks, but also thinks differently than the Frenchman, an Englishman or the Arab or the Ukrainian.

Today it is known that the significant part of legal terms has Latin origin (lawyer, arrest, decree, militia, recidivism), because the foundations of jurisprudence belonged to Ancient Rome. Many words from Greek (amnesty, dactylograma, drugs, paradox, police). Directly from French the next words are (arbitrator, bureaucrat, dossier, passport), from English (business, kidnapping, killer, lobby, hacker), from German – (accounting, bill), from Italian – (gang, fiasco), from Polynesian – taboo, from – Arabic-hashish. Many words entered through indirectly through the third language-*vacancy, version, visa, directive, and impeachment.* Only knowledge of foreign languages can find the suitable term or expression, because often the same words change their meaning to unknowability, and even worse they have variability

It is known that the definition of administrative misconduct was the result of scientific research and efforts of several generations of lawyers and linguists. The term *administrative offense* (delict**)** comes from the Latin "delictum" – *the misdemeanor*, *the crime* and manifests itself in an act or omission that is contrary to the law.

The relevance of the definition lies in the fact that the interpretation of the concept of «administrative delict" depends on the decisive importance of such specific issues of administrative law, as the grounds of administrative responsibility, qualification, application of administrative penalties and their commission. It means that the choice of legal and special measures for the prevention of administrative offenses and improving the efficiency of administrative legislation depends on what meaning will be invested in this concept.

On the basis of these facts, it can be argued that today the typology of terms and terminological constructions become the more acute problem for scholars of law and linguistics. It will facilitate the translation process, help to avoid possible errors in the selection of Ukrainian correspondences and create conditions for the further development and improvement of modern legal speech.

Thus, the development of ways to integrate law and language, the creation of the separate applied science and discipline, the definition of their common foundations is not the fashion, but an urgent need of society.

So, thanks to meaningful integration cognitive activity of future law enforcement officers goes beyond the curriculum of the discipline; provides the comprehensive approach to the goals and objectives of vocational training, orientation to the comprehensive deep professional training. Systematic implementation of the principle of integration helps to solve the contradiction between subject training and the need for systematic use of interdisciplinary knowledge in the process of law enforcement.

The principle of integration is implemented in order to use the conclusions (rules, principles) of one science to explain the conclusions (or facts) of another science (discipline), allows the future law enforcement officer to develop the ability to integrate the knowledge and use it in practice, to ensure greater intensity, independence of cognitive activity.

It should be noted that the principle of integration is correlated with the general didactic principles of scientific, systematic and consistent, consciousness and activity, the connection of theory with practice, learning motivation, and professional orientation. Proceeding from features of credit system of training, it is expedient to adhere to the following principles: structuring of training, optimality of methods of activity, flexibility, the realized prospect [6, p. 128, 129]. It is advisable to use the principle of integration when all other principles are taken into account at the same time.

Due to the consolidation of didactic units of educational material, the implementation of the integrative approach helps to avoid mental overload, psychophysiological stress of applicants for higher education. As V. G. Kremen says, " for personality-oriented learning it is not

indifferent what psychological price the student pays for his mental assets. It is clear, that training cannot be considered optimal which creates the situation of psychological discomfort for the student " [3, p. 64].

The educational function of integration processes is reflected in the formation of the positive evaluation attitude to future law enforcement activities.

The developing function of integration is to create additional reserves for the development of the creative personality of the policeman. The involvement of applicants for higher education in the process of mastering the educational material on the basis of the integrative approach is carried out with the help of certain means:

- complex problem questions (the fact that the answers to them require applicants for higher education to actively attract knowledge from different disciplines, as well as other sources);
- complex inductive cognitive tasks when facts from different academic disciplines are generalized;
- complex partially-inductive cognitive tasks, when there is the interdisciplinary generalization of already generalized subject knowledge (concepts, theories, laws);
- complex deductive cognitive tasks that require evidence of general scientific provisions through the integration of knowledge from different subjects;
- the solution of professional situations of various contents (in contrast to the complex cognitive problem, the problem of which is derived from the content of educational subjects, the professional situation is set as a very real event);
- practical situations for socio-psychological training (for example, for the acquisition of law enforcement experience of business relationships characteristic of law enforcement, the formation of communicative culture);
- exercises for working off the certain complex of rather complicated professional actions of law enforcement officers.

Conclusions. It is necessary to consider that future law enforcement officers have personal resources of integration of scientific knowledge which are caused by inclinations, level of education and the acquired personal experience of educational and professional activity. Therefore, the great role is given to the identification of personal meaning and emotional satisfaction from educational and professional activities.

Real opportunities for development of creative abilities of future law enforcement officers are provided by research activity which acts as the integration factor of professional training. Research activity, as the holistic creative act, requires higher education applicants to understand interdisciplinary problems at different levels: methodological, theoretical, and applied.

Therefore, the didactically justified application of the integrative approach provides the high level of professional training of the future policeman, legal culture and his professional thinking.

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Summary

The article analyses the process of integration of psychological and legal knowledge, interpenetration, consolidation, unification of knowledge, the gradual change of individual didactic elements, which are included in the large number of connections and relationships.

Keywords: *law enforcement officer, linguistics, interdisciplinary relations, integration, psychology, speech competence, education.*

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COMMUNICATIVE COMPETENCE AS A COMPONENT OF THE PROFESSIONAL SKILL OF THE INVESTIGATOR

Інна Шинкаренко, Тетяна Пакулова. КОМУНІКАТИВНА КОМПЕТЕНЦІЯ ЯК СКЛАДОВА ПРОФЕСІЙНОЇ ПІДГОТОВКИ СЛІДЧОГО. Об'єктивний аналіз діяльності працівників органів досудового розслідування дозволяє описати класи ситуацій професійного спілкування які, потребують від них відповідної професійною комунікативної компетентності.

У статті пропонується аналіз «ланцюга» діяльності працівника Національної поліції на прикладі діяльності слідчого з точки зору професійних комунікативних якостей, необхідних для фахового виконання його професійної діяльності. Виокремлено основні складники зазначених компетентностей та розглянуто специфіку комунікативних навичок працівників органів досудового розслідування з урахуванням вимог сучасності. Значну увагу приділено умінню свідомо керувати вербальними і невербальними проявами емоцій, вести конструктивний діалог як з правопорушниками, так і з неповнолітніми (малолітніми) та іншими категоріями громадян. Звертається увага на вдосконалення комунікативної компетентності працівників Національної поліції шляхом проведення соціально-психологічного тренінгу, що в свою чергу сприяє формуванню професійної майстерності фахівців.

Спілкування з правопорушником часто є маніпулятивним; суб'єкт – це об'єкт, де злочинець намагається діяти як активний суб'єкт, керуючи ситуацією. Навик слідчого часто своєчасно виявляти поведінку гри, зустрічну гру та ефективно взаємодіяти. У цьому складному процесі спілкування важливими професійними комунікативними якостями є: контроль за станом, який впливає на сприйняття ситуації та взаємодію з правопорушником; чутливість до особистості злочинця; здатність створити відповідні умови, за яких можна проводити подальшу роботу відповідно до умов особистості.

Виокремлено основні складники зазначених компетентностей та розглянуто специфіку комунікативних навичок працівників органів досудового розслідування з урахуванням вимог

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сучасності. Значну увагу приділено умінню свідомо керувати вербальними і невербальними проявами емоцій, вести конструктивний діалог як з правопорушниками, так і з неповнолітніми (малолітніми) та іншими категоріями громадян. Звертається увага на вдосконалення комунікативної компетентності працівників Національної поліції шляхом проведення соціально-психологічного тренінгу, що в свою чергу сприяє формуванню професійної майстерності фахівців.

До активних засобів навчання, які забезпечують досвід професійних ситуацій спілкування, віднесено: тренінг чутливості, навчання партнерської комунікації, навчання ефективному співробітництву в групі, тренування взаємодії в агресивному середовищі. Доведено, що за допомогою системи тренінгів та квестів можна досягти цілеспрямованого формування професійної комунікативної компетентності за короткий проміжок часу, а отже, підвищити професійну майстерність.

***Ключові слова**: комунікативна компетентність, агресивне середовище, комунікативні уміння, малолітні (неповнолітні), соціальна перцепція, тренінг.*

Problem statement. The communicative activity of an investigator is a very important aspect in the process of which the addressee (investigator) must obtain the information necessary to investigate the crime from people through communication with them.

Communicative activity is the ability to understand a person, to feel him, to manage his emotional environment through verbal and non-verbal interaction.

Among the basic principles of communication contact are the following: legality, morality, knowledge of the investigators of the basics of practical psychology, mastering the techniques of psychological communicative contact, the ability to avoid conflict situations, mastering the initiative during a communication act. [2, p. 15]

Analysis of publication that started solving this problem. Various aspects of the professional development optimization of the personality of the National Police employee are in the centre of attention of scientific achievements of D.O. Alexandrov, V.G. Androsyuk, V.I. Barka, Y.B. Irkhin, S.M. Irhin, L.I. Kazmyrenko, V.P. Kazmyrenko, M.V. Kostitsky, S.D. Maksimenko, V.S. Medvedev, O.V. Timchenko, L.D. Udalova, O.V. Shapovalov, Yu.M. Schwalba, S.I. Yakovenko and others. Significant contribution to the study of communication problems was made by G.M. Andreeva, V.M. Bekterev, O.O. Bodalev, L.S. Vygotsky, O.O. Leontiev, B.F. Lomov, V.O. Noskov, S.L. Rubinstein, V.N. Panfiorov, O.V. Skripchenko, I.I. Chesnokova, T.S. Yatsenko and others. But the problem of the professional communication psychological peculiarities of the bodies of pre-trial investigation employees has received insufficient attention, which explains the relevance of our research.

Our analysis of the scientific literature revealed the lack of unity in the approaches to the nature and content of the definition «communicative competence» of employees of pre-trial investigation bodies in psychological doctrine, which creates the basis for further research in this area.

Among the large group of professions «person-to-person» the profession of the investigator stands out for its specificity, which requires the use of special techniques adapted to the criminal environment and methods of interaction and influence of the investigator on the criminal process participants. It should be noted that sociability in the profession of an investigator plays one of the most important roles [9, p. 52].

The article's objective is to consider the essence of the content of professional communication of investigators, its components, to distinguish the specific characteristics of professional communication in the activities of employees of pre-trial investigation bodies.

Basic content. At all the stages of the investigation, the psychological interaction of the investigator with other participants in the criminal process is carried out. The basis of such interaction is information and intentional (selectively directed) processes. Each of the parties is the source and recipient of the information on the basis of which the parties evaluate each other, develop appropriate strategies and tactics of behavior. For this purpose a variety of information is used: content and meaning of language messages, intonations of language, gestures, facial expressions, pantomime (outside), appearance, emotional-situational reactions, there are certain psychological phenomena of interpersonal perception:

– identification – understanding and interpretation of the perceived person by identifying with him;

- socio-psychological reflection – the interpretation of a person, perceived by thinking about it;

- empathy – understanding the person perceived through emotional feeling, empathy with his condition;

- stereotyping – an assessment of a person's perception of the traits that are inherent in a particular social group.

Some stereotypical ideas about other people often come across age, gender, national, etc. grounds. For example, «all these young people», «all these olds», «all these traffickers», «all these Caucasians», «all these witnesses», «all these criminals». It is often sufficient to create another person's negative image so that he or she, a «human – interlocutor», comes out for the investigator through the lens of a created negative set [3, p.121].

The range of actions of the investigator on the disclosure of crimes results from the conditions of the aggressive communicative environment: confrontation of witnesses, search, and so on. The term «aggressive communication environment» refers to all areas of an investigator's contact, is associated with negative emotional tension, confrontation of positions, open conflict of various degrees, manifestations of psychological struggle. One of the types of communication in an aggressive communicative environment is a hidden psychological struggle. At the basis of this class of communicative situations is a series of hidden transactions of communication, the purpose of which is to obtain moral or material gain, that is, psychological play [10, p. 18]. At the social level, such an interaction is masked by socially acceptable, but it is based on a hidden message, which is a psychological trap according to the «slack». Any investigator, a person with inherent traits, hobbies, needs that, when interacting with a fraudster, can be found in such a trap. Communication with the offender is often manipulative; the subject is the object where the offender tries to act as an active subject in control of the situation. An investigator's skill is often to detect game behavior, counter-play, and interact effectively in a timely manner. In this complex communication process, important professional communicative qualities are: controlling one's state, which influences perception of the situation and interaction with the offender; sensitivity to the offender's personality; ability to create the appropriate conditions under which further work can be done according to the individual's condition.

In an aggressive communicative environment, a number of situations of open psychological struggle are possible. They are related to the extent of conflict interaction of various degrees. An open psychological struggle arises with a certain contingent of offenders who have characteristic internal positions towards themselves as to the people endowed with certain privileges, and to other people as to lower ones in comparison with them. As far as the investigator is concerned, this position is most often expressed in terms of templates: persecutor, callous, soulless, and biased. Along with the images, there may be situations of threat to the life and health of the investigator. In this case, the offender's internal stance on other people is tougher: people's lives are not considered as a value, other authorities and personalities are not recognized at all. The extreme self-centered inner personal position of the offender in relation to others may at any moment lead to a conflict of different depths, even to the unfolding of violent confrontation. Under psychological struggle, the important professional communicative qualities will be the skills of state self-control, adequate psychological protection, which allows receiving important information in time regardless of the emotional stress of the situation; ability to localize conflict, choose effective interaction strategy [11, p. 94]. The contacts under aggressive communication environment are possible both with offenders and law-abiding citizens (who are in a serious emotional state, and so on). In a rough present-day period of formation and development of the state there are often cases of negative attitude of citizens to the employees of the National Police, which in itself can be the subject of special psychological and sociological research. We turn to the psychological aspect of the analyses of the professional interaction of the investigator with citizens who accuse police officers of failing to fulfill their responsibilities, who refuse to cooperate with law enforcement agencies. These situations cause a negative emotional state for police officers. One of the ways of prevention of unfavorable interaction with citizens, we consider directed formation of communication skills in these situations.

We turn to the psychological aspect of analyzing the professional interaction of the investigator with the citizens who accuse police officers of failing to perform their duties, who refuse to cooperate with law enforcement agencies. These situations cause a negative emotional state of police officers. We consider the purposeful formation of communication skills in such situations to be one of the ways of prevention of unfavorable interaction with citizens.

All the above mentioned situations of professional communication of the investigator are characterized by one mutual parameter – the emergence of the situation of threat, both real, physical and psychological.

Often, the situation of threat automatically triggers a stereotype of responsive behavior

that prevents adequate assessment of what is happening. Therefore, in our opinion, one of the central communicative qualities of the investigator and other officers of the National Police is the self-control of stereotyped and emotional response blocks, which can become barriers to adequate perception of information and sources of inappropriate actions. The investigator must have self-defense mechanisms that can reliably protect the unit of self-worth, but do not become barriers to adequate information perception.

Particular attention is paid to the work of investigators with minors and underage people. V.O. Konovalova suggests that during the interrogation of minors, the following recommendations should be followed: to create the most favorable interrogation environment for establishing psychological contact; be polite and attentive, taking into account the minor's increased self-esteem. Special emphasis should be made on the formulation of questions – they must be in a clear and understandable form, must be accessible to a minor, should take into account the age and intellectual development; no complicated terms should be used; there is to be critical evaluation of the information obtained at the interrogation, and comparing it with the pieces of evidence; the interviewee's attention should be focused on the evidence available in the case for the purpose of preventing falsehood, refusal to testify, condemnation and self-denial [6, p. 119].

The investigator cannot avoid a certain psychological influence on the minor in order to obtain truthful testimony, according to N.L. Borisov. There is nothing illegal and immoral about it (unless the influence contains elements of deception or violence). Regarding the methods of legitimate psychological impact, these are as follows: the method of persuasion (giving information to the interrogated in order to influence his emotions, intelligence, will), the method of exposure (transmission of information to the interrogated to obtain more complete information), the method of legitimate suggestion (by requests, suggestions, tips, requests, warnings, cautions), method of emotional experiment (use of the psychological state of the interrogated), method of example (personal example or message about the positive qualities of the others) [1].

Ukraine is a democratic country that is developing and striving to cooperate with European countries. This involves improving the legislative and judicial systems, including the introduction of pre-trial investigation. The procedure of procedural interview that exists in European countries is offered. In our opinion, this technique is more open in comparison with the recommendations for conducting interrogation in our country. And it requires additional communicative qualities for proper conducting this type of procedure.

Conclusions. Thus, it is possible to schematically describe the structure of the professional communicative competence of the investigator, while identifying three main blocks of requirements for its characteristics:

1. Social perception block. It requires:
- sensitivity (sensitivity to other people);
- self-regulation of emotional and stereotype response;
- the ability to adequately interpret the observed.
2. Information exchange block:
- ability to rely on both verbal and non-verbal information;
- ability to manage information processes in personal and group contacts;
- organizational skills to ensure effective team and partner communication.

The described structure is of great interest to us as a guideline in the formation of the necessary professional qualities of the National Police employees. For acquisition of complex professional communicative qualities, it is insufficient for cadets and students of corresponding specialties to grasp theoretical courses in legal psychology [7, p. 84].

Developing communication skills in future National Police officers is possible when introducing active learning methods that link theoretical schemas to specific patterns of behavior in the educational process. To gain this goal, we propose a multi-stage system of specialists training, which is a logically connected series of stages of social and psychological training, quest tasks that ensure the development of the personality of the specialist and the formation of the necessary professionally communicative qualities [8, p. 123].

The system is based on the principles of social and psychological training, developed by a number of psychologists [4, 5, 12] and includes:

1) Perceptually orientated training of sensitivity. The purpose is to increase sensitivity to involuntary non-verbal manifestations of the communication partner.

2) Training of affiliate communication. The purpose is to develop the skills of partnership.

3) Training of effective cooperation in the group. The purpose is to form the skills of successful interaction in the group, organization of group activities, favourable distribution of roles.

4) Training of interaction in an aggressive environment. The purpose is to acquire the skills of self-control of behavior in the situation of conflict of interests, attitudes, unmotivated aggression.

5) These topics are presented as active learning tools, which provide experience of professional communication situations. Employees have gained similar experience of situation analysis over the years. In the system of trainings and quests it is possible to achieve the targeted formation of professional communicative competence in a short period of time, and therefore to increase the professional skills.

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Summary

The objective analysis of the activities of pre-trial investigation officers allows us to describe the classes of professional communication situations that require them to have appropriate professional communicative competence.

In the article, we offer the analysis of the «chain» of activities of the National Police employee on the example of the investigator's activity in terms of professional communicative qualities necessary for the professional performance of his professional activity. The main components of these competencies were identified and the specific communication skills of the staff of pre-trial investigation bodies were considered, taking into account the requirements of the present. Much attention is paid to the ability to consciously manage verbal and non-verbal expressions of emotions, to conduct constructive dialogue with both offenders, and with minors (underage people) and other categories of citizens. The article considers the essence of the content of professional communication of investigators, its components, distinguishes specific characteristics of professional communication in the activities of the employees of pre-trial investigation bodies. Attention is focused on improving the communicative competence of National Police officers by conducting social and psychological training, which in its turn contributes to the professional skills of the specialists.

Keywords: *communicative competence, aggressive environment, communicative skills, minors (underage people), social perception, training.*

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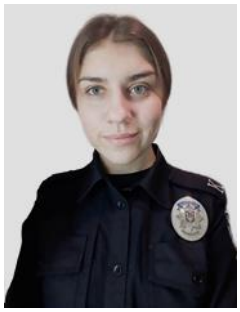

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USE OF INFORMATION TECHNOLOGIES AS A MEANS OF INCREASING MOTIVATION WHEN LEARNING FOREIGN LANGUAGE IN NON-LINGUISTIC HIGHER EDUCATION INSTITUTIONS

Ганна Декусар, Олена Дишкант, Вікторія Дегтяр. ВИКОРИСТАННЯ ІНФОРМАЦІЙНИХ ТЕХНОЛОГІЙ ЯК ЗАСІБ ПІДВИЩЕННЯ МОТИВАЦІЇ ПРИ ВИВЧЕННІ ІНОЗЕМНОЇ МОВИ У ВИЩИХ НАВЧАЛЬНИХ ЗАКЛАДАХ НЕФІЛОЛОГІЧНОГО ПРОФІЛЮ. Освітні реформи, які проводяться в нашій країні, поряд із розробкою нових освітніх стандартів, зумовили необхідність зміни методики викладання іноземної мови в університетах. Підвищення мотивації студентів, підвищення інформаційної спроможності навчального процесу, застосування та активізація сучасних методів навчання, а також використання нових навчальних посібників та технологій – основні завдання, які стоять

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сьогодні перед вищим навчальним закладом.

У статті розглянуто різні підходи вітчизняних та іноземних науковців щодо визначення концепції «мотивації», визначено шляхи підвищення мотивації студентів вищих нелінгвістичних навчальних закладів та окреслено ключові проблеми використання інформаційних технологій при вивченні іноземної мови студентами.

У роботі представлено конкретні приклади успішного використання комп'ютерних технологій при викладанні англійської мови у вищих навчальних закладах нефілологічного профілю, проаналізовано їх переваги та акцентовано увагу на необхідність комплексного підходу щодо їх використання. Наведено приклади інформаційних технологій, які можна ефективно використовувати при викладанні іноземної мови у вищих навчальних закладах: платформа MOODLE, електронні підручники та словники, дистанційні електронні курси, мультимедійні презентації, навчальні комп'ютерні програми, тощо.

У статті підкреслюється можливість поєднання новітніх та традиційних технологій викладання іноземної мови.

Метою статті є доведення доцільності запровадження інформаційних технологій у процесі викладання іноземної мови, що призводить до суттєвого підвищення мотивації у здобувачів вищої освіти.

Ключові слова: *мотивація, інформаційні технології, мультимедійна презентація, електронний підручник, дистанційне навчання*

Problem statement. The educational reforms that are taking place in our country, along with the development of new educational standards, have also necessitated a change in the methodology of teaching a foreign language in universities. Increasing the motivation of students, increasing the information capacity of the educational process, the application and activation of modern teaching methods, as well as the use of new teaching aids and technologies are the main tasks that the higher education institution is facing today [2, p. 17].

Analysis of publications that started solving this problem. The analysis of motivational factors in the educational process (in particular when learning a foreign language) involved a number of both domestic and foreign researchers, namely: IA Zimnya, SL Rubinstein, AK Leontiev, NM Simonova, M. Rost, K. Ames, K. Williams, T. Bell, and others. The problem of motivation in learning a foreign language, according to M. Rost, is the most important, before which the problems of the methodology of teaching [7]. And in fact, problems in motivation arise at least because: 1) there is no great opportunity to involve students in a foreign language environment; 2) there is not a sufficient number of native speakers to communicate with. Thus, the student must have simply extraordinary internal and external motivation to learn a foreign language. Not for nothing K. Ames [5] quotes T. Bell's quote: "There are three things you need to remember in education. The first thing is motivation. The second thing is motivation. The third is motivation. Researchers who study motivation define it as goal-oriented. This orientation can be positive, negative, or ambivalent (dual). K. Williams [6] identifies five major components to enhance student motivation: student, teacher, content, method / process, environment. This problem is investigated in the framework of the activity approach to learning, developed by SL Rubinstein. AK Leontiev [4] and others. In the field of foreign language teaching, psychological issues of motivation are addressed in the works of AA Alkhazishvili, IA Winter, AA Leontiev, NM Simonov, and others. According to IA Winter [3], "a motive is what explains the nature of a given linguistic action, whereas a communicative intention expresses what communicative purpose is pursued by the speaker, planning some form of influence on the listener."

The article's objective is to substantiate the feasibility of introducing information technologies into the foreign language teaching process by substantially increasing the motivation of higher education applicants.

Basic content. The proliferation of English, the increasing number of English language learners, have led to the emergence of different teaching methods and technologies. The advent of information technology has radically changed the nature of foreign language teaching at a non-linguistic university, making the learning process more exciting and productive.

The most commonly used elements of information technology in the educational process are: electronic textbooks and tutorials that are demonstrated by a computer; multimedia projector; interactive whiteboards; electronic encyclopedias and reference books; testing programs, educational resources of the Internet; distance learning materials; projects and presentations. Studying English with the use of information technologies in our university gives students the opportunity to participate in open classes using multimedia, conferences, olympiads, boundary and exam testing, study remotely, etc. Classical and integrated classes, accompanied

by multimedia presentations, online tests and software, allow students to gain knowledge in a more productive way, as they say in the English saying: "Tell me – I'll forget, show me – I'll remember." I would like to focus on the most commonly used information technology lessons in foreign language classes.

A computer lesson developed by Power Point is a thematically and logically related sequence of information objects displayed on a screen or monitor. Various informational objects are used during the lesson: images (slides), audio and video clips. The performance of slides, images and other demonstration materials will be much higher if complemented by the display of diagrams, tables. After such lessons, the material studied remains in the memory of students as a vivid image and helps the teacher to stimulate their motivation. Most often, non-linguistic universities have combined-type classes where both homework surveys and explanations of new material are present. The Power Point Presentation Program combines a variety of visuals, maximizing the benefits of each and eliminating the disadvantages.

Creating and using multimedia presentations in Microsoft PowerPoint is an effective way of teaching that helps the student to become aware of an active subject.

Using a computer presentation in class allows you to: 1) apply a large amount of illustrative material, creating striking spectacular patterns in the form of diagrams, diagrams, graphic compositions, etc.; 2) intensify classes by eliminating the time to write material on the board; 3) involve students in an independent learning process, which is especially important for the development of their general education skills; 4) to focus students' attention on the important points of teaching information; 5) affect several types of memory: visual, auditory, emotional and in some cases motor. You can use a presentation in the educational process at different stages of the lesson, with its essence as a visual means remains unchanged, only its forms change, depending on the intended purpose of its use.

I think it is advisable to use a computer training program in English, "Tell me more," in practical English classes. This program can be used for classroom, individual or independent work of students. Exercises are aimed at developing all kinds of language activities. Particular attention is paid to listening as one of the most difficult skills in learning a foreign language. Types of exercises are presented, such as: exercises for listening and checking the content of the audio recorded; exercises for the formation of graphic and sound image of the word through the activation of new lexical units; exercises on the formation of skills of reading and training in use; letter matching method; the method of perceiving a word or phrase as a unit; finding the word on the screen by its sound; exercises on semanticization of vocabulary and development of spelling literacy; exercises for forming grammatical skills. Higher education students are very happy to take such classes, repeat words, watch movies and perform exercises. The ability to listen to the recording several times, repeatedly perform the task gives students confidence in their abilities and increases their self-esteem. Because a lot of attention is paid to listening, students get used to listening to a foreign language and the language becomes "live". The use of information technology helps to make the lessons more memorable, interesting, and memorable.

An important aspect of using information technology in English is project activity. Multimedia presentations have been actively involved in the learning process. Higher education providers use the Internet to collect material for their projects. Studying a topic or section always ends with repetition, consolidation, and generalization. All these elements can be combined by inviting cadets to create a multimedia project after each topic is completed. When creating a presentation, they are given a great opportunity to organize their knowledge and skills. It is very important to give them a sense of interest in independent creative work, to evaluate the significance of the results of their work, since the presentation is a ready methodical material for the lesson. It should be noted that every year, applicants learn to make presentations in a better quality, professionally, with great interest, feeling their success and improving their skills. In particular, at the Dnipropetrovsk State University of Internal Affairs (DGSD), cadets of 1-2 courses studying at the Faculty of Economic and Legal Security, during the work on the topic "Types of crimes", presentations were prepared on such topics as: "Classification of crimes according to severity", "Types and classification of methods of combating crime", "Types of drug offenses", etc.

The project activity of higher education applicants using presentation has several positive aspects: 1. First, students' independent creative work in creating computer presentations maximizes the supply of active foreign language vocabulary; 2. Secondly, creating a presenta-

tion increases the level of proficiency in English and the computer; 3. And, most importantly, this type of work shapes the student's self-activity skills and initiative, as he determines what the presentation will be, specifically, in what form and how it will pass. Thus, we can conclude that the presentation is an opportunity for students to express their ideas in a creatively thought out and convenient way for them.

The Dnipropetrovsk State University of Internal Affairs also provides training in the use of distance learning technologies in the field of foreign language training on the MOODLE platform. Distance learning has several advantages: it is distance learning, which is organized with the help of modern information technologies; this is an opportunity to work independently with educational computer training materials; this is the prospect of higher education without a break from production and at a convenient time for the student; it is an opportunity to take exams and tests, to participate in online seminars, trainings, to receive individual consultations without leaving home. E-learning complexes have been developed for distance learning students, which include instructional video lectures, texts, exercises, self-control questions, a glossary of terms in the discipline under study, as well as an index of links to online resources where you can gain additional knowledge on throughout the disciplines of the curriculum chosen by the student specialty. All that is needed for a distance learning student is a Windows computer and Internet access. There are no age, professional, educational restrictions when teaching with the use of distance education technologies. Students can get a college degree without leaving their residency, study subjects, take credits and take exams from the Internet. After successful study, a diploma of higher education of the state model is issued.

The introduction of electronic textbooks in the educational process of our university has a number of advantages, first, it is their mobility, secondly, the accessibility of communication with the development of computer networks, and third, the adequacy of the level of development of modern scientific knowledge. On the other hand, the creation of electronic textbooks also contributes to the solution of such problems as constant updating of information material. They can contain a large number of exercises and examples, detailing the dynamics of different types of information. In addition, electronic textbooks control knowledge – computer testing. The possibilities of using Internet resources are enormous. The Global Internet creates the conditions for receiving any information and information needed by students and teachers from anywhere on the globe: news, country material, and more. In foreign language classes, the Internet helps to solve a number of didactic tasks: to develop reading skills and skills, using the materials of the global network; improve students' writing skills; replenish their vocabulary; to form a strong motivation for students to learn English. In addition, the work is aimed at exploring the possibilities of Internet technologies to broaden the students' outlook, maintain business contacts and contact with their peers in English – speaking countries.

Using electronic dictionaries is another example of the introduction of computer technology when learning a foreign language. It combines the functions of finding the right information, demonstrating linguistic patterns, and makes it possible to learn training material through a special system of exercises. All modern electronic dictionaries use the audio features of multimedia personal computers to reproduce pronunciation. Most often, students use the following dictionaries: Google, Promt (translates sentences from Ukrainian to English and from English to Ukrainian); on-line Multitran Dictionary (the new edition contains about 160,000 words). To translate using any of these dictionaries, you must enter a word or phrase in the dialog of the selected dictionary and follow the instructions in the electronic dictionary. The use of electronic online dictionaries is especially convenient when you need to translate more than one dictionary unit, but several, for example, when working with "keywords" of text, dialogue, etc., when performing reading training exercises in the pre-textual stage. And of course, the ability to use almost any dictionary online saves time and effort.

Conclusions. It should be emphasized that the introduction into the educational process of information technology does not exclude traditional methods of teaching, but harmoniously combines with them at all stages of learning. The use of new technologies not only repeatedly increases the effectiveness of learning, but also encourages students to further learn a foreign language.

Various computer and multimedia programs and their development allow attracting visual, audio and kinesthetic channels of information assimilation, which is especially relevant for teenagers, since in this period of study the kinesthetic method of information perception is the most effective [3]. Inattentive students are better able to perceive the information presented on

the screen, which allows them to develop and actualize their imagination, as well as to absorb material without difficulty. Those who learn to exercise their autonomy, cooperate with each other and with the teacher, develop communicative qualities, which increases the motivation and activates the cognitive activity of higher education applicants.

Thus, the use of computer technology in foreign language classes at universities is dramatically changing the learning environment. In the center of learning, he finds himself the educator – his motives, goals, his psychological features, and the teacher in this case acts only as an assistant, which leads to the activation of students' mental activity, which forms a positive motivation for these activities [4].

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Summary

Different approaches of domestic and foreign scholars to define the concept of "motivation" are considered, ways of increasing the motivation of students of non-linguistic higher education institutions and topical issues of using information technologies in the study of a foreign language are singled out. Specific examples of information technologies for teaching English in non-linguistic higher education institutions that are already successfully applied in practice are presented, their advantages are analyzed and the need for a comprehensive approach to their use is emphasized.

The purpose of the article is to substantiate the feasibility of information technologies introduction in the process of teaching a foreign language by significantly increasing the motivation of higher education applicants.

Keywords: *motivation, information technologies, multimedia presentation, e-textbook, distance learning.*

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