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

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# EUROPEAN SOCIAL POLICY: FROM ORIGINS TO THE PRESENT

**Abstract.** The article analyzes the formation and development of the legal basis for regulating EU social policy, the contribution of the founding treaties of the integration association in this area. The attention is focused on European specialized acts in this field.

The importance of social dialogue is emphasized. The role of Sectoral Dialogue Committees is noted. The significance of social summits has been revealed; the emphasis is placed on the activities of states and their partners in the development of social standards.

The role of the EU institutions, in particular the European Commission, which complements the policies of Member States in the field of social integration and social protection by developing strategic acts aimed at improving the social status of individuals; provides recommendations to Member States on modernizing their social security systems.

***Keywords:*** *legal basis, social dialogue, social policy, social standards.*

**Relevance of the study.** By the end of the XX century the social protection of population has become the main attribute of social policy of any civilized state. The task of most social protection systems is to maintain the stability of people's incomes, provide equal access to health care and necessary social services. As an organized system, it exists in many countries around the world. In economically developed countries, social protection is the most important part of the national economy, spending more than a quarter of gross domestic product. The most developed systems of social protection are the countries of the European Union (hereinafter – the EU, the Union). First social programs were appeared and developed there. Due to social protection systems, modern European economies are called socially oriented. As the experience of Western European countries shows, the existence of a well-designed social protection system that covers all citizens not only improves their well-being, expands and strengthens the country's labor resources, but also contributes to economic growth and stabilization of political and social situation. Thus, social protection has a positive impact on society, contributes to social harmony and ensures a common sense of social security among its members [1].

However, the rapid development of society, the active introduction of digital technologies and the emergence and active uncontrolled spread of new threats, such as the new

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type of corona virus pandemic COVID-19 require the development and implementation of new social policy approaches to bridge the digital skills gap, increase employment, reduce the risk of poverty, etc.

**Recent publications review.** It should be noted that the issues of EU social policy are in the spotlight at the doctrinal level, in particular, some issues on European social policy were covered in the works of such authors as: M. Hurina, K. Dorenko, M. Mikiievych, O. Shpakovych, O. Formaniuk, V. Blyzniuk and others [1-24].

However, such issues need further study in the light of current challenges and threats.

**The purpose of the article***:* to reveal the genesis of the legal basis of European social policy; to identify the role and importance of social forums and individual EU institutions in the field of social policy; to make the appropriate conclusions.

**Discussion.** European policy of employment, social affairs and equal opportunities aims to improve living conditions by promoting employment, sustainable development and greater social cohesion. The European Union (hereinafter – the EU, the Union) is a catalyst for social change, with the aim of increasing the employment and mobility of workers, improving the quality of jobs and working conditions, informing and advising the employees, combating poverty and social exclusion, promoting equal opportunities and combating discrimination, as well as modernizing the social protection system [2].

According to Persida Cechin-Crista, Gabriel Ionel Dobrin and others, the EU's role in social policy-making is to ensure national policy or to initiate measures to be applied according to the methods defined by each member state. Social policy and employment are important tasks of society, which have been transformed by the EU institutions into the legal instruments [3, p. 18].

Thus, the development of social policy by EU Member States began with the awareness of European politicians of the need to turn to the social base of integration as a basis for sustainable economic growth. The first agreements on economic cooperation, signed in the 1950s (the Treaties establishing the European Coal and Steel Community in 1951, the European Economic Community (EEC) in 1957 and the European Atomic Energy Community (Euratom) in 1957) contained provisions protecting workers' rights. The inclusion of minimum social guarantees in the texts of treaties provided the basis for the free movement of people within the Communities. Provisions of social guarantees were initially declarative, as they were not supported by a specific program of measures, there was no mechanism for implementing of social guarantees. The adoption of the European Social Charter of the Council of Europe in 1961, which all the Member States of the European Community were accepted, gave an additional impetus to the development of a comprehensive legal framework in the social sphere of the European Communities. Deepening the economic integration and creating a single European market required equal importance for the social and economic aspects of integration, so that they could develop in a balanced way [4].

At the time of drafting the founding treaties establishing the European Communities, the Member States did not aim to pursue social policy coordination alongside with economic integration. Firstly, social policy was a very sensitive area of national sovereignty, and as a result, Member States were not ready to transfer their functions in this area to the European level. Secondly, it was assumed that the success of economic integration would contribute to social development and progress in the Member States, especially in the long run. Therefore, all founding treaties include articles that provide for a number of social measures to minimize the negative consequences of the first steps of integration. However, the declared goals were formulated vaguely and were mostly of declarative nature. This was especially true of the articles on "social harmonization", as this aspect was the most controversial in the drafting of treaties. As for the implementation of specific measures in the social sphere provided for the first period of integration, they were mainly carried out in two directions: the introduction of the principle of free movement of employees and retraining of workers in the coal and steel industry [5, p. 32-33].

The tasks of social policy were set in the Treaty of Rome. In particular, the need of harmonization of living and working conditions, improving the employment opportunities and living standards were pointed out. For this purpose, the European Social Fund (ESF) was created. However, as recognized in the European Union, the real work in the social sphere began only in the mid-1970s, after the Paris Conference in 1972, which aimed to intensify activities in the social sphere, because it is one of the most important components of economic and monetary union [6, p. 167-168].

According to Miriam Hartlapp, until the mid-1970s, EU social policy was limited to a few tools. All of them were closely related to the justification of market integration. The regulation sought to coordinate social security systems to maintain the free movement of employees or equal pay for men and women to avoid an unfavorable competitive position for countries that had already followed this principle [7, p. 1].

Thus, a new stage in the development of social policy in the European Communities began in the early 1970s. It was characterized by a change in the approach to this area of EU activity and the practical content of social policy, the expansion of its functions, the reform of old and the introduction of new instruments. At the Community level, it was first recognized that the development of integration in the social sphere lags far behind economic integration and that the success of the latter does not automatically lead to the elimination of most social problems [5, p. 33].

The issue of social policy as an independent area of activity was first discussed at the Paris Summit in 1972, one of the most significant results of which was the emergence of the first large-scale Program of Social Action. Since the mid-1980s, some intensification of the EU's work in the social sphere has been observed. In a draft of the Single European Act prepared by the European Parliament in February 1984, one of the chapters was entirely devoted to social issues. The 1990s were the beginning of a new stage in the development of EU social policy, which moved to a qualitatively new level of development during this period [5, p. 35]. In a number of EU countries in the 1990s, major reforms of social protection systems were carried out, there was a significant reduction in the volume of social services and the introduction of market principles of social security. These tendencies could not help but provoke sharp criticism from trade unions and some political forces, and also led to claims that the welfare state in Europe is being replaced by a system of "individual welfare" [4].

The Single European Act, adopted in 1986, set the task of "forming a single social space within the Community", which meant the desire to create a single area for the protection of social rights within the EU. In fact, the set of social rights specified in the first agreements was not changed, but the range of decision-makers in the social and economic spheres was expanded, and financial institutions were established to provide programs in the social sphere. Particular attention was paid to the creation and strengthening of institutions of social dialogue at the European level [8, p. 100].

It is worth to note that in 1989 the Jacques Delors Commission presented to the Community the Charter of Fundamental Social Rights of Workers, designed to promote a more social Europe in the internal market. The British administration, led by Mrs. Thatcher, opposed the Charter on the grounds that it would restrict free entrepreneurship and negatively affect the free market and slow down the economic growth of the Community and its Member States. The adoption of the Community Charter of the Fundamental Social Rights of Workers in 1989 showed that the EU institutions were aware of the importance of the "social dimension" of integration. The text of the Charter was approved at the European Council in December 1989. Particular attention was paid to the conditions of competition within the European Communities, when the cost of social security began to be taken into account by companies when choosing a country for allocation of capital and production. Trade union representatives said that the market mechanism of competition within the EU undermined the gains in social protection sphere and could lead to a "gradual and indirect process of erosion of social policy". The charter enshrined 12 basic social rights of workers, which EU Member States committed to ensure "at the appropriate level" [8, p. 100].

In 1992, with the signing of the Maastricht Treaty, it was complemented by the Protocol on Social Policy with the Agreement concluded between the Member States of the European Community, with the exception of the United Kingdom of Great Britain and Northern Ireland. Areas of regulation of social policy were: improving the quality of the working environment to protect the health and safety of workers; working conditions; information and advice for workers; equality between men and women in terms of opportunities in the labor market and attitudes at work; the involvement of people excluded from the labor market in economic activities, without prejudice to compliance with Article 127 of the Treaty establishing the European Community [9]. However, until the entry of the Amsterdam Treaty into force, social policy issues remained largely within the national competence of states. At the same time, recognizing the geopolitical, economic, technological, demographic and other global challenges alongside domestic problems, the EU authorities and the governments of the Member States increasingly coordinated their activities in the social sphere. The increase in the

number of Member States (from 15 to 27), the population (up to half a billion people) over two and a half years (May 2004 – January 2007) and the unprecedented deepening of regional socio-economic disparities urgently required changes to the EU's founding treaties [10, p. 203]. Amsterdam Treaty introduced several innovations into the European social model. The main one was that it replaced the Protocol on Social Policy of the Maastricht Treaty with the chapter on employment. Nice Treaty in 2000 did not make a revolutionary or innovative contribution to social policy due to the fact that by the time of signing this Treaty, the Community had already acquired many commitments in the field of social policy. However, it should be noted that the Treaty of Nice allowed the Council to take unanimous decisions on the use of the joint decision-making procedure with Parliament in such policy areas as dismissal of employees, protection of collective interests, etc. Moreover, full recognition of the social rights of workers in the Union was enshrined in the Charter of Fundamental Rights of the European Union. The Charter was proclaimed in Nice on 7. December, 2000 and received full legal force equal to the Treaties of the Union under the Treaty of Lisbon (2009) [9; 11].

The Lisbon Treaty, which entered into force at the end of 2009, confirmed the affiliation of social policy to the common competence of the EU and the Member States. The priority issues of social policy were mentioned - these are various aspects of labor relations, the optimization of which can better ensure justice in the distribution of public goods, create conditions for a dignified life for all citizens, regardless of profession, gender, age, ability to work, ethnicity and religion. EU social policy is characterized by a wide range of instruments through which the Union's institutions harmonize the social sphere, promote employment and guarantee social protection of the citizens [10, p. 203].

The preamble to the EU Treaty (hereinafter – TEU) also reaffirms the commitment of states to fundamental social rights, as defined in the European Social Charter signed in Turin on 18. October 1961 and in the Community Charter of the Fundamental Social Rights of Workers in 1989 and readiness to pursue policies that ensure progress both in economic integration and in other areas with a view to promote the economic and social progress of their peoples, taking into account the principle of sustainable development and in the context of completing the internal market. Art. 3 (ex Article 2) of the Treaty stipulates that the Union shall create an internal market; seeks to ensure the sustainable development of Europe on the basis of balanced economic growth and price stability, a highly competitive social market economy that strives for full employment and social progress, and a high level of protection and improvement of the quality of the environment; fights against social marginalization and discrimination, promotes social justice and social protection, equality between women and men, intergenerational solidarity and the protection of the rights of the child; promotes the economic, social and territorial cohesion and solidarity of the Member States [12].

This issue is also reflected in the provisions of the Treaty on the Functioning of the EU (hereinafter – TFEU) [13]. In particular, it provides that the Union may take initiatives to ensure the coordination of the social policies of the Member States (Article 5 (3) (ex Article 2 D)). In addition, in defining and implementing its policies and activities, the Union shall take into account the need to promote a high level of employment, adequate social protection, combating social marginalization and a high level of education, training and human health (Article 9 (ex Article 5-bis)). It should be noted that Section X "Social Policy" is also devoted to this issue. Thus, in particular, in the provisions of this Section, EU Member States have recognized their goals in this area: increasing employment, improving living and working conditions, adequate social protection, social dialogue, human resources development, which allows to achieve high and sustainable employment, combating marginalization. At the same time, the Union and its Member States have recognized the fundamental social rights guaranteed by the European Social Charter and the Community Charter of the Fundamental Social Rights of Workers. In order to achieve these objectives, the Union and the Member States have committed themselves to take the measures that take into account the diversity of national practices and the need to maintain the competitiveness of the Union economy, given that such development will serve as a result of both the functioning of the internal market, which will contribute to the harmonization of social systems, and the procedures provided in the Treaties and the approximation of legislative, by-law and administrative provisions (Article 151 (ex Article 136)).

According to Art. 152 (ex Article 136-bis) TFEU the Union recognizes and encourages the role of the social partners at its level, taking into account the diversity of national systems. It promotes dialogue between the social partners while respecting their autonomy.

The Tripartite Social Summit for Growth and Employment contributes to social dialogue (art. 155 (ex Article 139)) [13].

Dialogue between the social partners at Union level may, if they wish so, lead to the establishment of contractual relations, including the conclusion of agreements. The implementation of agreements concluded at Union level shall be carried out either in accordance with the procedures and practices of the social partners and the Member States or, in the areas covered by Article 153, at the joint request of the signatories by decisions of the Council adopted on a proposal from the Commission (Article 155 (ex Article 139)).

Article 152 of the Treaty reaffirms the EU's commitment to support European social dialogue and recognizes the independence of the European social partners [13].

The social dialogue is an integral part of the European social model and a central component of the EU's concept of "good governance". Social dialogue is enshrined in the TFEU (Articles 151-155) and is reflected in many strategic and practical areas of EU activity. In the EU context, social dialogue includes a number of procedures and arrangements in which European-level organizations representing employers and employees interests hold discussions and negotiations, carry out other joint activities and participate in EU decision-making and policy-making processes. Such social dialogue takes two main forms and takes place at two key levels: bilateral dialogue involving only the social partners (organizations representing employers and employees); tripartite dialogue with the participation of both social partners and Union bodies (EU Council, European Commission). Thus, within the EU, bilateral social dialogue takes place at two main levels: cross-sectoral, when the dialogue fully covers all sectors of the economy and the EU labor market as a whole; and sectoral, when the dialogue covers one or another industry within the EU. The tripartite dialogue – also called coordination – between the social partners and the EU bodies is of great importance. In particular, in 1970, at the request of the social partners, the Council established a Standing Committee on Employment (hereinafter – the SCE) to ensure a continuous dialogue, joint action and consultation on employment policy between EU bodies, governments and social partners. The SCE served as a forum for tripartite dialogue until the early 2000s, and in 1999 was reformed, modernized and integrated into the European Employment Strategy. The TFEU enshrines the important role of the tripartite social summit. Article 152 states that "the Union recognizes and encourages the role of the social partners at its level, taking into account the diversity of national systems. It promotes dialogue between the social partners while respecting their autonomy. The Tripartite Social Summit for Growth and Employment contributes to social dialogue". However, such reforms did not significantly improve the situation, and in 2001 the Tripartite Social Summit for Growth and Employment (which was already operating) took the place of the SCE. The Tripartite Social Summit was formally established by a decision of the Council in 2003 (to replace the SCE). Its role was to ensure a continuous dialogue between the Council, the Commission and the social partners on the EU's economic and social strategy. Tripartite dialogue on specific EU policies also began in the mid-1990s, and today cross-sectoral partners are engaged in structured discussions and consultations with EU bodies and governments of Member States on a range of issues, both political and technical. In particular, they address issues of macroeconomic development, employment policy, social protection and education / training. The Commission organized the first tripartite social forum in 2011 to discuss issues related to its flagship program for new skills and jobs and the Europe 2020 strategy in general [14].

It should be noted that at the sectoral level, a significant development of social dialogue took place in 1998, when the European Commission decided to establish sectoral dialogue committees that promote the dialogue between the social partners at the European level. The document set out precise provisions for the establishment, representation and operation of new sectoral committees designated as central bodies for consultation, joint initiatives and negotiations.

According to this decision, the Sectoral Dialogue Committees create sectors where the social partners jointly request to participate in the dialogue at European level and where organizations representing both sides of the industry meet the following criteria: they must relate to specific sectors or categories and be based at European level; they consist of organizations which themselves are an integral and recognized part of the social partner structures of the Member States and are capable for negotiating agreements, and which represent several Member States; they must have adequate structures to ensure their effective participation in the work of the committees. Each Committee consults on developments at

Community level which have social implications and develops and promotes social dialogue at sectoral level [15]. This Decision provides the basis for the establishment of sectoral social dialogue committees in various areas of EU activity, where representatives of employers and employees (known as "social partners") can meet to discuss policy changes. They are part of the wider European social dialogue, which is an important element of the EU's social model and governance.

Committees are set up in sectors where organizations representing employees and employers in this field jointly state that they wish to engage in dialogue at EU level. They should: address specific sectors of the economy, such as banking and agriculture; consist of organizations that are recognized national social partners; be able to negotiate agreements; and represent the social partners of several EU countries; have the structure and resources to participate effectively at EU level. Each committee: consults on EU development issues with social implications in its field; develops and promotes social dialogue within its competence; establishes, together with the European Commission, its own rules of procedure; meets at least once a year; chaired by either an employer, or a representative of the employees, or an official person of the Commission; regularly checks its activities with the Commission. Sectoral dialogue committees replace previous forms of sectoral cooperation between the social partners. Since 1998, the Commission has set up more than 40 social dialogue committees. They cover about 150 million workers in the EU in sectors such as transport, agriculture, construction, trade, public services, construction of machinery and equipment, hotels and restaurants, and banking. The dialogue has led to an agreement on about 900 texts of different legal status [16].

According to the Report of the Commission on Sectoral Social Dialogue at European level, the Committees work on issues such as health and safety, vocational training, skills, equal opportunities, mobility, corporate social responsibility, working conditions and sustainable development.

EU countries should implement the five Directives as a direct result of legally binding texts agreed by the social partners in the sectoral social dialogue committees: to prevent injuries and infections of medical workers; improve working conditions for around 300,000 seafarers across the EU by incorporating internationally agreed standards into EU law; establish minimum standards for working hours and rest periods for seafarers; establish minimum norms of working hours and rest periods for aircraft crews; provide satisfactory conditions (such as driving time, breaks and daily and weekly rest) for people working in cross-border rail services. In addition to these and other formal arrangements, the social partners take other specific measures at the national or company level to raise awareness, support social dialogue at the national / regional or company level, or influence policy-making. Shared opinions, presentations of best practices or participation in joint projects (seminars, conferences, research, seminars) offer social partners opportunities to learn from each other and build trust. The examples include: a framework agreement to reduce adverse effects on the musculoskeletal system, such as back problems, for agricultural workers; recommendations for avoiding false self-employment in the construction sector; guidelines for promoting gender equality in local government; handbook on accident prevention at sea; recommendations for forecasting and managing the restructuring of the textile industry [17].

It should be noted that in 2017, European heads of states and governments met in Gothenburg with EU institutions, social partners, civil society, students and leading experts at the Social Summit on Fair Jobs and Growth, organized by the Swedish Government and the European Commission. The summit provided an extraordinary opportunity for leaders and stakeholders to discuss topics related to the daily lives of citizens, which contributed to the debate on the future of the EU. The Social Summit on Fair Jobs and Growth focused on how to stimulate inclusive growth, create fair jobs and promote equal opportunities for all men and women, recognizing the common challenges and diversity of experience in Europe. Discussions took place in a unique, open and interactive format, which led to the hearing of different points of view and discussion of different solutions, taking into account common problems and features of the national context and priorities. Live broadcasts allowed citizens across Europe to follow the discussions in real time. The summit was an occasion to reaffirm the shared responsibility to address the challenges that labour markets face at all levels. It was emphasized at the Summit that employment and social progress are primarily created locally. The rich exchange of experiences has provided inspiration to governments and stakeholders on how to design and implement policies in the future. The need to promote the convergence of

economies and societies must correspond with efforts at all levels, including the social partners and, taking into account the diversity of social traditions in Europe, promote further steps to improve access to labor markets, fair employment and working conditions [18].

Within the 2017 Summit, the European Parliament, the Council and the Commission proclaimed the European Pillar of Social Rights at the Gothenburg Summit. The Pillar sets out 20 key principles that represent a beacon aimed at creating a strong social Europe that is just, inclusive and full of opportunities in the 21st century. The twenty principles of the Pillar help to build fairer and more efficient labor markets, as well as social security systems for the benefit of all Europeans, including: education, training and lifelong learning; gender equality; equal opportunities; active employment support; safe and adapted employment; salary; information on employment conditions and protection in case of dismissal; social dialogue and employee involvement; work and life balance; healthy, safe and well-adapted work environment and data protection; child care and support; Social Protection; unemployment benefits; minimum income; income and old-age pensions; health care; inclusion of people with disabilities; long-term care; housing and assistance for the homeless; access to basic services [19, 20].

The European Pillar of Social Rights adds new principles that address the challenges posed by social, technological and economic development. For their legal support, principles and rights first require the adoption of special measures or legislation at the appropriate level. The principles enshrined in the European Pillar of Social Rights apply to citizens of the Union and to third-country nationals residing legally. If the principle applies to employees, it applies to all employed persons, regardless of their employment status. The European Pillar of Social Rights must not prevent Member States or their social partners from setting more ambitious social standards. In particular, nothing in the European Pillar of Social Rights shall be construed to limit or adversely affect rights and principles recognized in the relevant fields of application by Union law or international law and international agreements to which the Union or all Member State are parties to, including the European Social Charter and relevant conventions and recommendations of the International Labor Organization The implementation of the European Pillar of Social Rights is a shared political commitment and responsibility, involving the implementation of appropriate measures at both Union and Member State level within their respective spheres of responsibility, taking into account different socio-economic conditions and national systems, including the role of social partners. At the same time, the social dialogue plays a key role in strengthening social rights and sustainable and inclusive growth. Thus, the social partners at all levels must play a crucial role in the implementation and realization of the European Pillar of Social Rights in accordance with their autonomy in negotiating and concluding agreements and the right to collective negotiations and collective actions [20].

It should be noted that the Social Summit in Porto held 7-8. May 7-8, 2021 and organized under the chairmanship of the Portuguese Council, was confirmed the desire and ambition to put people on the first place in the reconstruction of Europe. The social commitment between the Portuguese Presidency of the Council of the EU, the European Commission, the European Parliament and the social partners as part of a joint effort to strengthen the commitment was signed at the summit. The parties reaffirmed their commitment to the implementation of the European Pillar of Social Rights and to join efforts for an inclusive, sustainable and equitable recovery with a large number of workplaces based on a competitive economy. The parties also noted the significant impact of COVID-19 on health care systems, which resulted in further far-reaching changes in the workplace, education, economy, social security and social life systems in Europe and the emergence of a deep economic and social crisis. They noted that in the face of rising unemployment and inequality due to the pandemic, it is important to direct resources to where they are most needed to strengthen the economy, and focus political efforts on equal opportunities, access to quality services, quality jobs, entrepreneurship, retraining and reduction of poverty and alienation. In view of the above mentioned, they concluded that was the right time to collectively endorse and support an ambitious program of strong, sustainable, comprehensive economic and social recovery and modernization, which goes hand in hand with strengthening the European social model so that everyone could benefit from the transition to "green" and digital technologies. The parties also emphasized that the 20 principles remain a compass that leads to a strong, sustainable, comprehensive recovery and to the growth of economic and social convergence. In their Strategic Agenda for 2019-2024, EU leaders also stressed that the Pillar should be

implemented by transforming its principles into action at the level of the Union and the Member States with the relevant competences involved. In its resolutions "A Strong Social Europe for Just Transitions" and "The Child Guarantee", the European Parliament also strongly reaffirmed the need for a strong shared commitment to the realization of the rights and principles of the Pillar. In this context, the parties welcomed The European Pillar of Social Rights Action Plan presented by the European Commission [21].

The above-mentioned Action Plan, presented by the European Commission, proposed a number of initiatives and identified three main goals to be achieved across Europe by 2030: keeping the employment rates of at least 78% in the European Union; at least 60 % of adults attending training courses each year; reducing the number of people at risk of social exclusion or poverty by at least 15 million people, including 5 million children [22].

To achieve the first goal, Europe must strive to: reducing the gender gap in employment by at least half compared to 2019, which is crucial for progress towards gender equality and the employment target for the working age population; increasing the provision of formal education and care for young children, thus promoting better work-life balance and supporting more active participation of women in the labor market; reducing the share of young people aged 15-29 who are not involved into employment, education or training (NEET), from 12.6% (2019) to 9%, namely by improving their employment prospects.

Regarding the achievement of the second goal, it is noted that in the context of increasing adult participation in education to 60 %, it is of paramount importance to improve employment opportunities, stimulate innovation, ensure social justice and bridge the digital skills gap. However, by 2016, only 37 % of adults participated in training activities annually. For low-skilled adults, this figure reached only 18 %. A key success factor in ensuring that adults can participate in skills development and retraining at a later age is a solid foundation of basic and cross-cutting skills acquired in primary education and training, particularly among vulnerable groups. In view of this, it is necessary to intensify efforts to increase adult participation in learning and increase the level of success in primary education and training, in particular: at least 80% of people aged 16 to 74 must have basic digital skills, which is a prerequisite for inclusion and participation in the labor market and society in Europe with digital transformation; early school leaving should be further reduced and participation in higher secondary education increased. This is based on the objectives set out in the European Training Program, the Council Recommendation on Vocational Education and Training and the Council Resolution on the European Education Area.

With regard to the third goal, it is noted that focusing on children will not only give them access to new opportunities, but will also help break the cycle of poverty passed down from generation to generation, preventing them from becoming a risk group for poverty or social exclusion in adulthood and thus causing long-term systemic effects.

These three main goals for the period up to 2030 are considered ambitious and realistic at the same time. Although the level of uncertainty associated with the pandemic and its implications for societies and economies does not fully predict the progress expected in the coming years, the proposed targets reflect recent economic forecasts as well as the impact of the COVID-19 crisis. The desire to achieve them is necessary for Europe to maintain its leadership in improving the well-being of people [22].

In order to achieve these goals, the Action Plan set out in the Porto Social Summit called for a concerted effort to: mobilize all the necessary resources – investment and reform – to overcome the economic and social crisis, increase Europe's resilience to future crises and increase the competitiveness of European economy based on sustainable and inclusive growth; maintaining fair and sustainable competition in the internal market through innovation, quality jobs, decent salaries, adequate working conditions, safe and healthy jobs and the environment, equal treatment and fair mobility; taking measures to improve the functioning of labor markets so that they contribute to sustainable economic growth, international competitiveness, the creation of decent working conditions and the integration of women, youth and vulnerable groups into the labor market; taking measures to strengthen national social protection systems to ensure a dignified life for all while maintaining their resilience; drawing attention to the communities and people most affected by the COVID-19 crisis and its short-, medium- and long-term effects; promoting social dialogue as a structural component of the European social model and strengthening it at the European, national, regional, sectoral and corporate levels; promoting gender equality, including by bridging the gender pay gap and guaranteeing the right to equal pay for work of equal value, etc. [21].

The issue of EU social policy was also addressed in Regulation (EU) № 883/2004 on the coordination of social security systems, which sets out general rules for the protection of social security rights when moving within the EU (as well as Iceland, Liechtenstein, Norway and Switzerland). The Regulation on the coordination of social security systems does not replace national systems with a single European system, but covers all traditional areas of social security, namely sickness, maternity and paternity, old-age pensions, invalidity pensions, survivors' and death benefits, unemployment, large families allowance, accidents at work and occupational diseases [23].

It should be emphasized that significant support in this area is provided by the European Commission, which complements the policies of Member States in the field of social integration and social protection. The Europe 2020 strategy for smart, sustainable and inclusive growth aims to lift at least 20 million people out of poverty and social exclusion and increase employment of population aged from 20 to 75 %. The flagship initiatives of the Europe 2020 strategy, including the Platform against Poverty and Social Exclusion and the Agenda for New Skills and Jobs, support efforts to achieve these goals. Through its social investment package, the Commission makes recommendations to Member States on modernizing their social security systems for social investment. The package complements: the Employment Package, which sets the way forward for recovery, the White Paper on Pensions, which presents a strategy for adequate, sustainable and secure pensions, and the Youth Employment Support Package, which specifically addresses the situation of young people. As social policy is an integral part of the Europe 2020 Strategy, the Commission also supports the efforts of EU countries to address their social problems through the actions provided for in the Platform against Poverty and Social Exclusion and the Social Investment Package, as well as EU funds, including the European social fund. The Commission works with EU countries through the Social Protection Committee, using the open method of coordination in the field of social inclusion, health and long-term care and pensions, which is a voluntary process of political cooperation based on agreeing common goals and assessing progress towards these goals using common indicators. This process also involves close cooperation with stakeholders, including the social partners and civil society [24].

**Conclusions.** In view of the above mentioned, we conclude that: EU policy is based on generally accepted international norms, integration legislation and the national legislation of the Member States, including the European Social Charter and the relevant conventions and recommendations of the International Labor Organization; this policy is based on the principles of equality, non-discrimination and equal opportunities; EU social policy aims to increase the well-being of all categories of Union citizens and third-country nationals who have a legal place of residence, regardless of their employment status; the social policy standards developed by the Union are a model to be pursued by the Member States, which can and should be a springboard for setting more ambitious social standards; It should be noted that the EU seeks to improve the rules in this area in the light of current realities, taking into account the adjustments made by the COVID-19 pandemic.

*Conflict of Interest and other Ethics Statements*

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**ЄВРОПЕЙСЬКА СОЦІАЛЬНА ПОЛІТИКА: ВІД ВИТОКІВ ДО СУЧАСНОСТІ**

**Анотація.** У статті проаналізовано становлення та розвиток правової основи регулювання питань соціальної політики ЄС, зазначено внесок установчих договорів інтеграційного об'єднання у цій царині, зокрема: Договору про заснування Європейського об'єднання вугілля і сталі 1951 р., Договору про заснування Європейського економічного Співтовариства 1957 р. і Договору про заснування Європейського співтовариства з атомної енергії (Євратом) 1957 г., Римського 1992 р. , Амстердамського 1999 р., Ніццького 2000 р. договорів, Договору про ЄС і Договору про функціонування ЄС в редакції Лісабонського договору 2007 р. у сфері соціальної політики Союзу.

Зосереджено увагу на європейських спеціалізованих актах у цій царині, зокрема означено вплив Європейської соціальної хартії 1961 р., прийнятої в межах Ради Європи, на розвиток всеосяжної правової основи в соціальній сфері Європейських співтовариств; розкрито сутність і значення Хартії основних соціальних прав трудящих Співтовариства 1989 р.

Підкреслено значення соціального діалогу, як невід'ємної складової Європейської соціальної моделі. Зазначено роль Комітетів галузевого діалогу, що сприяють діалогу між соціальними партнерами на європейському рівні. Розкрито значення соціальних самітів та ролі прийнятих ними рішень у сфері соціальної політики; акцентовано увагу на діяльності держав та їхніх партнерів у розробці соціальних стандартів.

Означено роль інституцій ЄС, зокрема Європейської Комісії, яка доповнює політику держав-членів в галузі соціальної інтеграції та соціального захисту шляхом розробки стратегічних актів (напр., Стратегія «Європа-2020»), спрямованих на покращення соціального статусу осіб; надає рекомендації державам-членам щодо модернізації їхніх систем соціального забезпечення з метою соціальних інвестицій тощо. Зроблено відповідні висновки.

***Ключові слова:*** *правова основа, соціальний діалог, соціальна політика, соціальні стандарти.*

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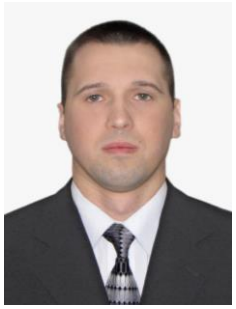

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## CONSTITUTIONAL AND LEGAL REGULATION OF THE RIGHT TO PROFESSIONAL LEGAL AID IN UKRAINE AND THE COUNTRIES OF CONTINENTAL EUROPE: COMPARATIVE ANALYSIS

**Abstract.** The article examines the constitutional practice of normative regulation of the right to professional legal assistance, enshrined in Art. 59 of the Constitution of Ukraine and in similar norms of the constitutions of the states of continental Europe. The necessity of presenting the mentioned article in the new edition is substantiated. It is determined that the right to professional legal assistance, which is enshrined in Art. 59 of the Constitution of Ukraine, is one of the inalienable human rights, which provides a state-guaranteed opportunity for any person to receive assistance in legal matters in the amount and forms which is needed. It is noted that the right to professional legal assistance in various formulations and volumes is reflected in the constitutions of Andorra, Azerbaijan, Belarus, Belgium, Armenia, the Netherlands, Serbia, Slovakia, the Czech Republic, Montenegro and Switzerland. In other European countries such right is regulated at the level of sectoral legislation. The expediency of separating the provisions on the free choice of each defender of their rights and freedoms in an independent part of Art. 59 of the Constitution of Ukraine and supplement it with provisions on the prohibition to influence a person in any way when choosing a lawyer, as well as the prohibition to interfere with the lawyer in his / her activities to provide the legal assistance, is substantiated.

***Keywords:*** *constitution, assistance, professional legal assistance, right to professional legal assistance, free of charge.*

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**Relevance of the study.** The main duty of the state is to establish and ensure human rights and freedoms, among which a special place is occupied by the right to professional legal assistance, which is enshrined in Art. 59 of the Constitution of Ukraine. As a fundamental and inalienable right, it is an effective guarantee of other constitutional rights and freedoms of man and citizen

**Recent publications review,** that have begun to address this issue. The scientific and theoretical basis for the study of this topic were the constitutional legislation of Ukraine and European countries, as well as scientific works of scientists on selected issues.

It should be noted that there are no significant research in Ukraine has been conducted on the comparative legal analysis of the provisions of the Constitution of Ukraine with the relevant provisions of the constitutions of continental European states, which enshrine the right to professional legal assistance. G. Dzhuska's dissertation research "Constitutional human right to professional legal aid in Ukraine" (Kyiv, 2018) is devoted to the generalized characteristics of the right to professional legal aid. The analysis of this work makes it possible to determine the state of the researched issues and to outline the range of issues that have not yet been the subject of a separate scientific research.

**The article's objective** is to conduct a comparative analysis of the provisions of the constitutions of Ukraine and the states of continental Europe, which enshrine the right to professional legal assistance, as well as the formulation of specific proposals to improve the provisions of Art. 59 of the Constitution of Ukraine.

**Discussion.** The right to professional legal assistance, which is enshrined in Art. 59 of the Constitution of Ukraine, is one of the inalienable human rights, is of particular importance in the period of legal transformations and reforms, and provides "state-guaranteed opportunity for any person regardless of the nature of its legal relations with state bodies, local governments, associations , legal entities and individuals are free, without undue restrictions to receive assistance on legal issues in the amount and forms as it requires" [1]. In this case, as noted by V. Isakova, the right to legal aid should be considered as a natural inalienable right of the individual (the right to legal aid in the subjective sense) and is essentially a civil right [2, p. 344]. Moreover, the scholar emphasizes that this right has a special, dual nature: on the one hand, it is revealed as one of the human rights, covering a system of certain fundamental legal possibilities, and on the other – acts as an important guarantee of other human rights, including law for effective judicial protection [3, p. 8].

As state guarantees are an important factor in the realization of specific rights and freedoms and ensuring their legal protection, we propose to strengthen the first sentence of Art. 59 of the Constitution of Ukraine the word "guaranteed", which will emphasize not only the constitutional and legal obligations of the state, but will promote compliance with Ukraine's international legal obligations in accordance with international human rights instruments, as well as the experience of some European states. Thus, in Part 1 of Art. 67 of the Serbian Constitution stipulates that "everyone is guaranteed the right to legal aid under the conditions provided by law" [4].

It should be emphasized that this is the only human right in Section II "Rights, freedoms and responsibilities of man and citizen" of the Constitution of Ukraine, which in Art. 59 the word "legal" has been replaced by the phrase "professional lawyer", which in our opinion cannot be considered successful compare to the previous definition of this word. Thus, in the Great Explanatory Dictionary of the modern Ukrainian language the word "legal" means the same as "juridical" [5, p. 917]. That is, from the point of view of linguistics, these concepts are synonymous. And therefore it is unclear why the domestic legislator in Part 5 of Art. 55 of the Constitution of Ukraine replaced the word "legal" with the word "juridical", and in Part 4 of Art. 29 and Part 1 of Art. 59 he replaced the word "legal" with the word "juridical", adding the word "professional", which is an adjective to the word "profession", which, in turn, means "related to a certain profession" [5, p. 995]. In this regard, we propose the first sentence of Art. 59 of the Constitution of Ukraine to state as follows: "Everyone is guaranteed the right to receive legal aid", which is more understandable for citizens.

A careful analysis of the constituent constitutions of continental European states has shown that the right to professional legal assistance in various wordings and volumes is reflected in the basic laws of Andorra, Azerbaijan, Belarus, Belgium, Armenia, the Netherlands, Serbia, Slovakia, the Czech Republic, Montenegro and Switzerland. Thus, in paragraph 1 of Art. 18 of the Constitution of the Netherlands states that "everyone has the right to legal assistance in representing his interests in civil, criminal or administrative proceedings"

[6, p. 479]. At the same time, in other European countries, the law under study is regulated by sectoral legislation. In addition, some European constitutions also state that legal aid is provided to a suspect, accused or defendant in criminal proceedings. For example, in paragraph 2 of Art. 48 of the Russian Constitution states that "every detainee, detainee, accused of committing a crime has the right to use the assistance of a lawyer (defense counsel) from the moment of detention, detention or indictment" [7, p. 349].

It should be noted that at the doctrinal level, the subject of legal (legal) assistance was initially considered to be the relationship that developed in the process of bringing a person to justice. Subsequently, this right began to apply to persons who were subject to any kind of legal liability. In modern conditions, preference is given to a broad understanding of the right to receive legal (legal) assistance in the exercise of rights and freedoms, legitimate interests and responsibilities, covering various types of legal services, including advice, clarification, claims and appeals, certificates, statements, complaints, representation in courts and other state bodies, protection against prosecution, etc.

It is also worth noting that in addition to the right to professional legal assistance in Art. 59 of the Constitution of Ukraine enshrines a provision providing for the provision of professional legal assistance free of charge in cases provided by law. Azerbaijan, Albania, Andorra, Armenia, the Netherlands, Serbia, Montenegro and Switzerland have enshrined a similar position at the constitutional level. Thus, in Part 3 of Art. 21 of the Constitution of Montenegro stipulates that "legal aid may be free of charge, in accordance with the lawм" [8], and in paragraph 3 of Art. 29 of the Swiss Constitution states that "every person who does not have the necessary funds has the right to unpaid justice". As this is necessary for the observance of her rights, she is entitled to free "legal aid" [9, p. 541]. At the same time, in some of these countries of continental Europe, free legal aid is provided only in criminal proceedings. For example, in paragraph d) of Art. 31 of the Albanian Constitution stipulates that "in the process of criminal proceedings everyone has the right to:… use free legal aid in cases of lack of sufficient funds" [10, p. 186-187]. At the same time, some constitutions stipulate the obligation of the state to provide free legal aid in other categories of cases. For example, in paragraph 2 of Art. 37 of the Czech Constitution stipulates that "everyone has the right to legal assistance during the consideration of his case in courts, other state bodies or public administration bodies from the moment of implementation" [9, p. 528]. The Constitutions of Azerbaijan, Belarus and Armenia have established that the financing of free legal aid is provided by state funds, i.e. the source of funding for this aid is earmarked funds allocated from the state budget. For example, in paragraph 2 of Art. 18 of the Constitution of the Netherlands emphasizes that this assistance is provided to "low-income persons" [6, p. 479]. In our opinion, the wording of the second sentence of Art. 59 of the Constitution of Ukraine does not require changes, as it is successful and understandable for the population of Ukraine.

In Art. 59 of the Constitution of Ukraine also enshrines a provision that allows everyone to freely choose a defender of their rights. According to M. Teslenko, the Constitution itself provided for a person with a "special status as a defender", who must have special knowledge in the field of law, i.e. legal education. Therefore, legal aid should be provided by a lawyer, someone who knows the law, has the appropriate skills in this area [11, p. 56]. At the same time, M. Havronyuk adds that in general, legal assistance can be provided to citizens by any person – a lawyer by profession, if he in the prescribed manner has acquired the appropriate powers and is not deprived of them [12, p. 261]. In addition, the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, provide that everyone has the right to seek the assistance of any lawyer in defending and defending their rights and protecting them at all stages of criminal proceedings, and the government must ensure that the competent authorities promptly inform each person of his or her right to the assistance of a lawyer of his or her choice in the event of detention, arrest, or prosecution. This means that everyone can defend themselves personally or through a lawyer of their choice, taking into account his or her authority, level of qualifications, professional skills and practical experience required to provide legal protection or legal aid.

However, the analysis of Art. 59 and Part 2 of Art. 131–2 of the Constitution of Ukraine, which states that "only a lawyer represents another person in court, as well as protection against criminal charges" [13], gives grounds to conclude that the right to free choice of defense counsel is limited to such a choice only between the lawyers. At the same

time, in our opinion, a logical mistake is made, as the defense attorney is not dependent on the quality of defense, but only on membership in the bar. Regarding this thesis, the question formulated by A. Kozlov is correct: "Are a doctor of law or an honored lawyer less prepared if they are not lawyers ?!" [14, p. 29]. Therefore, it is difficult to disagree with the opinion that it is inadmissible to secure the right to provide legal (legal) assistance exclusively to lawyers. After all, this would mean recognizing their monopoly position in the market of legal services, which would limit the right of everyone to freely choose a lawyer, as well as violate the rights of persons engaged in private law practice and have a degree in law. At the same time, as noted by scholars, national law does not restrict competition in the provision of services by private law entities [15, p. 380]. This is also explicitly stated in paragraph 3, item 6 of the motivating part of the Judgment of the Constitutional Court of Ukraine of 16. November 2000 №13-rp / 2000: "persons who are held administratively liable do not promote competition for the provision of qualified legal assistance in these areas and the training of specialists in the field of law" [16]. Thus, limiting legal aid to services provided only by lawyers will be in the best interests of the lawyers themselves, rather than the interests of those in need of legal aid. And therefore it is impossible to agree with the new edition of Art. 59 of the Constitution of Ukraine, proposed by V. Rechytsky, and which, according to the scientist, encourages the use of professional legal assistance in many spheres of life of Ukrainian society [17, p. 54].

We also believe that the provision on the free choice of each defender of their rights should be separated into an independent part of Art. 59 of the Constitution of Ukraine and supplement it with provisions on the prohibition to influence a person in any way when choosing a lawyer, as well as the prohibition to interfere with the lawyer in his activities to provide legal assistance.

**Conclusions**. Thus, given the above and taking into account the results of comparative legal analysis of Art. 59 of the Constitution of Ukraine with similar provisions of the constitutions of the states of continental Europe, we consider it necessary to present this article in the following wording:

"Everyone is guaranteed the right to legal aid. In cases provided by law, this assistance is provided free of charge.

Everyone is free to choose a defender of their rights and freedoms. It is prohibited to influence the person in any way when choosing a lawyer and to hinder the lawyer in his / her legal aid activities".

*Conflict of Interest and other Ethics Statements*

The authors declare no conflict of interest.

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**КОНСТИТУЦІЙНО-ПРАВОВЕ РЕГУЛЮВАННЯ ПРАВА НА ПРОФЕСІЙНУ ЮРИДИЧНУ ДОПОМОГУ В УКРАЇНІ ТА КРАЇНАХ КОНТИНЕНТАЛЬНОЇ ЄВРОПИ: ПОРІВНЯННЯ**

**Анотація.** У статті досліджена конституційна практика нормативного регулювання права на професійну правничу допомогу, закріпленого у ст. 59 Конституції України та в аналогічних нормах конституцій держав континентальної Європи. Обґрунтована необхідність викладення зазначеної статті у новій редакції.

Визначено, що право на професійну правничу допомогу, яке закріплене в ст. 59 Конституції України, є одним із невід'ємних прав людини, що передбачає гарантовану державою можливість будь-якій особі незалежно від характеру її правовідносин з державними органами, органами місцевого самоврядування, об'єднаннями громадян, юридичними та фізичними особами, вільно, без неправомірних обмежень, отримувати допомогу з юридичних питань в обсязі і формах, як вона того потребує.

Запропоновано перше речення ст. 59 Конституції України посилити словом «гарантується», що, на нашу думку, підкреслить не тільки конституційно-правовий обов'язок держави, а й буде сприяти дотриманню взятих Україною міжнародно-правових зобов'язань відповідно до положень норм Загальної декларації прав людини, Конвенції про захист прав людини і основоположних свобод, Міжнародного пакту про громадянські і політичні права тощо.

Наголошено, що право на професійну правничу допомогу є єдиним правом людини в розділі ІІ «Права, свободи та обов'язки людини і громадянина» Конституції України, в якому в ст. 59 здійснена заміна слова «правова» на словосполучення «професійна правнича», що не можна визнати вдалим порівняно з попереднім визначенням цього слова.

Зазначено, що право на професійну правничу допомогу в різних формулюваннях та обсягах знайшло своє відображення в конституціях Андорри, Азербайджану, Білорусі, Бельгії, Вірменії, Нідерландів, Сербії, Словаччини, Чехії, Чорногорії і Швейцарії. В інших європейських державах досліджуване право врегульоване на рівні галузевого законодавства.

Звернуто увагу на те, що крім права на професійну правничу допомогу в ст. 59 Конституції України закріплено положення, що передбачає надання професійної правничої допомоги у випадках, передбачених законом, на безоплатній основі. Такий підхід застосовано і в законодавстві Азербайджану, Албанії, Андорри, Вірменії, Нідерландів, Сербії, Чорногорії і Швейцарії.

Обґрунтовано доцільність виокремити положення про вільний вибір кожним захисника своїх прав і свобод в самостійну частину ст. 59 Конституції України та доповнити її положенням про заборону будь-яким чином впливати на особу при виборі нею захисника, а також про заборону перешкоджати захиснику в його діяльності з надання юридичної допомоги.

Запропоновано, враховуючи європейський досвід конституційно-правового регулювання права на професійну правничу допомогу, положення ст. 59 Конституції України викласти в такій редакції: "Кожному гарантується право на отримання юридичної допомоги. У випадках, передбачених законом, ця допомога надається безоплатно. Кожен є вільним у виборі захисника своїх прав і свобод. Забороняється будь-яким чином впливати на особу при виборі нею захисника та перешкоджати захиснику в його діяльності з надання юридичної допомоги".

***Ключові слова:*** *конституція, допомога, професійна правнича допомога, право на професійну правничу допомогу, безоплатність.*

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# ADMINISTRATIVE AND LEGAL STATUS OF GENERAL PRACTICE – FAMILY MEDICINE

**Abstract.** The article is devoted to the disclosure of the problem of administrative and legal status of a general practitioner - a family doctor. Emphasis is placed on the importance of clearly defining the legal personality of the family doctor in view of reforming the health care system and overcoming the negative consequences of counteracting the COVID-19 pandemic.

Disclosure of administrative and legal status was carried out through the generally accepted categories of "legal status" enshrined in legal science. It is stated that there is no codification of legal norms in this area. This problem is emphasized against the background of the rapid response of the primary level to the threats of outbreaks of epidemics and pandemics.

***Keywords***: *legal status, medical worker, general practitioner, health care, family doctor.*

**Relevance of the study.** The restructuring of the health care system from a budget-organized to an insurance model has contributed to the emergence of a new form of relationship between patients and doctors. This transition contributed to the formation of a new form of medical care and the emergence of the institution of general practitioner – family medicine (hereinafter – family doctor). The creation of the new institute caused a number of organizational and legal problems related to the organization of the family doctor's work, financing of his activity, definition of the range of powers and stimulation of activity in the direction of his constant improvement of his qualification.

Unfortunately, it has to be stated that the existing legal regulation of a family doctor in Ukraine does not correspond to the level of development of public relations in the field of health care. Insufficiently taken into account specific aspects of activities that affect the quality of the treatment process, there are a number of problems with ensuring the rights and freedoms of the doctor, defending his rights and creating appropriate conditions for self-realization of a qualified specialist and counteracting the spread of COVID-19 [1].

**Recent publications review.** The problems of the formation of medical law were devoted to the work of S. Stetsenko, who is the founder of domestic medical law, V. Stetsenko actively worked on the issue of insurance medicine as another round of reform of the medical system. B. Logvinenko actively researched the legal regulation of departmental medicine. The work of O. Skochylias-Pavliv was dedicated to the legal status of a medical worker. However, it is necessary to state the absence of a single systematic approach to determining the priority of research on medical law in general, and the lack of work on the disclosure of the administrative and legal status of a general practitioner – family medicine.

**The article's objective.** The active implementation of health care reform has caused a certain imbalance in the legal field of regulation of relations in the field of health care and a certain resistance of certain members of society. This issue is becoming increasingly important in combating the spread of COVID-19.

Given the above, it is necessary to state the urgent need to develop a perfect mechanism for regulating the legal status of a family doctor, the main areas of which will be: stimulating


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the professional growth of a family doctor, improving self-education; ensuring the professional rights and legitimate interests of the family doctor; determining the place of the family doctor in the health care system, etc.

**Discussion.** Disclosure of the administrative and legal status of a general practitioner – family medicine can not be fully disclosed without analyzing the concept of "legal status" as a subject of primary care. Legal science and practice understand the concept of "legal status" as a set of subjective legal rights and responsibilities, guarantees of rights and responsibilities.

At the same time, the legal status of a specific individual can be considered as the sum of general, special, individual statuses, the ratio of which varies depending on specific situations [2, p. 92]. At the general level, the legal status of a person and a citizen is enshrined in Section II of the Constitution of Ukraine. The norms defined in the Basic Law are general and universal for all people, regardless of their affiliation with certain religious or political groups, race, nationalities or other discriminatory characteristics. They are characterized by stability, are fundamental and fundamental for the definition of human rights.

Thus, the legal status of a person and a citizen is based on the following principles: inalienability and inviolability; equality of rights and freedoms; unity of human and civil rights and responsibilities; guaranteeing human and civil rights and freedoms. The constitutional status of a person and a citizen is the basis for the acquisition of certain subjective rights, the imposition of duties and responsibilities. At the same time, individual – the status of a particular person, associated with his personal qualities, abilities and physical characteristics (gender, age, marital status, health status, etc.) [3, p. 59-60].

In contrast, the administrative and legal status is inherent in persons - participants in public relations. This type of legal status reveals a person's affiliation to a specific type of activity and reveals his specific functional activity (student, pensioner, serviceman, disabled person, official, etc.). It is characterized by the presence of specific rights and responsibilities. As an optional feature – the qualification requirements provided at the legislative level for the possibility of engaging in a certain type of activity and / or holding a relevant position. Also, these persons are characterized by the provision of additional and special rights and obligations in accordance with laws and other regulations.

The relationship between the individual and the state or other persons, recorded in legal form (rights, freedoms and responsibilities), constitute the legal status of the person, reflecting the characteristics of socio-cultural society, democratic relations and legality. From the Latin language "status" means "position" [4, p. 545]. Administrative and legal status as one of the types of legal status is interpreted by scholars as a system of rights and responsibilities that are assigned to the relevant subjects of administrative law; the rights and obligations of a person established by law, together with the scope and nature of the legal personality of this person; a set of rights and responsibilities established by legislative acts that guarantee the participation of citizens in the management of public affairs, the satisfaction of personal and public interests; a set of human rights and freedoms enshrined in the rules of administrative law, a set of responsibilities, guarantees of realization of rights and responsibilities and a mechanism for their protection by the state [5, p. 194; 6, p. 272; 7, p. 58].

Based on the above, it is appropriate to state the fact that medical workers have a characteristic special status, which specifies the general at the level of a particular group. Moreover, such legal status of medical workers is regulated in Ukraine by current laws and bylaws (statutes, regulations, etc.) to the extent necessary to perform the tasks assigned to them. Given the above, it is possible to identify the following structural elements of the administrative and legal status of the subject, in particular, medical workers. First, these are subjective rights and legal obligations; secondly – the scope and nature of legal personality (legal capacity and legal capacity); thirdly – administrative, in some cases - disciplinary, responsibility; fourth – special qualification requirements for the relevant position (education, experience, work experience in the specialty).

The relevant Law of Ukraine "Fundamentals of the Legislation of Ukraine on Health Care" of November 19, 1992 stipulates that medical care (emergency, primary, secondary (specialized), tertiary (highly specialized), palliative, medical rehabilitation) is provided accordingly. to medical indications by professionally trained medical personnel who are in employment with health care institutions that provide medical care in accordance with the license obtained in the manner prescribed by law, as well as natural persons-entrepreneurs who are registered and licensed in accordance with the law . In turn, in Art. 74 of the Fundamentals of Health Care Legislation clarifies that, in particular, only those persons may engage in

medical and pharmaceutical activities.

At present, there is no single approach to defining the concept of "legal status" among scholars. The definitions submitted for consideration differ significantly in terms of accentuation and the desire to characterize a particular area of activity. In view of O. Zaychuk and N. Onishchenko, under the legal status suggest to understand the system of rights, freedoms and [9, p. 366].

In turn, Yu. Shemshushenko understands the legal status of the set of rights and responsibilities of individuals and legal entities, it does not disclose the features of its legal responsibility and the procedure for bringing such [10]. Influential researcher on this issue O. Skakun under the legal status suggests to understand a clear legal consolidation of the legal status of a person in society, according to which the subject of legal relations coordinates and implements its behavior [11, p. 57].

In his works V. Dovbysh defends the position according to which, on the basis of the current concept, under the legal status, it discloses the set of rights, freedoms and responsibilities of a person that has its legal basis. In addition, it divides the rights into subjective (the ability to independently choose their behavior within the legal field) and objective (enshrined in specific rules of law) [12].

Researcher O. Markov proposes to supplement the generally accepted rights and responsibilities in the legal status with optional elements: norms of morality and social norms that determine the privileged position of a person in society [13, p. 306].

At the same time, the current legislation, unfortunately, does not contain a clear concept of this category of "medical worker". In specialized regulations: the Law of Ukraine "Fundamentals of the legislation of Ukraine on health care" [8] and the Order of the Ministry of Health "On approval of the Procedure for choosing a doctor who provides primary care and forms of declaration on the choice of doctor providing primary care" from March 19, 2018 № 503 [17], the legislator appeals to such concepts as: "family doctor", "attending physician", "doctor of other specialties", etc.

Given the lack of pluralism of approaches to the general definition of the category "legal status", it is logical to conclude the lack of a centralized approach to the definitions of "legal status of a doctor" and "administrative and legal status of a family doctor".

Directly, an attempt to consolidate the legal status of a family doctor was made in the Order of the Ministry of Health of Ukraine "On approval of certain documents on family medicine" from 23.02.2001 № 72 [14].

An important novelty of this normative act is the consolidation in Annex 1 of the tasks of a general practitioner, which include: ensuring the provision of qualified primary treatment and prevention care to the population; implementation of medical care is carried out in the amount of qualification characteristics of a doctor in the specialty "general practice – family medicine"; this qualified care is provided in outpatient clinics and at home.

An important element of providing medical care by a family doctor is its provision on a family-territorial basis. A family doctor can be a person who graduated from the medical or pediatric faculty of the higher medical educational institution of III-IV levels of accreditation or the medical faculty of the university, passed the primary specialization in the higher medical educational institution of postgraduate education and specializes in "general practice-family medicine". specialist in this specialty. Thus, we can distinguish the following qualification requirements: 1) availability of higher medical education; 2) direction of education, medical business or pediatrics 3) successful completion of appropriate special training in the specialty "general practice-family medicine" and has a certificate of a specialist in this specialty.

A family doctor who works at a health care facility of communal property as a chief physician of a treatment and prevention facility is appointed and dismissed to the position of a family doctor. In his work he is directly subordinated to the head of the department of general practice - family medicine, in his absence – to the chief physician of the outpatient clinic.

According to the current legislation (Appendix 1 to the order of the Ministry of Health of Ukraine dated 23.02.2001 № 72), the family doctor has the following rights: 1) to control the work of his subordinate secondary and junior medical staff; 2) to submit proposals to management to improve the organization of medical care to the population on the basis of general practice – family medicine; 3) to take part in meetings, scientific and practical conferences, seminars on the issues of providing medical and preventive care on the basis of general practice – family medicine; 4) to conduct business activities in the specialty "general practice - family medicine" [15].

The same normative act enshrines a number of responsibilities. In particular: 1) to provide qualified, including emergency, medical care in the amount of the qualification characteristics of the specialist in the profile; 2) in the cases shown, to provide counseling to patients by the head of the department, doctors of other specialties of the outpatient clinic, by agreement - by specialists of other treatment and prevention facilities; 3) to prepare patients for hospitalization and ensure their timely referral to inpatient treatment – to use in their work modern methods of prevention, diagnosis, treatment and rehabilitation of patients with various diseases; 4) to carry out preventive work aimed at identifying risk factors, early and latent forms of disease; 5) to organize and conduct a set of measures for medical examination of the population of the site (detection, registration, medical and health measures) and monitoring of his health; 6) to carry out sanitary and anti-epidemic work at the polling station; 7) to carry out sanitary-educational work among the population of a site; 8) to carry out examination of temporary incapacity for work of patients, in the presence of indications to direct them to the medical advisory commission; 9) to improve their professional skills systematically; 10) to keep accounting records; 11) to provide counseling to the population of the precinct on medical-social and medical-psychological issues, family planning issues; 12) to organize the provision of medical care to the population in extreme situations.

As we can see from the above, the imbalance between rights and responsibilities towards the emphasis on responsibilities is clearly visible. Despite the fairly regulated legal status of the family doctor, the block of rights looks somewhat limited and insufficiently complete. Yes, the protection of the rights of the family doctor and the procedure for his recovery were not reflected. It would be appropriate to establish a procedure for pre-trial and judicial defense of the rights of a family doctor in conflict with patients.

Despite the regulation of the family doctor's daily routine, and according to paragraph 9 of Annex 2 to this Regulation, the schedule is fixed and approved by the Chief Physician of the treatment and prevention institution, taking into account labor legislation, overtime remains unspecified hours and weekends / holidays), as well as counseling citizens by phone outside working hours. In addition, analyzing the rights and responsibilities of the family doctor, his role in counteracting epidemics and pandemics is not disclosed, which is especially relevant with the burden placed on the doctor during the exacerbation of the viral disease COVID-19.

We support the opinion of V. Bezprozvannoi, on the need to adopt the Law of Ukraine "On the Rights of Medical and Pharmaceutical Workers", which would contain provisions on the principles of activity, status, functions of state control over the rights of medical and pharmaceutical workers, as well as establish a list of legal mechanisms to protect the rights of medical and pharmaceutical workers in Ukraine, specified the interpretation of the concepts "medical error" and "rights of medical workers" [16, p. 117].

**Conclusions.** Despite the rather large array of specialized regulations on the regulation of doctors in general and family doctors in particular, it is necessary to state the lack of codification in this area. This issue is especially relevant against the background of the rapid response of the primary level to the threats of outbreaks of epidemics and pandemics. The very definition of rights, responsibilities and features of defending the rights of doctors will create a proper basis for the mobilization of forces and means to protect the health of citizens.

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

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**Роман ОПАЦЬКИЙ**

## АДМІНІСТРАТИВНО-ПРАВОВИЙ СТАТУС ЛІКАРЯ ЗАГАЛЬНОЇ ПРАКТИКИ - СІМЕЙНОЇ МЕДИЦИНИ

**Анотація.** Стаття присвячена розкриттю проблеми адміністративно-правового статусу лікаря загальної практики – сімейного лікаря. Акцентовано увагу на важливості чіткого визначення правосуб'єктності сімейного лікаря з огляду на реформування системи охорони здоров'я та подолання негативних наслідків у протидії пандемії COVID-19.

Розкриття адміністративно-правового статусу здійснювалося через загальноприйняті категорії «правовий статус» закріплені в юридичній науці. Під правовим статусом медичного працівника запропоновано розуміти сукупність суб'єктивних юридичних прав та обов'язків, гарантій здійснення прав і обов'язків. Водночас правовий статус конкретної фізичної особи можна розглядати як суму загального, спеціального, індивідуального статусів, співвідношення яких варіює залежно від конкретних ситуацій.

Адміністративно-правовий статус лікаря загальної практики – сімейного лікаря, як різновид правового статусу, доречно розглядати як комплекс суб'єктивних прав і обов'язків, які закріплено у відповідних адміністративно-правових нормах. Виділено такі структурні елементи адміністративно-правового статусу, зокрема, сімейного лікаря: публічні суб'єктивні права та юридичні обов'язки, обсяг і характер правосуб'єктності (дієздатності та правоздатності), адміністративна, у деяких випадках – дисциплінарна, відповідальність. Автор підтримує позицію про необхідність прийняти Закон України «Про права медичних і фармацевтичних працівників», який би містив положення про засади діяльності медичних працівників.

Як підсумок, констатується відсутність кодифікації норм права з даного напряму. Акцентується дана проблема на тлі оперативного реагування первинної ланки на загрози при спалаху епідемій та пандемій. Саме визначення прав, обов'язків то особливостей відстоювання прав лікарів створить належне підґрунтя для мобілізації сил та засобі по охороні здоров'я громадян.

***Ключові слова**: правовий статус, медичний працівник, лікар загальної практики, охорона здоров'я, сімейний лікар.*

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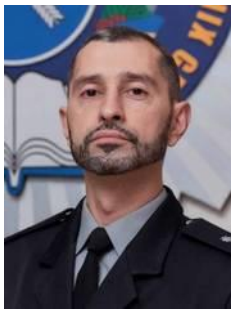

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## PERMITS OF ADMINISTRATIVE AND LEGAL ENVIRONMENTAL SECURITY: ESSENCE, TYPES FOR IMPROVEMENT

**Abstract.** The article, based on the analysis of current legislation, available scientific, journalistic and methodological sources, including foreign experience, defines the concept, clarifies the essence and importance of administrative remedies in ensuring air safety.

It is established that the essence of legal protection of atmospheric air is to limit those anthropogenic impacts on atmospheric air that have negative consequences for humans and the environment. Carrying out protection of atmospheric air, the state in the person of the authorized nature protection bodies proceeds from a task to prevent harm to the person and environment in the course of interaction of a society and the atmosphere.

The importance of administrative and legal means of air protection is emphasized, which are proposed to be considered as legal phenomena expressed in instruments (institutions) and administrative and legal actions of the subjects of administrative and legal protection of this important natural component, aimed at preserving and restoring its natural state, living conditions, environmental safety and prevention of harmful effects of atmospheric air on human health and the environment.

The specific features inherent in the administrative and legal means of air protection are outlined, including: the special sphere of influence of these means, which is associated with the solely use to preserve, improve and restore atmospheric air, prevent and reduce its pollution and chemical compounds, physical and biological factors; exclusive application only within the scope of administrative and legal relations arising during the protection of this natural component; availability of a wide range of subjects of application; dominance among them of application of measures of control-supervisory and preventive-coercive character; predominant detailing and development in departmental regulations and decisions of local authorities and local self-government; use in the application of technical and legal content and nature.

***Keywords***: *atmospheric air, atmospheric air safety, administrative remedy, legal protection, administrative legal protection.*

**Relevance of the study.** The state, as the main subject of atmospheric protection activities, establishing a system of permits for environmentally hazardous activities, not only puts the subjects responsible for such activities, but also takes the risk: allowing such dangerous types of environmental development, the state, at the same time recognizes their

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necessity and usefulness for the development of society and legitimizes them on terms of acceptable risk. The state receives fiscal revenues from such entities as: license fees, pollution fees, resource taxes, differentiated mono-resource rents, etc. By allowing such risky activities, the state simultaneously undertakes to create and develop a system of control, supervision and regulation of such activities, which is not only a right but also a duty that corresponds to the absolute constitutional right of citizens to environmental safety [1, p. 83].

The purpose of permitting activities in the study area is to regulate emissions of pollutants into the atmosphere by stationary sources, carried out in accordance with Article 11 of the Law of Ukraine "On Atmospheric Air Protection" to ensure environmental safety, create a favorable living environment, prevent harmful effects of air on human health and the environment [2].

**Recent publications review.** Important aspects of administrative and legal security of air safety have been studied by many well-known lawyers. Domestic scientific research is not fragmentary and in this aspect we should pay tribute to the scientific works of scientists of the Soviet period (monographs by M. Malyshko "State control over air protection" (1982) and M. Brynchuk "Legal protection of air" (1985) and modernity (dissertations of O. Ilyina "Organizational and legal measures for the protection of the ozone layer in Ukraine" (Kharkov, 2004), S. Vorushylo "Administrative and legal protection of atmospheric air" (Kyiv, 2011), which, although of undeniable scientific interest, are prepared in other legal realities. At the same time, the issue of applying the necessary set of administrative and legal remedies, primarily of a permitting nature, has not been comprehensively studied. The vast majority of scientists in their works either cover it in fragments, or do not touch at all.

**The article's objective.** Therefore, the **purpose** of the article is to determine on the basis of analysis of current legislation, available scientific, journalistic and methodological sources, including foreign experience, the nature and importance of administrative and legal means of ensuring the safety of atmospheric air permits.

**Discussion.** According to the Law of Ukraine "On Atmospheric Air Protection" emissions of pollutants into the atmosphere by stationary sources may be carried out only after obtaining a permit for emissions issued to the business entity by the permitting authority in coordination with the central executive body implementing state policy in the field of sanitation and epidemic well-being of the population [2].

To date, in the field of environmental safety, which is part of environmental activities, there are dozens of different permits and registration documents, the specificity of which depends on the type of activity in the field of environmental protection and nature management, including: disinfection of quarantine materials and facilities moving across the state border and quarantine zones; retail trade in pesticides and agrochemicals; collection, procurement of certain types of waste as secondary raw materials (according to the lists determined by the Cabinet of Ministers of Ukraine); operations in the field of hazardous waste management; extraction of precious metals and precious stones, precious stones of organogenic formation, semi-precious stones; production of precious metals and precious stones, production of products from them and semi-precious stones, collection, primary processing of waste and scrap of precious metals and precious stones; centralized water supply and drainage; construction activity; design, construction of new and reconstruction of existing reclamation systems and individual engineering infrastructure facilities; production of especially dangerous chemicals (according to the list determined by the Cabinet of Ministers of Ukraine), activities related to the production of cars and buses; transportation of oil, oil products by main pipeline, transportation of natural and oil gas by pipelines and its distribution, supply of natural gas at regulated and unregulated tariff, storage of natural gas in excess of the level established by the license conditions; provision of services for the carriage of passengers and goods by rail; provision of services for transportation of passengers and cargo by air, performance of aero-chemical works; provision of services for transportation of passengers and goods by public road transport; provision of services for transportation of passengers and goods by river, sea transport; activities related to commercial fishing; search (exploration) of minerals; execution of topographic-geodetic and cartographic works; production, storage, transportation, use, disposal, destruction and utilization of toxic substances, including biotechnology products and other biological objects; activities in the field of nuclear energy use [3].

Scientists consider the permitting activity as a legal regime of beginning and implementation of certain legally recognized activities, which provides for state confirmation and determination of the limits of the right to conduct business, state control over the activities,

possibility of termination on special grounds by state authorities [4, p. 17]. Despite some volume, the above definition sufficiently reflects the purpose of not only the licensing activity, but also the components derived from it - registration, licensing, certification, etc.

There are also many different types of permits in the field of air protection. Given the specificity of activities in this area of environmental protection and nature management, these permits are extremely diverse not only in content and form, but often in name. In the field of atmospheric air use, these are, first of all, permits for emissions of harmful (polluting) substances and for harmful physical impact on atmospheric air.

There are two types of activities in environmental law that require a special permit: the actual environmentally significant activities, which are not limited by quantitative criteria and are ongoing (for example, air pollution as a result of economic activities) and certain depleted business transactions single action and have quantitative characteristics (in other areas of environmental activity).

Mechanism of control for these activities is also different. In the first case, the control, as well as the activity itself, is ongoing and aimed mainly at ensuring compliance with the actual environmentally significant activities to the conditions of the permit, the implementation of measures to protect the atmosphere. And the control over observance of conditions of the permission for performance of separate operations comes to the end with the termination of the operation and provides check of quantity and conformity of object of the operation specified in the permission.

In general, the issuance of permits for the release of harmful (polluting) substances into the atmosphere and the harmful physical impact on it is a state activity carried out in the interests of environmental and economic security, aimed at ensuring citizens' favorable air quality, preserving its properties for the current and future generations. These interests are realized through a set of organizational and legal measures related to the issuance of permits and control over the implementation of the requirements and conditions contained therein.

The activity of issuing permits for emissions of harmful (polluting) substances into the atmosphere is carried out within the administrative and legal relations between the State Ecological Inspectorate of Ukraine and its officials, regional, Kyiv, Sevastopol city state administrations, the executive body of the Autonomous Republic of Crimea natural environment on the one hand, and individual or collective entities wishing to obtain a permit to carry out a specific type of environmentally significant activities, on the other hand.

The value of activities for the issuance of permits for air emissions in the mechanism of state control is determined by the functions it performs in the field of air protection. Yes, V. Petrov notes that the permits concentrate two control functions: first, on legality, and secondly, on the rationality of activities on the use of natural resources, compliance with environmental and sanitary norms and normalized consumption of the natural resource [5].

M. Brynchuk points out that the range of functions of permitting environmental activities is much wider. It identifies the following main functions: preventive (preventive), which is expressed in the prevention and prevention of irreparable environmental damage to the environment and human health, ensuring the rational use of natural resources; information, within which information is collected, accumulated and disseminated on the scale, types and limits of ecologically significant activities, measures that must be performed by a particular nature user for environmental protection; control - is manifested in the fact that issuing a certain environmental permit, specially authorized bodies in the field of environmental protection monitor compliance with environmental requirements under current legislation, or if necessary, public authorities may suspend such documents [6, pp. 342-343].

The general principles of permitting activities in the field of atmospheric protection are laid down in the Law of Ukraine "On Atmospheric Air". In particular, licensing activities in the research area are implemented by:

1) issuance of permits for emissions of pollutants into the atmosphere by stationary sources (Part 5 of Article 11 of the Law). Such permits are issued on condition of: not exceeding the established environmental safety standards during their validity period; not exceeding the standards of permissible emissions of pollutants from stationary sources; compliance with the requirements for technological processes in terms of limiting emissions of pollutants;

2) issuance of permits for emissions of pollutants for which the relevant environmental safety standards have not been established (Article 14 of the Law of Ukraine "On Atmospheric Air");

3) issuance of permits for activities aimed at artificial changes in the state of the

atmosphere and atmospheric phenomena for economic purposes (Article 16 of the Law of Ukraine "On Atmospheric Air");

4) approval of projects for construction, construction and reconstruction of enterprises and other facilities that affect or may affect the state of atmospheric air;

5) consideration and approval of materials on the selection and allocation of land for construction of facilities and participation in state commissions created to address issues of construction of a facility [7].

The activity of issuing permits in the environmental sphere is regulated mainly by numerous by-laws of a nature department. The only legislative act, the norms of which determine the legal and organizational principles of the permitting system in the field of economic activity and establish the procedure for permitting bodies authorized to issue permitting documents and state administrators, is the Law of Ukraine "On the permitting system in the sphere of economic activity" [8].

According to the Law of Ukraine "On the permitting system in the sphere of economic activity" the term of issuance of the permit document, the list of documents for its issuance, the grounds for refusal of issuance and its cancellation are established exclusively by law. Similarly, the terms of providing administrative services, the list and requirements for documents required to obtain administrative services are determined in accordance with the Law of Ukraine "On Administrative Services" [9]. Such, for example, in accordance with Article 11 of the Law of Ukraine of 12 December 2019 Law of Ukraine "On Principles of Monitoring, Reporting and Verification of Greenhouse Gas Emissions" [10], entitled "Administrative services in the field of monitoring, reporting and verification of greenhouse gas emissions installations located on the territory of Ukraine ”such services include registration, approval of the monitoring plan, approval of the monitoring plan with changes, approval of the improvement report, acceptance of the operator's report and approval of the verifier's decision to conduct on-site verification.

At the same time, it should be noted that the Law of Ukraine "On Atmospheric Air Protection" does not currently specify the terms of issuing a permit for emissions, the list of necessary documents for its receipt, the grounds for refusal and cancellation. Also, part nine of Article 11 of this law stipulates that the list of institutions, organizations and establishments that have the right to develop documents justifying the amount of emissions for enterprises, institutions, organizations and citizens – business entities, is determined by the central executive body , which ensures the implementation of state policy in the field of environmental protection [2]. However, the law does not set requirements for such institutions, organizations and establishments.

Moreover, the absence of legally defined grounds for refusal and revocation of permits for emissions of pollutants into the atmosphere convinces of the need to supplement the Law of Ukraine "On Protection of Atmospheric Air" by Part 13 of Article 11 of the following content: "The grounds for refusal to issue a permit for emissions of pollutants into the atmosphere by stationary sources are: submission by the business entity of an incomplete package of documents required to obtain a permit; detection of inaccurate information in the documents submitted by the business entity; obtaining a negative decision of the central (territorial) body of executive power, which implements the state policy in the field of sanitary and epidemiological well-being of the population, regarding the possibility of issuing a permit; the absence of notification of the local state administration on the presence or absence of public comments on the issuance of a permit to the business entity for emissions of pollutants into the atmosphere by stationary sources".

This is due to the fact that the Law of Ukraine "On Protection of Atmospheric Air" in Article 11 lists the conditions under which permits are issued for emissions of pollutants into the atmosphere, including:

– non-exceeding during the term of their validity of the established norms of ecological safety;

– not exceeding the standards of permissible emissions of pollutants from stationary sources;

– compliance with the requirements for technological processes in terms of limiting emissions of pollutants [2].

At the same time, the grounds for refusing to issue permits for emissions of pollutants into the atmosphere by stationary sources are still not legally defined.

**Conclusions.** Summarizing the above, it should be noted that the permissive means of

administrative and legal security of air safety are implemented through: 1) the issuance of permits for emissions of pollutants into the atmosphere by stationary sources; 2) issuance of permits for emissions of pollutants for which the relevant environmental safety standards have not been established yet; 3) issuance of permits for activities aimed at artificial changes in the state of the atmosphere and atmospheric phenomena for economic purposes; 4) approval of projects for construction, construction and reconstruction of enterprises and other facilities that affect or may affect the state of atmospheric air; 5) consideration and approval of materials on the selection and allocation of land for construction of facilities and participation in state commissions created to address issues of construction of a facility. The outlined administrative and legal means of permitting the provision of atmospheric air require further proper regulatory and legal regulation, and the activities of public administration bodies for their implementation – the systematization, organizational and methodological streamlining.

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

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**ДОЗВОЛИ АДМІНІСТРАТИВНО-ПРАВОВОЇ ЕКОЛОГІЧНОЇ БЕЗПЕКИ: СУТНІСТЬ, ВИДИ ПОКРАЩЕННЯ**

**Анотація.** У статті на основі аналізу чинного законодавства, наявних наукових, публіцистичних та методичних джерел, у тому числі зарубіжного досвіду, визначено поняття, роз’яснено сутність та значення адміністративних засобів у забезпеченні безпеки повітряного транспорту.

Встановлено, що суть правової охорони атмосферного повітря полягає в обмеженні тих антропогенних впливів на атмосферне повітря, які мають негативні наслідки для людини та навколишнього середовища. Здійснюючи охорону атмосферного повітря, держава в особі уповноважених органів охорони природи виходить із завдання не допустити шкоди людині та навколишньому середовищу в процесі взаємодії суспільства та атмосфери.

Підкреслено значення адміністративно-правових засобів охорони атмосферного повітря, які пропонується розглядати як правові явища, що виражаються в інструментах (установах) та адміністративно-правових діях суб’єктів адміністративно-правової охорони цієї важливої

природної складової, спрямованих на збереження відновлення його природного стану, умов життя, екологічної безпеки та запобігання шкідливому впливу атмосферного повітря на здоров'я людей та навколишнє середовище.

Окреслено особливості адміністративно-правових засобів охорони атмосферного повітря, зокрема: особливу сферу впливу цих засобів, яка пов'язана з використанням виключно для збереження, оздоровлення та відновлення атмосферного повітря, запобігання та зменшення його забруднення та хімічного впливу. сполуки, фізичні та біологічні фактори; виключне застосування лише в межах адміністративно-правових відносин, що виникають під час охорони цього природного компонента; наявність широкого спектру предметів застосування; домінування серед них застосування заходів контрольно-наглядового та превентивно-примусового характеру; переважна деталізація та розробка у відомчих нормативно-правових актах та рішеннях місцевих органів влади та місцевого самоврядування; використання у застосуванні техніко-правового змісту та характеру.

***Ключові слова:*** *атмосферне повітря, безпека атмосферного повітря, адміністративний засіб, правовий захист, адміністративно-правовий захист.*

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## EFFICIENCY OF THE ACTIVITY OF GOVERNMENT AUTHORITIES IN THE FIELD OF PROTECTION AND USE OF FOREST RESOURCES

**Abstract.** The purpose of this article is to establish the effectiveness of state regulation and management in the field of forest resources in order to ensure their proper protection, rational use and reproduction; to define the powers of public authorities in relation to forest resources management; to establish the functions of state management of forest resources; to analyze the main tasks of state regulation and management in the field of forest relations.

The methodology includes a comprehensive analysis and generalization of available scientific and theoretical material and the formulation of relevant conclusions and recommendations. The following methods of scientific cognition were used during the research: terminological, logical-semantic, functional, system-structural, logical-normative.

As a result of the study, it was found that in our country there is a very extensive system of control of government agencies over activities in the forest sector. But its efficiency is low, because illegal deforestation is carried out en masse, and the authorities that are supposed to monitor it do not seem to notice anything, or the officials on whom the solution of a particular issue depends decide in their favor, not in favor of the state - that is, officials themselves commit illegal acts. Unfortunately, such cases are not uncommon - mostly mass. Therefore, there is a need to change, improve and increase the effectiveness of control both directly by public authorities and these bodies themselves. Procrastination can lead to the destruction of forests, animals, and the ecological network, which in turn affects the ecological environment of citizens and their lives and health.

Scientific novelty: in the course of the research it was established that the system of state management of forest resources is inefficient and needs to be improved.

The results of the study have practical significance and can be used in lawmaking and law enforcement activities during the implementation of measures for the protection, use and reproduction of forest resources.

***Keywords:*** *forest, forest resources, governance, forest protection, use of forest resources, rational use of forests, forest protection.*


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**Relevance of the study.** Unlike previous epochs, it is now generally accepted that the state should play a leading role in the protection, use and reproduction of forests. To what extent such activity of the state, which is enshrined in the relevant regulations, is effective.

**Recent publications review.** Such scientists as M. Byzova, A. Golovko, A. Deineka, V. Kurilo, Ya. Lazarenko, P. Melnyk, I. Sinyakevych dealt with separate issues of this topic., Yu. Shelyag-Sosonko and others.

**The article's objective.** The task of the article is to determine how effective the role of government agencies is in forest resource management.

**Discussion.** The main discussions revolve around another question - how strong should be the influence of the state in this area. According to some views, reflected in particular in the German model of forestry, the role of the state is nothing more than the role of a kind of "forest police". That is, it consists in professional management in state forests and in providing services to other forest owners and society in general. The state should promote forestry at all levels through research, education, information support, forest management, statistics, and the establishment of common standards. Financial incentives are reduced to investments dictated by acute public needs and which are impossible without public assistance. Funds can be provided for structural improvements, such as silvicultural works, road construction, as well as to overcome the effects of natural disasters or pollution. However, they do not allow direct intervention of state bodies, for example, in the regulation of prices or earnings in the private or communal sector [1, p. 183-187].

According to the scientist A. Hetman, the complexity and versatility of management in the field of ecology, which are due to the fact that"… on the one hand, should take into account objective, spontaneous processes of self-government in nature, and on the other – the need for targeted environmental management. The object of management is relations in the field of society and relations in the field of the natural environment, which do not coincide with the laws of human development. Therefore, "society should determine the main activities of public administration and public organizations in solving problems of environmental protection and environmental management, develop and implement an appropriate system of measures aimed at implementing the tasks set in the field of environmental management, provide them with state and legal support" [2].

According to other views, public authorities should be involved as widely as possible in forestry, logging and processing of forest products, as well as pricing. The main argument is that the state should control the behavior of private entities to ensure its compliance with the public interest. Regulation aimed at preventing or correcting of market failures is of particular importance in this case.

This approach is common in Canada and to a much lesser extent in other Western countries. As agents representing the interests of the forest owner (citizens of the state in general), public authorities control the management and use of state forests by issuing various permits and concluding contracts, an integral part of which are clearly defined conditions and time limits. These legal acts allow state bodies to control the volume and structure of the use of natural resources on public lands, to establish forestry standards and to influence the distribution of financial revenues from the use of forests.

It is obvious that Ukrainian legislation follows a different model. So in accordance with Art. 25 of the LC of Ukraine, the main task of state regulation and management in the field of forest relations is to ensure effective protection, proper protection, rational use and reproduction of forests. And this goal is achieved by forming and defining the main directions of state policy in the field of forest relations; determination by law of the powers of executive bodies and local self-government bodies; installation in accordance with the law of order and rules in the field of protection, preservation, use and reproduction of forests; implementation of state control over the protection, defense, use and reproduction of forests [3, Art. 691].

The organizational model of state regulation and management in the field of public relations for forests in Ukraine, as in other countries, is characterized by a significant number and heterogeneity of its constituent entities.

Along with public administration, it covers local governments. In addition, the territorial scale of their activities and the internal structure of the organization are different. Along with the specially authorized central executive body for which such activity is the main task, this includes central executive bodies with sectoral and functional powers.

Thus, the Verkhovna Rada of Ukraine in this area determines the principles of state policy in the field of forest relations; adopts laws regulating relations in this area; approves national programs on protection, protection, use and reproduction of forests (Article 26 of the

LC of Ukraine).

The Forest Code of Ukraine (Article 33) provides for a certain amount of powers in the field of forest relations for village, settlement and city councils. They decide on the allocation in the prescribed manner for long-term temporary use of forests of these forest areas, and terminate the rights to use them; take part in the implementation of measures for the protection and preservation of forests, the elimination of the consequences of natural phenomena, forest fires, involve in the prescribed manner in these works of the population, vehicles and other technical means and equipment; organize the improvement of forest areas; establish the procedure for the use of funds allocated from the local budget for forestry.

In Ukraine, executive bodies of general competence, for which management in this area is only an integral part of a broader activity, are the Cabinet of Ministers of Ukraine, the Council of Ministers of the ARC and local state administrations. The Cabinet of Ministers of Ukraine, the highest body in the system of executive power, ensures the implementation of state policy in the field of forest relations; directs and coordinates the activities of executive bodies in the organization of protection, conservation, use and reproduction of forests; ensures the development and implementation of national programs for the protection, conservation, use and reproduction of forests; approves state programs for protection, protection, use and reproduction of forests [3, Art. 691].

The Council of Ministers of the Autonomous Republic of Crimea, oblast, Kyiv and Sevastopol city state administrations in the field of forest relations within the limits of their powers on their territory ensure the implementation of the state policy in the field of forest relations; … Ensure the implementation of measures for protection and preservation of forests, set a limit on the use of forest resources in the procurement of secondary forest materials and the implementation of secondary forest uses; set maximum rates for free collection of wild herbaceous plants, flowers, berries, nuts, mushrooms, etc.; resolve other issues in the field of forest relations in accordance with the law (Article 31 of the LC of Ukraine).

District state administrations, which exercise executive power on the territory of the respective administrative-territorial unit and exercise the powers delegated by the relevant councils, ensure the implementation of state policy in the field of forest relations; participate in the development and implementation of regional (local) programs for the protection, conservation, use and reproduction of forests; participate in the implementation of measures for the protection and preservation of forests, etc. (Article 32 of the LC of Ukraine).

Having analyzed the powers of state bodies in the field of forest resources management, it can be argued that in modern conditions the mechanism of public administration has significant shortcomings and needs further improvement. In the division of competence between these state bodies, the principle of balancing powers has been violated. Thus, today in Ukraine continues to operate inherited from the Soviet Union system of forest management and forestry, which is characterized by concentration of forest and forest management functions within one management entity – the State Forestry Agency of Ukraine. The powers of the State Forestry Agency include planning, regulation, standardization, implementation of forest policy, control, i.e. the State Forestry Agency carries out management in the field of forest protection, and the Ministry of Agrarian Policy and Food is authorized to carry out general formation and determination of forest policy State Forest Agency.

Thus, the role of the state in establishing the principles of sustainable development of forests, in general, is to achieve the harmonious development of environmental, economic and social properties of forests. The leading place is occupied by the law-making function of the state, as forest legislation is the legal basis of the state forest policy and its coordination with the state policy in other areas.

The functions of implementing forest legislation and monitoring its implementation are to ensure compliance all forest owners, forest users and other entities whose activities affect the state of forests, legal norms and provisions of forest policy. The functions of the state as the owner of forests are to ensure compliance with the principles of sustainable development of these forests, i.e. the preservation of their environmental and social value, as well as profit from them. The function of state support of the needs of the forestry industry includes scientific work and professional education; statistics, forest management and planning; consulting services; fire and phytosanitary control; quality control of seeds and planting material.

However, the influence of the state on the state of forests is not limited to the implementation of the above functions. In a broader sense, the state acts as a driver of social and economic progress in the field of protection, use and reproduction of forests, which is

reflected in the creation of the necessary public institutions, attracting investment, development of appropriate infrastructure.

The state interacts with the private sector in various ways to establish the principles of sustainable forest development. First of all, the state performs functions that this sector cannot perform due to the lack of market incentives (maintains recreational and protective forests, protects lands, increases their productivity, etc.). In addition, the state establishes the conditions under which the private sector manages its own forests and uses public forests. The state protects forest resources to meet public needs, regardless of who owns the forests. To this end, the legislation imposes appropriate restrictions on the use and disposal of forests.

As follows from the above list of functions of the state, we can distinguish two types of influence of the state on public relations in relation to forests. First of all, through the powers deriving from state ownership of forests, as well as exercising power. In turn, public authorities can exercise their powers by applying two main approaches to influencing public relations in relation to forests.

The first is the regulatory (command-administrative) approach. It relies on direct legal regulations and administrative controls to curb undesirable trends in the market. The main drawback of the regulatory approach is that the proper behavior of actors is not achieved through economic incentives, but through the threat of sanctions. At the same time, those who have reached a level that exceeds the minimum set by the state have no advantages.

Instead, the essence of market relations is that the improvement of production is properly rewarded, and therefore the subject's attention is constantly focused on finding new ways to improve. Therefore, another way to exercise power is to try to reconcile economic incentives with the public interest (in this case, the interests are reduced to proper forest management and use of forest resources). It follows that in order to successfully exercise power, it is essential to find out what should be left to the self-regulation of market forces and what is subject to direct administrative regulation.

Ideally, the functions of the state should be separated as fully as possible from the functions of the private sector. This would allow public institutions to be a completely impartial arbiter of interest groups, governed exclusively by law. If the law does not specify clearly defined ways to resolve disputes, the goal should be to achieve the highest possible level of public consent. However, such a scheme cannot be put into practice, as some of the functions of the state are not fully compatible with each other, or even directly contradict each other or the functions of the private sector.

The state, in particular, is the largest owner of forests with relevant interests. Like any other owner, it is interested in maintaining and multiplying the value of this type of real estate, as well as making the most profit from it. At the same time, social and environmental demands of society counterbalance these interests. Thus, the state will be able to achieve its goals in regulating public relations in relation to forests only by balancing economic interests with other social needs.

Usually, the state of forests is influenced by three main state structures, which embody the diversity of its interests in forests. The interests of institutions performing fiscal functions (tax authorities, the Ministry of Finance) are to ensure the largest possible current financial revenues from the forest sector to the state treasury. Bodies representing the interests of industry (primarily the Ministry of Economy and the Ministry of Agriculture) are objectively interested in ensuring industry with a significant amount of cheap raw materials, introducing an "agronomic" type of forest management. And environmental authorities aim to ensure compliance with the high environmental standards provided by national legislation and international legal instruments.

There is no doubt that all of these interests are vital to society, so they are informally supported by a much wider range of stakeholders. At the same time, maintaining the overall balance between these forest interests is not the main task of any of these bodies. Therefore, the state as a whole, as a single institution, must take care of such a balance.

From an administrative point of view, this can be achieved by distributing the functions of the state in the field of forestry among existing state institutions, restructuring these institutions or creating new ones. There are four main organizational models of public management of protection, use and reproduction of forests in the modern world.

The first (typical of Argentina) involves the division of functions between two agencies: the Ministry of Economy (Finance, Planning) is responsible for the use of forests, and the Ministry of Environment is authorized to protect forest ecosystems. In this case, acute conflicts of interest of these agencies excessively complicate the management decision-making process.

In countries such as Zambia, forest issues are the sole responsibility of the Ministry of the Environment. Under such an organization, forests are considered, first of all, as a resource of national importance that performs important non-commercial functions. Considerable attention is paid to environmental issues. The disadvantage of this model is that command-and-control approaches to forest policy prevail and economic interests are not sufficiently taken into account. The needs and aspirations of the local population can also be considered insignificant compared to the national environmental objectives [4, p. 35-36].

In some countries (USA, Japan, Latvia) forestry issues are the responsibility of the Ministry of Agriculture. Under such a structure, forestry is usually given a secondary role. Forest policy is influenced by a much more powerful agricultural lobby. Much of the revenue from forestry is transferred to other sectors that are under the jurisdiction of the same ministry and have more attention for economic or political reasons.

It is worth noting that this is how forest management was organized in the USSR in the late 1950s and early 1960s. These were difficult times for domestic forestry, as it was fully affected by the shortcomings of such an organizational structure [5, p. 352].

A kind of opposite is the model when a separate Ministry of Forestry (Switzerland, New Zealand) is organized. In this case, the industry usually has significant political and financial support, and policy is shaped by its characteristics and potential.

**Conclusions.** Thus, in many countries, forestry authorities are the oldest, largest and most influential agency in the field of natural resources.

Traditionally, this institution has the main authority to formulate and implement forest policy, as well as the direct management of a significant part of forest resources. Being organizationally separate, it has the opportunity to join one of the three above-mentioned state structures in a particular issue, when the general balance of public interests in relation to forests is disturbed, and thus restore the balance. This, however, does not exclude a possible discrepancy between departmental interests and public ones.

In addition, like any other institution, forestry authorities object to any restriction of their powers, even if it is appropriate in the public interest. It is clear that the above description of the organizational models of the system of state bodies involved in forestry can not claim universality and completeness. These advantages and disadvantages are not always clear, as in many cases the formal organizational model is less important than other factors, such as the availability of political support, the internal hierarchical structure of forestry bodies, interdepartmental competition, efficiency, professional competence and initiative, number of employees, proper remuneration, etc.

It can also be argued that in our country there is a very extensive system of government control over activities in the forest sector. But its effectiveness is low, because illegal deforestation is carried out en masse, and the authorities that are supposed to monitor it do not seem to notice anything, or officials who depend on the solution of a particular issue decide them in their favor, not in favor of the state. Such cases are not uncommon – mostly mass. Therefore, we need to change and improve this control system – otherwise we may be left without forests. This in turn affects the ecological environment of citizens and their lives and health.

*Conflict of Interest and other Ethics Statements*

The author declares no conflict of interest.

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**Юрій КОРНЄЄВ**

## ЕФЕКТИВНІСТЬ ДІЯЛЬНОСТІ ДЕРЖАВНИХ ОРГАНІВ ВЛАДИ В ГАЛУЗІ ОХОРОНИ ТА ВИКОРИСТАННЯ ЛІСОВИХ РЕСУРСІВ

**Анотація.** Метою зазначеної статті є встановити наскільки ефективно здійснюється державне регулювання та управління у сфері лісових ресурсів з метою забезпечення їх охорони, належного захисту, раціонального використання та відтворення. Визначити повноваження державних органів влади стосовно управління лісовими ресурсами. Встановити функції державного управління лісовими ресурсами. Здійснити аналіз основних завдань державного регулювання та управління у сфері лісових відносин.

Методика включає комплексний аналіз та узагальнення наявного науково-теоретичного матеріалу та формулювання відповідних висновків та рекомендацій. Під час дослідження використовувались наступні методи наукового пізнання: термінологічний, логіко-семантичний, функціональний, системно-структурний, логіко-нормативний.

В результаті проведеного дослідження встановлено, що в нашій країні дуже розгалужена система контролю державних органів за діяльністю в лісовій галузі. Але ефективність її низька, тому що масово здійснюються незаконні вирубки лісу, а органи які мають за цим слідкувати начебто нічого не помічають, або чиновники від яких залежить вирішення того чи іншого питання вирішують їх на свою користь, а не на користь держави – тобто чиновники самі здійснюють протизаконні дії. Нажаль такі випадки є непоодинокі – в більшості своїй масові. Тому виникає необхідність змінювати, удосконалювати і підвищувати ефективність контролю як безпосередньо з боку органів державної влади так і самих цих органів. Зволікання може привести до знищення лісів, тварин, екологічної мережі, що в свою чергу впливає на екологічне довкілля громадян та їх життя і здоров'я.

Наукова новизна: в процесі дослідження встановлено, що система державного управління лісовими ресурсами є неефективною і потребує удосконалення. Результати дослідження мають практичну значимість та можуть бути використані у правотворчій та правозастосовній діяльності під час реалізації заходів охорони, використання та відтворення лісових ресурсів.

***Ключові слова:*** *ліс, лісові ресурси, державне управління, охорона лісів, використання лісових ресурсів, раціональне використання лісів, охорона лісів.*

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## INTERNATIONAL LEGISLATIVE BASIS OF SOCIAL WORK WITH MIGRANTS AND REFUGEES IN GERMANY

**Abstract.** The article deals with an acute issue of legal basis of social work with migrants and refugees in Germany. The basis of the migration policy of this country is international and bilateral regulations. Among them, the author highlights the laws and regulations of the Council of Europe, the UN, ratified by the German government, such as the Universal Declaration of Human Rights, the International Convention for the Protection of All Migrant Workers and Members of Their Families, the Treaty establishing Rome, the Schengen agreement, the Hague Program, the Blue Card of the European Union, etc. In the article the bilateral European treaties between the member states of the European Union are also analyzed.

***Keywords****: international law, social worker, migrants, refugees, European Union.*

**Relevance of the study.** The activities of a social worker are multifaceted and multi-vector. It provides not only special knowledge, but also wide erudition, which will contribute to the implementation of socio-pedagogical research, the organization of complex social,

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medical, pedagogical, psychological and legal assistance to people. After all, the main purpose of a social educator is to be a mediator between the individual and the microenvironment, various social institutions in solving client's urgent problems and meeting pressing needs.

Today, according to the World Bank, more than 130 million people are outside their homeland, according to the International Organization for Migration – 192 million, which is 3 percent of the world's population. This means that about one in 35 people in the world is a migrant. From 1965 to 1990, the number of international migrants increased by 45 million, an annual increase of 2.1 percent. Labor migration in the world has become an integral part of socio-economic and geopolitical processes and is beginning to occupy a leading position in the policy of not only the G8 and many countries, but also such structures as the UN, UNESCO, US and others. Among European countries, Germany ranks first in the number of migrants or residents with migrant roots.

Germany's migration policy is primarily based on international legal instruments. That is why it is important for our scientific research to study international law concerning the rights and opportunities of migrants and refugees. Because the existence of legal provisions on this category and the peculiarities of working with it indicate the need to train professionals competent in working with migrants.

The points substantiated in international documents regulate the basic principles of activity and training of social workers in the context of work with migrants and refugees. They emphasize that regardless of race, color, sex, language, religion, political or other beliefs, national or social origin, property or other status, everyone has the right to equal rights guaranteed by international instruments. The European Social Charter states that "migrant workers who are nationals of either Party and members of their families have the right to protection and assistance in the territory of the State of any other Party", as well as to the use of medical, social services and inclusion in the social security system [1].

**Recent publications review.** The main task of the state to provide quality social services is to create a valid legal basis for the work of social workers. Some aspects of the legislative provision of social work have been the subject of study by modern researchers. Among Ukrainian scientists, in our opinion, it is necessary to highlight T. Semigina, N. Sukhytska and A. Yaroshenko. They pay a lot of attention to the legal regulation of social policy, the main characteristics of the mechanism of human rights and international legal regulation of relations in the field of social policy.

Among German scholars, we highlight Professor Annegret Lorenz, who considers German civil and family law as the basis of social work with all categories of clients, including migrants and refugees. In addition, in the constellation of modern scholars who deal with the problem of legislative support of social work in Germany, we note Barbara Schermaier-Stöckl and Christof Stock. They highlight the legal aspects of social work and the right of immigrants to receive various social and financial assistance. Anna Müller points out the role of belonging to a certain social group of refugees in the light of the legal normative multilevel system and others.

**The article's objective** is to study, analyze and systematize international and European legal documents that provide social services to migrants and refugees in Germany.

**Discussion.** After analyzing the researches of native and foreign scholars, we came to the conclusion that the concept of social work with migrants and refugees in Germany is based on legal documents of various levels, which can be divided into international, bilateral, national and regional. In this article, we will consider in detail the first two groups of documents.

The first group includes documents of the world community. First of all, these are legislative and regulatory acts of the Council of Europe, the United Nations, ratified by the German government. It should be noted that at the international level the main document is the Universal Declaration of Human Rights of 1948, according to which the individual has the right to leave any state (including his/her own) and return to it (Article 13, Part 2). The right to seek asylum and the opportunity to use it is also enshrined (Article 14, Part 1). The provisions of the Declaration for States Parties are only for guidance [2]. The International Covenant on Civil and Political Rights of 1966 guarantees the possibility of the individual to leave any state, including his/her own (Article 12, Part 2). It prohibits arbitrary deprivation of the right to enter the country of origin (Article 12, Part 4) [3, p. 77].

International conventions are very important too. For example, the International Labor Organization (ILO) ratified the Migration for Employment Convention (1949), Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity

and Treatment of Migrant Workers (1975). The provisions of the Migration for Employment Convention state that migrants and members of their families have the right to access social security, as well as to exercise their fundamental rights, freedoms, interests and religion, on an equal footing with the citizens of the country of residence to the extent that it does not contradict the norms of the legislation of the host state.

The International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990, provides for the unimpeded movement of migrants for the purpose of legal employment [4] The protection of the rights and freedoms of migrant workers is the responsibility of the International Labor Organization (ILO) [5]. In order to combat illegal migration under the ILO Convention No. 143 on the Abuse of Migration, member states are obliged to take the necessary measures to stop the "secret" migration movement and the illegal employment of migrants [6]. The main international legal instruments protecting the rights of refugees are the Convention relating to the Status of Refugees and the Protocol Relating to the Status of Refugees, which obliges member states to cooperate with the Office of the United Nations High Commissioner for Refugees [7].

In the structure of organizations that regulate migration processes at the international level, an important role is given to the activities of the International Organization for Migration (IOM). Given decision has been made in 2016 at the 71st session of the UN General Assembly on the new status of IOM and its inclusion in the UN, it was planned that the organization within its competence will contribute to the development of a global agreement on migrants. As a result, in December 2018, the international community managed to agree on the Global Compact on Safe, Orderly and Legal Migration (hereinafter referred to as the Global Compact), which, although not a legally binding agreement, will reduce illegal migrants and increase legal displacement. In our opinion, the most constructive direction is "the introduction of a new mechanism that will establish the responsibility of Member States, partners in civil society and the UN system in situations involving large-scale displacement or long-term stay of refugees" [8].

It should be noted that in parallel with the international official documents to be executed by the states that have signed and ratified them, there is a set of bilateral legal acts that regulate and shape the migration policy of each state. We have conditionally allocated them to the second group of legal documents, which are the basis of the concept of social work in Germany with migrants and refugees.

We emphasize that in the context of our study of Germany as one of the leading members of the European Union, it is appropriate to highlight the fundamental provisions of the legal framework of the integration association, which currently faces external migratory pressures and related threats and challenges.

It should be said that the general migration policy in Germany is implemented taking into account the provisions of the Treaty of Rome "On the Establishment of the European Community" of 1957 (Article 63 as amended on April 16, 2003, Article 69c) with four basic freedoms: movement of capital, goods, services and freedom of movement of persons [9]. The purpose of the document is to support favorable living conditions for citizens who legally come to the member states of the integration association.

The Schengen Agreement of 1985, which provides for the waiver of passport and customs control at the internal borders of the integration association, was the main issue in simplifying the procedure for finding migrants in the EU. The Germans signed this document together with the Dublin Convention in 1990.

The Amsterdam Treaty on the Integration of the Schengen Achievements within the European Union of 1997 (Articles 61-63) sets out the fundamental provisions in the field of immigration, visas and the procedure for examining asylum applications [10].

According to this treaty, it is recognized that the interaction of courts and law enforcement agencies of nation states is the basis for internal security. An important provision of the document is the admissibility of the state to impose an exceptional restriction on the freedom of movement of persons for a certain period in the event of a threat to national security. The consent of other members of the integration association is a prerequisite for this procedure.

In order to develop the Amsterdam Treaty on the Implementation of the Concept of the European Area of Freedom, Security and Order at the EU Extraordinary Summit in Tampere in October 1999, the task of adopting the Schengen requirements by Central and Eastern European candidate countries was set. This helped to reform the system of registration of entry

documents for foreigners as an element in the fight against illegal migrationю. At the same time, the members of the integration association, including Germany, did not want to completely abandon control over migration and transfer this issue to supranational structures [11, p. 4].

The next normative document according to the concept of social work with migrants and refugees in Germany is the Hague Program, within the framework of which it was planned to form a common EU policy on migration by 2010. In this program, the priority is to strengthen cooperation with third countries, regulate the procedure for protection of external borders and readmission [12].

Let us clarify that readmission is the transfer from the territory of the requesting contracting county and the admission to the territory of the requested contracting state of nationals of contracting states, third-country nationals or stateless persons on the grounds and in the manner prescribed by international readmission agreements [13, p. 1].

Among other normative legal acts, it is expedient to single out Directive 2009/50 / EU 2009, which is an important document for the development of uniform criteria for the admission of labor to the EU internal market. The Directive points to the need to establish a control system for legal [14].

The introduction of the Blue Card of the European Union (analogous to the US Green Card) is important for the socialization and integration of migrants in the EU, and in Germany in particular. These are temporary residence permits and work permits. The priority is not only to invite qualified personnel for employment in one of the EU countries, but also to facilitate the relocation of specialists within the integration association with the subsequent return to the country of origin.

Each member state retains the right to regulate the number of highly qualified professionals from third countries, which indicates a lack of willingness of countries to transfer this issue to a supranational association. Directive 2009/52/EU of 2009 aims to combat employers who use illegal labor by imposing penalties.

A new period in European legislation on migrants and refugees is the entry into force of the EU Treaty (as amended by the 2007 Lisbon Treaty), which brings migration policy under a «common denominator» for all EU members. The following aspects of the document deserve attention. The joint competence of Brussels and the member states includes issues of migration, social sphere, security, which gives the right to make legislative decisions at national level in accordance with the general policy of the European Union (paragraph 2, Article 2). The policy on border control, asylum and immigration is set out in a separate section (Chapter 2, Section 5, Articles 77-80). A new legal category is formulated – "values of the union" (freedom, human rights, human dignity) [15].

The agreement pays special attention to the principles of solidarity and fair distribution of responsibilities between member states, including the financial aspect, and emphasizes the need to strengthen EU cooperation with neighboring countries (transit countries) to combat unregistered displacement. It should be noted that European states, when forming the internal migration legislation, usually rely on EU policy, coordinating its provisions with other member states. According to the expert E. Paveleva, in such a situation one of the main issues is the interdependence of state sovereignty and the supranational component in the framework of membership in the integration association in conducting migration policy [16]. On the one hand, states determine the procedure for admitting citizens to their territory, on the other hand, they transfer part of their rights to a supranational structure, which forces them to act together in resolving problems.

It is recognized at EU level that the existence of the above-mentioned Global Compact – a special mechanism – will further avoid a recurrence of the migration crisis of 2015-2016 and will help increase the security of cross-border movements and manage migration.

In the context of the development by EU member states of a set of measures to combat the initial stage of the migration crisis in 2015-2016, the European Commission's 2015 Action Plan to Combat Smuggling of Migrants 2015-2020, which aims to countermeasures (strengthening the fight against human trafficking, expanding cooperation with third countries, improving the mechanism of information collection and exchange, intensifying police and judicial cooperation between EU countries, readmission of illegally arrived in the country of result) and a comprehensive approach to addressing the root causes of migration (formation of a system of legal and safe channels of movement towards the integration association, interaction with the countries of the result) [17].

In September 2019, Germany, France, Italy, Malta and Finland presented their Joint Plan. According to the provisions of the developed plan, it is planned to facilitate the distribution of African migrants who have recently arrived by sea among the EU countries. On the route through the western Mediterranean in 2019, 24 thousand 759 people came to Europe (2018 – 58 thousand 725 people) [18].

In the context of the current consequences of the migration crisis of 2015-2016, the issue of the division of responsibilities between EU member states for third-country nationals or stateless persons subject to deportation remains relevant. This has become an acute social problem that needs to be addressed not so much in each individual European country, but above all, at the international level. That is why Germany is promoting the reform of the Dublin Regulation (Convention). The task of adjusting the document during her tenure as President of the European Commission in the summer of 2019 was formulated by W. von der Leyen [19].

In the current reality, the "weakness" of the document is seen in one of the basic elements – to establish full responsibility for the refugee who arrived, the state in which the initial application for asylum was filed and personal data are retained. The solution also requires the issue of responsibility for those migrants who left the country of first entry on their own and moved to another.

In autumn 2020, the European Commission proposed a draft Pact on Migration and Asylum, which forms the overall responsibility of the integration association for migration policy on the basis of solidarity and equal responsibility. Previously proposed tools have been improved to "screen" refugees at the EU's external borders, interact with countries of origin, combat the root causes of migration, promote legal migration, and extend the mandate of Frontex (Agency for the Management of Operational Cooperation at the EU's External Borders) [20].

The novelty is as follows. First, as the migratory pressure on the integration association increases, the member state is not always obliged to "physically" receive those in need of refugee protection, but has the right to provide technical and material assistance to the return of illegal migrants for up to 8 months. Then it assumes responsibility for their placement and maintenance on its territory. In the event of a crisis, states accept refugees within the existing quota system.

Secondly, the EU member state, which has experienced increased migratory pressure over the last five years (in proportion to its population), is entitled to claim a 10% reduction in the existing quota under forced refugee accommodation.

In the conditions of necessity of realization of the mentioned "EU Action Plan to Combat Smuggling of Migrants 2015-2020" states, where the majority of refugees are concentrated, suggest actively using readmission procedures with third countries. They point out the expediency of developing common approaches to appealing against decisions on forced expulsion. Tough measures are proposed, for example, the use of the mechanism even in the absence of refugees' identification documents, the annulment of the limitation period and the implementation of the procedure at any time [21].

According to regulatory approaches, along with the EU as a supranational structure, individual states have the right to act as parties to a readmission agreement. It is allowed to form the necessary mechanisms for its practical implementation (reimbursement of deportation costs, creation of temporary accommodation for illegal migrants, observance of fundamental rights provided by international obligations).

A significant social and economic element of migration regulation is the "New Framework Partnership with Third Countries in the Field of Migration" initiated in 2016 by the European Council. In the short term, it aims to protect and further return migrants to their homeland. In the medium term its goal is to eradicate the causes of illegal movement of citizens [22].

Mechanisms for appropriate financial incentives for partnerships in the field of EU, member states and donor budgets have been launched (Refugee Assistance Fund in Turkey, Trust Fund for Assistance to African States, Marshall Plan, etc.) [23]. The provision of funds is accompanied by the launch of a dialogue process on the conclusion of readmission agreements between the EU and the countries of origin, which does not always receive a positive response. EU donation can be interpreted as a desire to preserve potential migrants in the resulting state, preventing them from entering the continent.

**Conclusions.** We emphasize that these regulations reflect only part of a wide range of

international and EU legislation in the field of migration. In our opinion, such international and bilateral agreements do not fully regulate certain aspects (the procedure and deadlines for identification of foreigners and preparation of the necessary documents on the line of the recipient state). The lack of specifics in the field of transport and logistics (rental of charter aircraft, use of commercial airlines) slows down the implementation of the return of illegal migrants and makes it difficult to provide quality social assistance to this category of the population.

Thus, the EU is in the process of finding effective approaches to implementing migration policy that would help eliminate the effects of the migration crisis of 2015-2016 and in the event of such a scenario would minimize possible risks.

Intensifying the implementation of readmission decisions, protecting the EU's external borders, eradicating the root causes of migration, and building ties with the countries of result, including through financial assistance programs, remain priorities. Despite the crisis, regulated cross-border movements of people and the practice of accepting refugees within the framework of the EU's legal and policy framework have been viewed positively. Illegal migration is a serious problem, which has a negative impact on the host society and the resulting countries, contributing to the formation of new risks to national security. As the 2015-2016 crisis has shown, the disorderly movement of people needs to be tackled at all levels, from the communal within a single state to the supranational.

*Conflict of Interest and other Ethics Statements*

The author declares no conflict of interest.

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**МІЖНАРОДНЕ НОРМАТИВНО-ПРАВОВЕ ПІДГРУНТЯ СОЦІАЛЬНОЇ РОБОТИ З МІГРАНТАМИ ТА БІЖЕНЦЯМИ В НІМЕЧЧИНІ**

**Анотація.** Діяльність соціального робітника має багатоплановий і різновекторний характер. Вона передбачає не тільки спеціальні знання, а й багату ерудицію, що сприятиме здійсненню соціально-педагогічних досліджень, організації комплексної соціальної, медичної, педагогічної, психологічної та правової допомоги людям. На сьогоднішній день приблизно одна особа з 35 у світі є мігрантом, що породжує багато соціальних, релігійних та економічних проблем. Соціальний робітник допомагає мігрантам та біженцям при подоланні багатьох питань, у тому числі у правовій сфері.

Німеччина являє собою одну з найбільш розвинених країн світу та пропагує активно допомагати мігрантам та біженцям. Основою міграційної політики цієї країни є міжнародні та двосторонні нормативно-правові документи. Серед них автор виділяє законодавчі та нормативно-правові акти Ради Європи, ООН, що ратифіковані урядом Німеччини, наприклад, Загальна декларація прав людини, Міжнародна конвенція про захист прав усіх трудящих-мігрантів та членів їх сімей, Римський договір «Про заснування Європейського співтовариства», Шенгенська угода, Гаагська програма, «блакитна карта Європейського союзу» тощо.

У статті наголошено, що європейські держави при формуванні внутрішньої міграційної законодавчої бази, як правило, спираються на політику ЄС, узгоджуючи її положення з іншими державами-членами. Країни-учасниці Європейського Союзу разом також намагалися подолати міграційну кризу 2015-2016 років, корегуючи при цьому міграційне законодавство. Було запущено також механізми відповідного фінансового стимулювання партнерств по лінії бюджетних коштів ЄС, країн-членів та країн-донорів. Європейською комісією запропоновано проект Пакту з міграції та надання притулку, згідно з яким формується загальна відповідальність інтеграційного об'єднання за міграційну політику на засадах солідарності та рівної відповідальності.

***Ключові слова:*** *міжнародне законодавство, соціальний робітник, мігранти, біженці, Європейський Союз.*

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# POLITICAL AND LEGAL IDEOLOGY AS A SOCIAL PHENOMENON AND LEGAL CATEGORY

**Abstract.** The main ways to defining the meaning of the concept of "political and legal ideology" are described. The own way to understanding of the maintenance of the specified category, taking into account the purposes and functions of ideology in a political and legal life of a society is offered. It is proven that political and legal ideology embodies the legal principles of functioning and development of the state, norms of current legislation are legitimate means of forming the legal consciousness of man, his socialization, affirmation of personal, professional and civic features. It is proposed to understand political ideology as a social phenomenon, which is a system of conceptually designed legal ideas and views on political life, which illustrates the interests, worldview and social ideas.

***Keywords:*** *ideology, political and legal ideology, the idea of the rule of law.*

**Relevance of the study.** Today, for every state that pronounced itself as the legal one, the problems of introducing effective legal mechanisms and guarantees for enduring and protecting human rights and freedoms are becoming essential. The political and legal ideology of the Ukrainian state is also formed on universal values, democracy, respect for human rights and freedoms, reflects the traditional foundations of Ukrainian statehood and law and order, forms public legal consciousness, promotes Ukraine as a socially oriented, sovereign, democratic state in the international arena. The main role of political and legal ideology in the formation of a democratic state was studied by A. Lutsky, who, in particular, stressed that the ideology of the state promotes and conditions the rule of law, stimulates lawful behavior, and the interests of citizens.

**Recent publications review.** The concept of political and legal ideology does not have a single meaningful interpretation among jurists. Scholars usually consider this ambiguous and complex phenomenon as a socio-political, legal and cultural phenomenon, as a legal category, as an element of legal consciousness, as a theoretical basis of state legal policy that shows the values, interests and principles of the Ukrainian citizens. Domestic political and legal science considers legal ideology, mainly as a component of legal consciousness, which is manifested primarily at the theoretical level, as it is a form of systematic, theoretical knowledge. In particular, such scholars as K. Belsky, L. Gerasin, Y. Kalinovsky, V. Kaminskaya, M. Nedyukha, P. Novgorodtsev, V. Khropanyuk and others studied political and legal ideology as an element of public legal consciousness [1-13].

**The article's objective.** In preparing this scientific article, the author set himself the purpose of analyzing the main approaches to understanding the concept of "political and legal ideology" as a social phenomenon and legal category. To manage this goal, the author illustrated the following research algorithm:

1. Analysis of the main scientific approaches to understanding the concept of "political and legal ideology";

2. Defining the content of the concept of "political and legal ideology" as a social


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phenomenon, defining its role and significance in society;

3. Substantiation of scientific expediency of using the category "political and legal ideology" in legal research.

**Discussion.** Modern democratic ideals, the legal development of civilization give grounds to consider legal ideology a structural element of state ideology, which expresses the will and interests of citizens and society as a whole.

Thus, Kalinovsky argued that legal ideology is a social phenomenon embodied in public ideas, views, beliefs, theories, concepts of legal reality. Legal ideology, as a rule, does not arise spontaneously, it is developed by specialists and assimilated by the population in the process of legal education, during legal education, in the study of legal literature and regulations [2, p. 91]. M. Nedyukha thinks that the main purpose of political and legal ideology is to implement regulatory and managerial, stabilizing influence on the life of society, its individual areas, human behavior. This means that legal ideology is able to be embodied in the legal principles of the state, the norms of current legislation, to be a legitimate means of forming the legal consciousness of man, his socialization, affirmation of personal, professional and civic traits [5, p.299]. V. Tolstenko, argues that political and legal ideology is an element of the structure of legal consciousness and is a systematized set of legal ideas, principles, values, ideals, theories, concepts that are formed in society (independently or through purposeful state activity), reflects the current state legal relations, determines the foundations of public perception of law and order, establishes the main objectives of the legal system and the system of state legislation [8, p. 14].

Some legal theorists consider legal ideology not only as a reflection of legal reality, but also as a result of social compromise, which is achieved on the basis of established, value vision of the role of law in the state and civil society, and in defining the main goals, methods and mechanisms of legal regulation [ 10, p. 564]. Thus, legal ideology is a relatively independent political and legal phenomenon, the functional purpose of which is to determine the role of law as a means of regulating the life of the state, society, citizens in their subordination to the goals of social change.

Some scholars emphasize that this scientific category, its essence, is always determined by the rule of law. According to the form of reflection of social reality, legal ideology represents a consensus reached on the basis of understanding the essence of the rule of law as a formally binding rule of physical behavior, which is general and established or authorized by the state to regulate public relations and provide appropriate state guarantees [ 1, p. 3].

This way, H. Markovich defining legal ideology as a legal category that defines a system of concentrated legal views, which are based on certain social and scientific knowledge [4, p. 108], in fact reduces its essence to legal views, without explaining how they (legal views, although concentrated) are able to ensure the functioning of society as a systemic whole. According to D. Tsygankova, legal ideology is a system of ideas, legal views, scientific concepts, theories that express attitudes to legal reality and evaluate it [11, p. 65]. V. Khropanyuk sees the main content of legal ideology as a system of views and ideas in the form of reflection of public life, or legal reality, in the ideas and interests of society, legal norms and social order [12, p. 204]. A. Shevchenko sees the essence of legal ideology in the systematized scientific expression of legal views, requirements, ideas of society, social group [9, p.16]. Legal ideology, according to O. Tkachuk, is a system of ideas about the essence, features, principles of law and legal regulation, the forms of implementation of legal ideas in life, the objective necessity of the rule of law [7].

Summing up the above, we believe that political and legal ideology as a social phenomenon is a system of conceptually designed legal ideas, ideas and views on political life, which reflects the interests, worldview, ideals of social status, nations and more. Structural elements of political and legal ideology are the rules of law, legal customs and traditions, political theories and ideas, concepts of political development and development of legislation, socio-political and legal ideals, values.

In other words, the legal ideology of the state is designed to reflect the will and interests of the people, and among its functions should be distinguished the following:

a) orientational, the essence of which is to give the socio-political system certain meanings and orientations. This function should determine the ideological strategic line of activity of the branches of government to achieve the declared goals, serve as a means of avoiding confrontation and dispute, defining authority, cooperation and interaction;

b) integrative, the purpose of which is to unite people around vital meanings, counteract

possible disintegrative tendencies, orientations, interests in political and legal life;

c) depreciation – as a means of understanding, interpreting and explaining social and political and legal reality, ideology is able to reduce conflicts, social tensions in society.

**Conclusions.** So, political and legal ideology contributes to the creation of such conditions for participants in public, in particular, political and legal relations, which would improve the realization of their political rights, freedoms and interests. The implementation of the ideological postulates of a democratic state should contribute to raising the level of public legal culture, individual and public legal awareness. Therefore, the assertion of the ideological basis is directly related to the law, which is one of the defining constitutional values and should be based on the ideological principles of the state in accordance with social needs.

Characteristic of political and legal ideology as a social phenomenon are the functions, above all, the ideological provision of social protection, political rights, freedoms and human interests; ideological struggle and counteraction to social inequality, political oppression; popularization of state policy in all spheres of public life.

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## ПОЛІТИКО-ПРАВОВА ІДЕОЛОГІЯ ЯК СОЦІАЛЬНЕ ЯВИЩЕ ТА ПРАВОВА КАТЕГОРІЯ

**Анотація.** Охарактеризовано основні підходи до визначення змісту поняття «політико-правова ідеологія». Запропоновано власний підхід до розуміння змісту означеної категорії, з урахуванням цілей та функцій ідеології у політико-правому житті суспільства. Доведено, що політико-правова ідеологія втілює правові засади (принципи) функціонування та розвитку держави, норми чинного законодавства, є легітимним засобом процесу формування правосвідомості людини, її соціалізації, утвердження особистісних, професійних і громадянських рис. Автором пропонується розуміти під структурними елементами політико-правової ідеології – норми права, правові звичаї та традиції, політичні теорії та ідеї, концепції політичного розвитку та розвитку законодавства, соціально-політичні та правові ідеали, цінності.

Визначено такі функції політико-правової ідеології: орієнтаційна, інтегративна, амортизаційна, які зводяться відповідно до визначення ідейної стратегічної лінії діяльності гілок влади щодо досягнення задекларованих цілей; єднання людей довкола життєво значущих правових сенсів; послаблення конфліктів, соціальної напруги в суспільстві, забезпечення соціального захисту, політичних прав, свобод та інтересів людини; ідейна боротьба та протидія соціальної нерівності, політичних утисків; популяризація державної політики в усіх сферах суспільної життєдіяльності. Пропонується розуміти політико-правову ідеологію як суспільне явище, що є системою концептуально оформлених правових уявлень, ідей і поглядів на політичне життя, яка відображає інтереси, світогляд, суспільні ідеали.

***Ключові слова:*** *ідеологія; політико-правова ідеологія, ідея верховенства права.*

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## PROTECTION OF THE RIGHTS OF MINORS FROM THE MANIFESTATIONS OF BULLYING: THE CONCEPT AND ESSENCE

**Abstract:** the problem of bullying is modern, acute social. You cannot close your eyes to it, because cruelty sometimes exceeds all permissible limits. The concept of bullying first appeared in the twentieth century, but its meaning is relatively modern. Bullying is a rather serious problem of our society, because this concept is the aggressive behavior of one person or team to another. Discussions on this issue have begun to take place actively over the last thirty years at the international level. Many scientists from around the world are trying to fully disclose this topic and establish the best ways to combat this concept.

***Keywords:*** *bullying, observer, observer injury, bully, victim.*

**Relevance of the study.** Bullying is not an easy topic for discussion and research: on the one hand, almost all people have encountered bullying situations in one way or another, on the other hand, they are associated with experiences of fear, guilt, shame, helplessness, hatred, despair, and these experiences are very little discussed. Scandinavian researchers made the greatest contribution to the solution of the problem: the Swedish school doctor Peter-Paul Heinemann, especially the Norwegian psychologist-researcher Dan Oleos, the teacher and sociologist Erving Georg Ruland, the Estonian-Swedish cognitive psychologist Anatol Picas. In recent years, the Finnish psychologist Christina Salmivalli has made a significant contribution to the research and development of the prevention system in education. The work of Dan Oleos was especially significant: it was thanks to him that the phenomenon of bullying in the scientific field became visible and for a long time determined the trend of world psychology [1].

**Recent publications review.** Problem of bullying is researched by such sientists as: T. Myskevych , D. Sorochan , O. Melnichuk, V. Androsyuk, Yu. Sudenko , T. Mironyuk , A. Zaporozhets, A. Dzhuska, V. Dzhusky and others.

**The article's objective is** to investigate the aspects of Protection the rights of minors from the manifestations of bullying.

**Discussion.** First, thanks to the work of Scandinavian psychologists, research in the


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field of phenomenology and technologies for the prevention and cessation of bullying began to develop rapidly around the world. Their relevance remains very high due to the severe consequences of bullying for all participants. The phenomenon of bullying as a subject of psychological science is located at the intersection of personality psychology, social and clinical psychology. To study relationships, aggression, power, at first, separate experiments were carried out (the most striking are Stanley Milgram's experiments with electric discharges and the prison experiment of Philip Zimbardo), recently material for studying the same phenomena can be found in everyday reality. In adolescence, many have difficulties and problems. Most of them are under observation and scrutiny, but among a variety of problems, bullying has received due attention. Concept of bullying came from the English word "bully", which translates as a rude. Bulling is a type of violence that includes acts of hooliganism.

Violence by a person or group of persons against a weaker person and includes certain consequences in the form of moral or physical harm. We studied the statistics and found that not only children are involved in bullying, but also even teachers can do such actions. Thus, children and adults can be both victims of bullying and its supporters. In many aspects of the development of this concept contributes to the upbringing in the family, the microclimate in the team and so on. There are many roles in bullying. However, there are three main ones: bullies (inventing and leading bullying), observers (as if away from the conflict, but still approving or condemning the aggressors) and the victim [1].

Unfortunately, in this situation it is useless to take a detached position. Even if only one classmate is attacked and you can assume that your child is "not affected", but observers receive no less and sometimes more trauma. In psychology, there is the term "observer trauma". Often children cannot cope with the experience of observing violence on their own. Bullying harms the mental health not only of the victim, but also of children who are silent witnesses. There are also difficulties in studying this topic. In theoretical terms, there is a difficulty in explaining the phenomenon itself. Terms such as conflict, victim, abuser, aggression and psychology itself are poorly understood. It is difficult to figure out the specifics of bullying in all its aspects, since the explanation of bullying does not always take into account age. Bullying is most common during adolescence, but this does not mean that adults do not experience bullying from others [6].

Another very important component is that bullying can affect not only mental health, but also even physical health, namely:

– unexplained abdominal and chest pain;

– nervous tic, enuresis;

– sad look, anxiety, worry;

– disturbed sleep, nightmares;

– prolonged depressed state;

– colds and other diseases became more frequent;

– problems with appetite [3].

School bullying has the most unpleasant consequences for all participants. Bullying students are depressed, prone to mental disorders, and often attempt suicide. Aggressive children have problems with school performance, acquire criminal tendencies and force the teaching staff to maintain discipline instead of conducting lessons. Witnesses to the harassment are often afraid to be at the victim's place and may join the bullies. Alternatively, they feel guilty for not interfering and injure the observer. Thus, school bullying undermines the entire education system, provoking general tension, alienation and cruelty [2].

Bullying, in turn, can divided into types depending on the scope:

– physical – direct physical actions against the victim (shocks, kicks, beatings, sexual harassment);

– verbal – threats, insults, ridicule, humiliation;

– socio-psychological – bullying aimed at social exclusion or isolation (gossip, rumors, ignoring, boycott, manipulation);

– economic – extortion or direct selection of money, things, damage to clothing;

– cyberbullying or Internet bullying - harassment on the Internet through social networks, e-mail. It involves spreading rumors and false information, hacking personal pages, sending negative messages and comments. It is the youngest and most dangerous type of bullying. Because it is very difficult to defend against it and find sources where the threat comes from. There is even such a thing as a biocide – a suicide committed through harassment

on the Internet. The most famous case occurred in the United States in 2006, when a mother and her 13-year-old daughter created a fake Myspace page and started harassing a girl about the same age. It all ended with the girl not being able to endure the abuse, kid kept everything to herself, and then committed suicide [4].

Bullying is somewhat similar to conflict, but with significant differences:

– unequal forces (in a conflict, the two sides have equal forces, in bullying, the force is on the side of the offender);

– repeatability of actions (bullying, as opposed to quarrels, is repeated regularly);

– occurrence (the conflict appears by chance and is accompanied by violent suppressed emotions; bullying is the deliberate and regular humiliation of one person by another person or a group of people);

– solution (the conflict can always be settled, the bullying should be stopped).

Children do not always say that they suffers from bulling at school. Adults may not be aware of this for a long time. How to understand that at school your child is not all right, that every day kid suffers from bulling and humiliating? How can this be determined if the child is silent and does not tell you anything?

In this case, can help a little quite characteristic feature of behavior:

– the child returns from school in a bad, depressed mood;

– a child with great reluctance goes to school every day, tries to miss lessons or suddenly leaves them without telling you about it;

– the child may not have friends, kid does not communicate with anyone and is always alone;

– the child may have disturbed sleep, may show signs of auto aggression (self-harm), it becomes very nervous and closed;

– the child refuses to participate in general school / class activities;

– the child does not share any stories from school life, does not tell about classmates, just keeps silent about it;

– the child's performance in school may decrease significantly [5].

If your child has any of these symptoms, it may be a signal that things are not going well at school. To find out, it probably makes sense to first talk directly to the child. If kid refuses to discuss this topic, kid should go to school and discuss the matter with the teachers and the school psychologist, because they, in theory, cannot help but see what is happening on the school grounds. If your child has really been the victim of bullying, it is important to start working calmly and consistently to help the victim. Yes, highlight the most important points that you should pay attention to and build your work based on them:

– do not ignore. If a child comes to you and says that kid is being bullied at school, you should not ignore her words. It is not necessary to let everything drift and say "don't pay attention, everything will pass". Unfortunately, such a "self" is extremely rare. In most cases, bullying can stop only after outside intervention. In addition, such words, spoken to a child by an adult, destroy trust. He understands that help is waiting for him out of nowhere, and shuts himself in and in his grief [5];

– talk to the child. The most important thing to do at once is to peacefully, quietly discuss with him everything that is happening, to learn as much information as possible, the reasons, the names of the offenders. It is important to make it clear to the child that kid can trust you, that when kid is close to an adult, kid may not be afraid of her abusers. Having a safe place, shelter, in this case is very important. You can offer to pick him up from school, but here it is important not to overdo it, so as not to start harassing him because he is like a child [5];

– think soberly, but do not be silent. It is important for parents to remain as calm as possible, not to arrange public scandals and fights at school with management or abusers. It can only hurt. You need to inform the school principal and class teacher about what is happening to your child. If there is any evidence, evidence of bullying (video, photos, beatings) – all this should be provided to management so that they understand the scale of what is happening [6];

– find a work. It makes sense to offer the child sports (boxing, karate, any martial arts), art, music, which kid chooses. In addition, here it is important first not that kid will be ready to repel offenders or brag that kid can do something, but that, becoming physically stronger or developing the ability to draw / play / create, the child raises his self-esteem. Kid will also be able to find friends in additional classes [6];

– psychologist. Yes, going to a good child psychologist together is the right idea. The

psychologist can give advice to both the child and the adult, help to overcome certain barriers that exist in the child and that were acquired during bullying [7];

– radical solutions. It happens that the only true and correct way to solve the problem of bullying is to transfer the child to another school. The new school is a new history, and, apparently, there will be no such problems. However, here it is important that a psychologist still work with the child, who will be able to smooth out the sharp corners a bit, deal with the psychological trauma and help with joining the new team [5].

In addition, thanks to the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Combating Bullying (Harassment)" of 19.01.2019 for committing a participant (participants) in the educational process of acts related to psychological, physical, economic or sexual violence, they will face administrative penalties in the form of 50 to 200 thousand non-taxable minimum incomes. If this act is committed by persons aged 14 to 16, the punishment is imposed on their parents. The purpose of this law is to ensure the creation of a safe educational environment in the educational institution, free from violence and bullying.

**Conclusions.** Thus, bullying in our society is one of the most important problems, because the youth of any country is its future. That is why this issue is at the international level. Children who are prone to aggressive behavior are often emotionally unbalanced and unable to control their behavior. Children who are bullies do this in order to humiliate (establish a relationship of dominance) and at the same time maintain common sense and control over their actions. Therefore, the most important task is to establish the fact of one's own involvement in any role in bullying in order to further, stop such actions.

Moreover, not only parents are interested in stopping the fact of bullying, but also almost the whole country, which is why our legislation provides answers to virtually all problematic issues related to this concept. Correcting bullying requires complex systematic efforts. In our opinion, the main bullying prevention means educating people about the forms and consequences of this phenomenon. Information can organize in the format of training courses, in which, in addition to among other things, it is worth highlighting topics such as "Exit from conflict situations", "What to do if you are faced with ridicule on the Internet", etc. Bullying eradication is associated with solving such a problem, as an increase in the culture of relationships, in which the very fact bullying will look unacceptable.

*Conflict of Interest and other Ethics Statements*

The author declares no conflict of interest.

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**ОХОРОНА ПРАВ НЕПОВНОЛІТНІХ ВІД ПРОЯВІВ БУЛІНГУ: ПОНЯТТЯ ТА СУТНІСТЬ**

**Анотація:** проблема булінгу – сучасна, гостросоціальна. На неї не можна заплющувати очі, адже жорстокість часом переходить усі допустимі межі. Травля, або булінг (іноді також використовується термін «мобінг»), – це складний соціальний феномен, що мав місце, ймовірно, протягом усього періоду існування людини, її життя в колективі. Найчастіше він визначається як систематична цілеспрямована агресивна поведінка за умови нерівності сил чи влади учасників. Ключові характеристики - навмисність, регулярність, нерівність сили або влади.

Вперше, поняття булінгу з'явилось ще у XX столітті, проте його значення є відносно сучасним. Булінг є доволі серйозною проблемою нашого суспільства, оскільки як вже зазначалось, дане поняття полягає у агресивному поводженні однієї людини чи колективу до іншої. Дискусії щодо даної проблеми почали активно проводитися у продовж останніх тридцяти років на міжнародному рівні. Багато науковців з усього світу прагнуть всебічно розкрити дану тему та встановити найбільш якісні шляхи боротьби з даним поняттям.

На жаль, переглядаючи статистичні дані, ми встановили, що в Україні рівень булінгу є доволі високим, майже 89 % школярів зазнають цькування з боку однокласників чи дорослих. При чому близько 40 % замовчують дану проблему, оскільки соромляться розповісти про те, що над ними знущаються. Загалом у світі понад третини школярів віком від 13 до 15 років стали жертвами булінгу, при чому дівчата частіше зазнають саме психологічного тиску, а хлопці частіше зустрічаються з погрозами та фізичним насильством. Окрім цього, близько 37 % дітей заявили, що булінг можливо зупинити шляхом залучення дорослих, тобто батьків. Саме тому у даній статті ми прагнемо розглянути такі питання, як: «Що таке булінг та як з ним боротися?».

***Ключові слова:*** *булінг, спостерігач, травма спостерігача, буллі, жертва.*

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**SCIENTIFIC APPROACHES TO THE DEFINITION OF LOBBYISM AND ITS BASIC CONCEPTS**

**Abstract.** In Ukraine, the phenomenon of lobbying is outside the legislative field, despite the general trend towards institutionalization of instruments for involving citizens in the national policies formation and implementation. The article analyses various approaches to the lobbying definition, compares the positions of scholars, and encyclopedic sources. As a result, the own concept is defined, as an activity of individuals or legal entities and/or their associations, aimed at representatives of public authorities, related persons, to influence certain actions or omissions in the rule-making process.

***Keywords****: lobbying, civil society, government relations.*

**Relevance of the study.** The rapid democratization of society and the development of civil society institutions in the world should be accompanied by the inclusion of these actors in all processes of decision-making in the public administration sphere, which is possible only with the institutionalization of lobbying. We trace the trend in a world where in the life of


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developed democracies the role of lobbying is growing every year.

However, in Ukraine today such a phenomenon has not acquired an institutional character, so now lobbying is the opposite, complex, multifunctional system associated with shadowy forms of interaction between public authorities, "pocket" institutions of civil society and business. Therefore, the issues of not only the actual institutionalization of lobbying in Ukraine, its concept, mechanisms of application, forms of functioning, but also of the theoretical justification of lobbying remain open in the context of the functioning of public authorities.

The concept of "lobbyist" originated in the second half of the XIX century in Great Britain and the United States of America. These countries developed the systems of representative democracy, which provided collegial and procedural decisions consisting of many stages. Some of them had the opportunity to appeal to parliament and members of the government to address important public issues. Therefore, lobbyists were persons interested in promoting certain draft laws, as well as persons who directly addressed the heads or members of committees or other units of public authorities. As the strict regulations did not provide for the presence of outsiders in the meeting rooms, members of such "groups of pressure" were in the lobby, so they were called lobbyists.

In the context of the understanding of lobbying the particular interest is provided by the periods of its formation in the historical and political retrospective. In "Features of the Process of Forming the Institute of Lobbying" R. Matskevich identifies the following milestones [11]:

1) Religious (2nd half of the XVI century) is associated with the great influence of religious organizations on the adoption of significant socio-economic and political decisions by government agencies;

2) Secular (1st half of the XVII century) – associated with the process of discussing and making the necessary diverse decisions during secular (formal and informal) meetings;

3) Parliamentary (mid-XVII century) – associated with the active work and political rise of the British Parliament;

4) Debatable (1st half of the XIX century) – associated with the beginning of a heated political debate in the US Congress;

5) Group (mid-XIX century) – associated with the formation and development of group political interests in the US Congress;

6) Political and legal (2nd half of the XIX - early XX century) – associated with the negative content and qualification of lobbying as bribery.

For outlining the main problems of lobbying in the modern world and Ukraine, first of all, it is necessary to define the concept of "lobbying" in its interpretation, noting all the factors and aspects of the functioning of such a phenomenon in the modern world.

**Recent publications review.** A number of works by Ukrainian scholars were devoted to the theoretical and methodological development of lobbying, as D. Bazilevych, M. Banchuk, O. Binetskyi, A. Bykobets, V. Brustynov, O. Voynych, I. Voronov, M. Gazizov, Y. Ganzhurov, V. Hotsuliak, O. Hrosfeld, A. Denysiuk, O. Diaghilev, O. Karpenko, N. Lapin, V. Lapkin, V. Lepekhin, M. Lopata, A. Lyubimov, R. Matskevich, M. Muntian, M. Nedyukha, V. Nesterovych, O. Pavroz, V. Sumska, E. Titomirova, P. Tolskykh, A. Trofymenko, V. Fedorenko, D. Chernohatniy, and others. Among foreign scholars who have devoted their research to the issue of lobbying should be identified Ch. Weiss, Ch. Endrein, D. Truman.

**Discussion.** A significant number of legal scholars, such as O. Diaghilev, V. Nesterovych, A. Lyubimov consider the definition of lobbying in terms of the legal system and note the need for legal legalization. Thus, O. Diaghilev notes that lobbying is a set of norms that require legalization, based on the inalienable constitutional right of citizens to participate in the public affairs management, and are regulated at the legislative level arising in the process of protecting their interests through methods of influence on public authorities and local governments not prohibited by law [1].

V. Nesterovych considers lobbying exclusively in the legal sphere, without taking into account its social aspect. In his opinion, lobbying is a set of legal norms regulating the process of legitimate influence on authorities clearly defined by law, as well as on their officials by duly registered and accredited persons in order to secure their own interests or the interests of third parties in the regulations to be adopted [14].

The definition of "lobbying" by A. Lyubimov is quite thorough. In his understanding, lobbying is a set of norms governing the interaction of citizens, public associations, organizations, enterprises specializing in lobbying, other subjects of legal relations with public

authorities to influence the decisions of interest for lobbyists to actively defend their interests [10]. As a consequence, we conclude that lobbying is a set of rules governing the legitimate activities of citizens, who aims to protect their own interests.

There is another vision of the definition of lobbying as a social and communicative phenomenon formed between the public and public authorities, with a predominant political aspect, by the group of philosophical scholars of the school of parliamentarism such as O. Karpenko, M. Nedyukha, Y. Ganzhurov, V. Sumska, M. Lopata, E. Titomirova, M. Muntian, and others.

O. Karpenko considers the concept of "lobbying" exclusively from the social aspect. He notes that lobbying is a widely recognized means of the formal and informal influence of interest groups on government structures in order to make the decisions they need; the purposeful influence of political and social forces on the legislative, executive, and state authorities in order to satisfy their interests [6].

Also, there is a noteworthy interpretation of "lobbying" in the scientific works of M. Nedyukha, who interconnects to the concept of lobbying and the communicative aspect. According to him, lobbying is one of the most common forms of influence of voluntary associations of people (interest groups) on the authorities in modern democratic societies; an extensive system of offices and agencies of monopolies or organized groups under the legislature and government, which exert pressure (from persuasion to bribery) on the latter to make decisions (adoption or blocking of parliamentary consideration of certain laws, government orders, subsidies, etc.) in the interests of organizations they represent [13].

If we consider "lobbying" as the communication process, we should also dwell on the works of Y. Ganzhurov, who recognizes lobbying as a necessary phenomenon in the relationship between the state and society. According to him, lobbying should be seen as an integral part of political communication, which provides a mechanism for direct communication and feedback between society and the state. The processes of decision-making, the mechanism of influencing public opinion, defending one's own position, – all this, in a broad sense, can be perceived as a phenomenon that corresponds to the concept of "lobbying" [5].

On the basis of a thorough theoretical analysis, V. Sumska gives a broad definition of lobbying. In particular, she represents it as the activity of individuals, including individual entrepreneurs, their associations, advisory bodies established under public authorities or local governments, legal entities and their associations, carried out in the manner, not prohibited by law, and aimed at exercising a legal influence on public authorities and local governments, their officials during the adoption, amending, revoking their decisions, other than the individual ones, in order to consolidate lobbyists own interests or the interests of third parties [16]. It is obvious that in this definition the scholar represents lobbying as a legalized form of communication. However, we must not forget that in most countries of the world, lobbying does not have an institutionalized status, but always exists where there are power relations.

M. Lopata proposed considering lobbying as an attempt of organizations or individuals to influence not only the adoption, rejection, or amendment of laws in the parliament, but also as an attempt to influence government administrative decisions, relying not only on elected deputies but also on various political parties, governmental and non-governmental institutions, and public support through the media [9].

In "Public Relations" E. Titomirova suggests that lobbying should be understood as the interaction of legal entities and individuals with the authorities, the purpose of which is to influence the development and adoption by these bodies of legislation, administrative, political, and other decisions of their interests or interests of their customers [17].

In his scientific works, M. Muntian adds the term "groups of pressure" to the definition of "lobbying", which gives it a modern reflection of the process. In his opinion, lobbying is a form of legal influence of "groups of pressure" on the management decisions of state bodies in order to satisfy the interests of certain social structures (organizations, associations, territorial formations, strata of citizens, etc.) [12].

In general, lobbying is seen as causing pressure on public authorities by conducting political communication to protect the interests of individual stakeholders.

It should be noted that in the Ukrainian works on public administration in defining the term "lobbying" much attention is paid to the functioning of public authorities in this process, which is not correct in our opinion. Lobbying concerns not only public authorities but also the public sector as a whole, and namely public authorities are only the subjects of this process. It is also worth noting that lobbying is not a purely legislative, political, communication, or social

process; lobbying works with the harmonious interaction of the above aspects, which is the main complexity of this process.

Considering the development of foreign scientific works in political science and public administration, we note that Ch. Weiss characterizes lobbying as the work of individual citizens, organizations in order to influence the adoption or rejection of the law in parliament, relying on the support of deputies, political parties, non-governmental organizations through the media [7].

The classic definition of lobbying in foreign science is the formulation of D. Truman, who identifies the concept of lobbying and interest groups; he notes that interest groups are groups consisting of people who are guided by certain interests and views in order to influence other social groups. Groups that use government organizations to achieve their goals are political interest groups [18].

According to S. Finer, lobbying is any activity of organizations that influence public authorities in order to promote their own interests, and these organizations, unlike parties, can not take responsibility for power in the country for themselves [4].

Attention should be paid to the opinion of the scholar F. Farnel, who notes that lobbying is a productive intervention in economic and social processes using political methods and tools [3].

He emphasizes that lobbying helps to strengthen the foundations of tolerance in society. L. Zetter in his scientific works considers lobbying as a process of finding ways to influence the government and its institutions by informing the public about political issues on the agenda [19].

So a distinctive feature of the views of foreign scholars is that they reflect the concept of lobbying from a positive point of view, noting the benefits of such activities for society through increased public involvement in these processes. In their turn, Ukrainian scholars reflect lobbying exclusively as a negative process that takes place in the public space, as it primarily refers to illegal practices of influence of interest groups on the authorities.

Encyclopedic literature, in particular the legal encyclopedia, understands lobbying as a set of legal norms governing the participation of citizens, groups of citizens, public associations, organizations, enterprises specializing in lobbying, other subjects of legal relations with public authorities that influence the adoption decisions necessary for lobbyists [8].

The encyclopedia of public administration states that lobbying is the activity of social groups and individuals who defend their special political interests; groups of pressure on the legislature and the executive powers [2].

The Political Encyclopedia highlights the concept of lobbying as a legal form of influencing the government and states that lobbying is an element of the political process in democratic societies, which does not involve direct bribery of government officials, and does not go beyond the law [15].

It should be noted that at the legislative level the concept of lobbying has not yet been defined in Ukraine: despite the registration of a significant number of draft laws aimed at defining and regulating lobbying, as of 2021 the relevant Law of Ukraine has not been adopted.

At the same time, scholars in Ukraine and around the world are still debating the definition of the subject of lobbying (interest group or group of pressure), the object of lobbying (only parliament, or executive bodies, local governments and their officials, other bodies public authorities, and possibly assistants and advisers to officials), as far as this phenomenon fits into the legal and moral norms of society, as well as whose interests are affected by lobbying (public, customer or their own).

Examining the works of domestic and foreign scholars and definitions in encyclopedic sources, we include the following features to the concept of lobbying:

– aimed at public decisions, regulations, legislative procedures and actions of the state, and stakeholders;

– related to communication in public space between stakeholders, the public and public authorities;

– aims to influence public authorities;

– consists in informal representation of interests in public decisions.

Also, Ukrainian and foreign scholars focus on the scope of lobbying as an object, mostly noting the negative consequences or both positive and negative consequences. Instead, encyclopedic sources outline only a framework for lobbying, defining its key features, such as the activities of individual groups to influence the authorities.

**Conclusions.** After analyzing the interpretation of the concept of "lobbying", we

determined our own scientific definition, based on the experience of scientists, the state of development of social relations, and the place of such activities in state-building processes. Accordingly, lobbying is the activity of individuals or legal entities and/or their associations, aimed at representatives of public authorities and related persons, in order to exert influence to commit certain actions or omissions in the rule-making process. In this case, lobbying activities include not only self-directed communication but also the preparation, planning, coordination, research, or any other ancillary work to form the basis for the decision being lobbied.

*Conflict of Interest and other Ethics Statements*
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**Інна МАРКУС**

## НАУКОВІ ПІДХОДИ ДО ВИЗНАЧЕННЯ ЛОБІЗМУ ТА ЙОГО ОСНОВНІ ПОНЯТТЯ

**Анотація.** В Україні явище лобіювання знаходиться поза межами законодавчого поля, незважаючи на загальну тенденцію до інституціоналізації інструментів залучення громадян до формування та реалізації національної політики. У статті аналізуються різні підходи до визначення лобізму, порівнюються позиції науковців, енциклопедичні джерела. Таким чином, власне поняття визначається як діяльність фізичних чи юридичних осіб та/або їх об'єднань, спрямована на представників органів державної влади, пов'язаних осіб з метою впливу на певні дії чи бездіяльність у процесі законотворчості.

***Ключові слова:*** *лобізм, громадянське суспільство, державні відносини.*

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# PARTICIPATION OF UNIONS TO ENSURE POLICE OFFICERS' LABOR RIGHTS: EUROPEAN AND NORTH-AMERICAN EXPERIENCE

**Abstract.** The article deals with the place and role of unions in protecting police officers labor rights in the EU, as well as in the US and Canada, which stood at the origins of world history of the union movement in general. The author has found differences between concepts of "workers' labor rights" and "workers' professional rights", which further forms the means of ensuring and protecting them with through trade unions. Based on the analysis of the genesis and current activities of police unions in a number of countries (UK, France, Germany, Poland, USA and Canada) he has concluded that their participation is aimed at ensuring such basic labor rights of law enforcement officers as wages, working conditions, pensions, the right to collective bargaining, as well as the right to strike.

***Keywords**: police union, police labor and professional rights, ensuring, protection, collective bargaining, strike.*

**Relevance of the study**. Labor activity involves not only the creation and maintenance of public goods, but also ensuring during this process the employee's private interests - material (wages), physical and reproductive (working hours, rest time, maternity leave, payments through temporary disability), social (childcare leave, study, etc.). The natural opposition of interests of employers and employees always leads to conflict situations between them, on the settlement of which the activity of trade unions is aimed. This have received appropriate legislation in Ukraine at the level of the following acts: 1) The Constitution of Ukraine (part 3 of article 36) [3]; 2) Code of Labor Laws of Ukraine (articles 246-252) [2]; 3) Law of Ukraine "On trade unions, their rights and guarantees of activity" [7]. The latter, in particular, in Art. 2 stipulates that trade unions are established for the purpose of representation and protection of labor, socio-economic rights and interests of trade union members, and Art. Part 2 of Art. 3 provides for the establishment by the relevant laws of the peculiarities of the application of this Law in the law enforcement agencies of the country. The National Police is no exception, the law on which in Art. 104 stipulates that in order to protect their rights and legitimate interests, police officers may form trade associations and trade unions under the trade unions legislation [6].

Taking into account the global trend of transformation of law enforcement forces from militarized to semi-civil structures, the problem of not only protection of socio-economic and labor rights of police officers, but also the observance of the principle of equality in their rights in relation to other citizens, and, consequently, the role of police unions in this process is growing. Thus, the Statute of the All-Ukrainian Trade Union of the Ministry of Internal Affairs of Ukraine stipulates that trade union members have the right, in particular, to represent and protect their rights and interests in public authorities, local governments, in relations with employers, in courts, when appealing to the Verkhovna Rada Commissioner for Human Rights, in international judicial institutions, etc. [8].

However, despite the well-established regulatory framework, the practical implementation of these provisions needs further study, Considering also that the processes of


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demilitarization of the law enforcement system of independent Ukraine began somewhat late compared to other post-socialist countries that have chosen the path of democratic development. In this regard, it is worth our attention to cover the processes of formation and current state of the police trade union movement in foreign countries. Based on the volume of this publication, we consider for a convincing example such countries as the United Kingdom, Germany, Poland, France, the United States and Canada.

**Recent publications review.** Protection of police officers' rights is the subject of research in several branches of legal sciences in Ukraine. At the monographic level, this problem was studied: in the theoretical and legal aspect – by Yu. Kovalenko, O. Perederiy and S. Shestak; in administrative law it was considered by such scholars as O. Lapka, N. Maksymenko, O. Nehodchenko and V. Filshteyn; criminal-legal protection of law enforcement activity is covered in the works of V. Osadchy; the issue of civil legal protection of law enforcement officers' rights was studied by S. Pylypenko and O. Synehubov. This issue naturally found its most common coverage in the field of labor law in the dissertations of V. Honcharuk, M. Inshyn, L. Knyazkova, K. Melnyk, O. Obushenko, Yu. Serdyuk, T. Chavikina, N. Cherednichenko, I. Shvydkiy, I. Shulzhenko and others. However, the issues of the place and role of trade unions in the social and legal protection of law enforcement officers were not covered at all or were mentioned only in fragments and superficially. Instead, in the Western science of policing, they have attracted the experts' attention for almost half a century, as evidenced by the thorough publications of such, in particular, American authors as T. Cooper, H. Juris & P. Feuille, J. Grimes, M. Levi, H. More, J. Magenau, & R. Hunt, D. DiSalvo, R. Reiner; British – H. Nolan, A. Zammage and S. Sachs; Canadians – J. Dunkan and K. Walby; French – A. Bargeau, J.-L. del Bayle et al.

**The research paper's objective.** Given the lack of thorough domestic research in the field of social and legal protection by trade unions of law enforcement officers to analyze the place and role of trade unions in protecting the labor rights of police in the EU, USA and Canada, which are recognized as at the origins of world history of the trade union movement in general.

**Discussion.** First of all, we consider it necessary to distinguish between the categories of "employees' labor rights" and "employees' professional rights".

The constitutional and sectoral labor legislation of most democratic countries, as well as international legal acts on socio-economic rights, proclaim that the government ensures the citizens's right to work, ie to receive wages not lower than the minimum set by the government, the right to freely choose a profession, kind of occupations and works. The government makes conditions for effective employment, promotes employment, training and retraining, and, if necessary, provides retraining for those released as a result of the transition to a market economy. Employees exercise their right to work by concluding an employment contract with the company, institution, organization or individual. Employees have the right to rest, paid annual leave, the right to healthy and safe working conditions, to unite in trade unions and to resolve collective labor conflicts (disputes) in the manner prescribed by law, to participate in the management of enterprises, institutions, organizations, for material security in the form of social insurance in old age, as well as in case of illness, complete or partial disability, for financial assistance in case of unemployment, the right to go to court to resolve labor disputes regardless of the nature of work or position, except provided by law, and other rights established by law [4]. Legal guarantees of labor rights are divided into 1) general, applicable to all employees, and 2) special, which apply to certain categories of persons (workers with harmful and difficult working conditions, as well as women, youth, the disabled, the elderly and other special subjects of labor law, which also includes law enforcement officers). Special legal guarantees of police workers' labor rights are, in particular, the regulation of working hours (mostly non-limited), the procedure for calculating salary accruals and the duration of leave depending on years of service, provision of housing, healthcare and pension, social security for their families and more.

Guarantees of professional rights include the use of legal remedies related to the direct performance of official duties and professional functions, improper performance of which may result in physical or material harm to another person. In such circumstances, the employee is sometimes unjustifiably prosecuted or subjected to excessive sanctions, which require appropriate protection both in the form of legal aid (through a lawyer) and participation in the protection of the trade union of which the employee is a member. The service in the police imposes additional responsibilities and restrictions on the police officer. In this regard, ensuring the effective protection of social and labor rights of police officers is of particular

importance [1, p. 165].

Therefore, speaking of labor rights, it is advisable to use the term "provision" through mostly material and financial resources of the state, and in relation to professional rights, it is logical to use the term "protection" through the judiciary and public associations, among which the most common historically there are unions.

Undoubtedly, Europe, where the first bourgeois revolutions took place in the 16-17th centuries, which marked the industrialization and emergence of the free labor market, is considered to be the birthplace of both the strike movement in general and the trade union movement in particular. For example, in Great Britain, which is the ancestor of professional policing in the world, the interests of police officers are represented by the Police Federation of England and Wales (PFEW), founded by the 1919 Police Act. PFEW unites constables, sergeants and inspectors. Its activities are determined by the Federation Regulations of 1969. Under UK labor law, police are prohibited from joining regular unions to protect pay and working conditions, as police strikes pose an exceptional risk to public safety. There is also a separate Police Superintendents Association of England and Wales (PSA), and high-ranking officers are members of the Chief Police Officers Staff Association (CPOSA) [18].

As for France, it is known as police syndicalism (from the French "syndicat" – trade union), the first forms of which emerged in the late 19th century, first for commissioners as a "brotherhood" or "association" and gradually became a union legalized in 1924. In 1940, the government dissolved unions, and in 1944, the National Federation of Police Unions of France and its Overseas Territories (FNSPF) was reunited, uniting most police unions and associations, including the General Police Union (SGP). Since then, the right of the National Police to associate has been regulated with the right to strike too. In 1995, two major police unions, the Independent National Police Union (SIPN), which represented law enforcement officers, and the National Union of Investigators (SNE), decided to unite to form the largest organization – the National Police Alliance. There are currently three police unions in France: in addition to the Alliance, the Independent Federation of Police Unions (UNSA), which works most closely with professional lawyers to protect police officers' rights, and the General Police Union (SGP), which most often organizes police strikes [15], the last the largest of which took place at the end of 2019 with the participation of more than 20 thousand police and gendarmes against the pension reform and with demands to improve working conditions [17].

In Germany, DPolG (Deutsche Polizeigewerkschaft – German Police Union) represents the professional, social, economic and financial interests of both current and retired police officers. Established in 1919, the forerunner of which were various police associations, founded in 1871, it later changed its name, and in 1933 was dissolved by the Nazis. In 1951 it re-established itself within the framework of Westrn Germany as the "Association of German Police" (BDP), in 1966 it was renamed the "Police Union in the German Civil Service Association" (PDB). Since 1987, it has been operating under its current name and also represents the interests of the Federal Border Guard Service (BPOL) and the Federal Bureau of Criminal Investigation (BKA) [11] and is a member of the European Police Union. However, police officers, like all German civil servants, are prohibited from striking [5].

The interests of the Polish police officers are represented by the Independent Self-governing Police Union, founded in 1990. Its 2008 Charter, in particular, provides for: protection of police officers, members of their families, and retirees from declining living standards; legal protection of police officers; influence on the policy of creating favorable conditions of service and salary, as well as other benefits; control over the implementation of measures in the field of labor protection and medical care; implementation of projects aimed at meeting the housing needs of employees; providing appropriate retirement and disability benefits; initiating and supporting measures to make conditions for professional development and socio-professional adaptation of police officers, etc. Also, if the dispute is not resolved through negotiations, this statute provides for protest forms by police union members, which are preventive actions (demonstrations, pickets), and if they are ineffective, the right to strike [20]. The last protest of Polish police took place in 2021 with the participation of 20 thousand officers (with a total of 100 thousand) in the form of an "Italian strike", which consists in refusing to fine drivers for minor traffic violations, limited to warnings, without replenishing the state budget in this way. The strikers' demands included a salary increase of € 150 (compared to the current average of € 1,000, but as a result of negotiations between the head of the union and the Minister of the Interior, it was increased by only € 65), as well as a return to early retirement, full overtime pay, and payments for the first 30 days of illness [19].

Unlike in European countries, the US police are characterized by a decentralized model of organization, activities and staffing, lack of a central law enforcement agency (except the FBI – the body to combat top corruption) and the dispersal of police agencies at the local and state levels which also affected the peculiarities of the police union movement.

Beginning in the 19th century, associations of police emerged to represent officers' interests publicly and offer solidarity privately. New York City's Patrolmen's Benevolent Association was formed in 1892 with the aim of raising money for widows of officers killed in the line of duty. Such benevolent associations and fraternal orders did not enjoy collective-bargaining rights, but they did seek to inform elected officials of officers' concerns.

Compared to recent decades, however, their lobbying and electioneering activities were modest. As labor unions began to emerge toward the beginning of the 20th century, many recognized that public-sector unions – especially groups representing police – posed challenges that differed from private-sector unions. The first prominent arguments that public-employee associations should be treated differently than those in the private sector came in 1895, when the postmaster general issued an order barring U.S. postal workers from visiting Washington for "the purposes of influencing legislation before Congress." Then in 1902, President Theodore Roosevelt issued a "gag rule" banning all federal employees from lobbying Congress on their own behalf.

These moves set the tone for state and local governments. In the first two decades of the 20th century, the question of whether police associations belonged in the labor movement at all was also debated. Some in the movement were concerned about the "divided loyalty" of police officers in situations where they were tasked with handling strikes by other unionists. Consequently, Samuel Gompers of the American Federation of Labor claimed to have "held off" on chartering police unions for years despite receiving numerous applications, beginning with a group of Cleveland police in 1897 [12].

In the USA police officers started to form unions in the early 1900s in conjunction with the labor movement that was sparked by the industrial revolution. The earliest example of why police officers started to form unions is commonly associated with the Boston Police Department. Boston police officers did not receive pay increases from 1898 through 1913. In addition, they were often required to work 72 hours per week and pay for their own uniforms.

After World War I in 1919, Boston cops unionized affiliated with the American Federation of Labor (AFL). After unionizing, 17 of the union leaders were suspended, which led to the majority of Boston’s police officers walking off the job. Violence in the city ensued after the walkout and, needless to say, after this occurred police officers were prevented from striking. Despite this incident police officers would continue to unionize and, as a result, most police officers belong to some sort of collective bargaining unit today [13].

It was not until a wave of state legislation in the 1960s and 1970s which granted state- and local-government employees collective-bargaining rights that most police officers gained them as well. The transformation was swift and dramatic. Collective-bargaining rights were extended from 2% of the state- and local-government workforce in 1960 to 63 % in 2010. The changes in state laws were spurred by President John Kennedy's 1962 Executive Order, which gave federal employees "the right ... to form, join and assist any employee organization or to refrain from any such activity." The new state laws facilitated the conversion of police officer associations, lodges, and orders into unions [12].

Since the Boston Police Strike of 1919 one of few police strikes in the United States was the Baltimore Police Strike of 1974 labor action conducted by officers of the Baltimore Police Department (BPD) during 15 days. Striking officers sought better wages and changes to BPD policy. They also expressed solidarity with Baltimore municipal workers, who were in the midst of an escalating strike action that began on July 11. On July 7, police launched a campaign of intentional misbehavior and silliness; on July 11 they began a formal strike. The department reported an increase in fires and looting, and the understaffed BPD soon received support from state police. The action ended on July 15 when union officials negotiated an end to both strikes. The city promised (and delivered) police officers a wage increase in 1975, but refused amnesty for the strikers. Police Commissioner Donald Pomerleau revoked the union's collective bargaining rights, fired its organizers, and pointedly harassed its members.

Although it was followed by a wave of police unrest in other cities, it remains one of a very few notable police strikes in US history. The action was also a test case for the American Federation of State, County and Municipal Employees (AFSCME), which was rapidly growing in size and strength but had not had much success in unionizing police officers [9].

Police officers' union rights vary by state [14]. Today, police enjoy collective-bargaining rights in 41 states and the District of Columbia, and union locals are dispersed across the roughly 18,000 police departments nationwide. Only Georgia, North Carolina, South Carolina, Tennessee, and Virginia prohibit bargaining for public employees, while Alabama, Colorado, Mississippi, and Wyoming lack statutes to either advance or oppose police unions. Even where collective bargaining is prohibited, police associations provide members with legal services, political advocacy, and insurance policies [12].

In the 1960s, police associations became more politically active, especially since they were gaining labor rights during a period of urban unrest and public hostility to the police. In a 1977 book, Stanford University political scientist Margaret Levi described police unions as a "bureaucratic insurgency" that overcame policecommissioner opposition in several major cities. In some instances, the unions even served as platforms for launching the political careers of former officers and officials [16]. But this matter will be the subject of another publication while describing the role of police unions in protection of police officers' more professional than labor rights.

Unlike the United States, the police of neighboring Canada, on the other hand, are organized according to a centralized (British) model because of its formal affiliation with the British Commonwealth. In Canada the unionization of police is made in the form of Canadian Police Association (CPA). It is the national voice for 60,000 civilians and sworn police personnel across Canada. Membership includes police personnel serving in 160 police services across Canada, from Canada's smallest towns and villages as well as those working in largest municipal and provincial police services, and members of the railway police, and first nations' police personnel. As the national centre for police labour relations, the role of the Canadian Police Association is to:

– promote the interests of police personnel and the public they serve, in the national legislative and policy fields;

– provide a collective support network for Member Associations to successfully improve representation and conditions for their own members in collective bargaining, education and training, equipment, health and safety, and protecting members' rights (e.g. to provide by established in 2006 Memorial Fund immediate financial assistance, in the form of a one-time lump-sum payment, to the families of police officers killed in the line of duty;

– advocate for adequate and equitable resources for policing;

– identify key national issues which impact on Member Associations and facilitate the resolution of these issues;

– react and respond, upon request, to local policing issues that may have national ramifications; and

– liaise with the international policing community on issues affecting Canadian police personnel.

The CPA also keeps relationships with parliamentarians from all political parties. Its members want to make a difference in their communities. As the national voice for front-line police personnel across Canada, it bring a unique perspective on policing and public safety. By raising awareness on law enforcement and justice issues, the CPA promotes community safety. Police associations have contributed to the deliberations on such issues as youth criminal justice; child pornography; impaired driving; sentencing, corrections and parole reform; national sex offender registry; criminal pursuits; organized crime; and technological innovation in policing, such as DNA testing and the Canadian Police Information Centre renewal project [10].

The CPA is also managed centrally, namely by a board of directors, which is re-elected every 2 years. It is chaired by the President and consists of 23 members from all regions of the country: Western Region (Vancouver, Winnipeg, Edmonton, Calgary, etc.) – 6, Ontario (South and Toronto) – 7, French-speaking Quebec (East and Montreal) – 6, Atlantic Region (North, Halifax and New Brunswick) – 4. Associate members of the CPA are also more than 150 local and regional police organizations and unions [10].

**Conclusions**. Thus, the review of European and American practice showed not only the existence of similar problems for most countries, but also the various ways to solve them in the manner prescribed by law, which is extremely relevant for Ukraine, also in view of the recent protests of law enforcement officers against the reduction of pensions. In particular, police unions should be involved in the development of regulations governing social issues such as money security (most of which are not salaries, but bonuses and salary supplement set by the

chief of the police agency or department), benefits, social housing, preventive treatment and rehabilitation, etc.

The direction of further research of this problem is the study of the role of foreign police unions in protecting their employees professional rights.

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The author declares no conflict of interest.

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**Андрій САМОТУГА**

## УЧАСТЬ ПРОФСПІЛОК У ЗАБЕЗПЕЧЕННІ ТРУДОВИХ ПРАВ ПОЛІЦЕЙСЬКИХ: ДОСВІД КРАЇН ЄВРОПИ ТА ПІВНІЧНОЇ АМЕРИКИ

**Анотація.** Висвітлено місце й роль профспілок у захисті трудових прав поліцейських у країнах ЄС, а також у США і Канаді, які стояли біля витоків світової історії профспілкового руху загалом, що пов'язано із революційним започаткуванням нових соціально-економічних відносин між роботодавцями і найманими працівниками. Загальносвітова тенденція трансформації сил правопорядку з мілітаризованих до напівцивільних структур визначає актуальність проблеми не лише захисту соціально-економічних і трудових прав працівників поліції, а й дотримання принципу рівності в їхніх правах відносно решти громадян, а отже, зростає роль у цьому процесі профспілок працівників поліції.

Автором з'ясовано відмінності між поняттями «трудові права працівників» та «професійні права працівників», що в подальшому формує засоби їх забезпечення та захисту за допомогою профспілок. Особливості службової діяльності накладають на поліцейських додаткові обов'язки та обмеження, у зв'язку з чим забезпечення ефективного захисту соціально-трудових прав працівників поліції набуває особливого значення.

На підставі аналізу генезису та сучасної діяльності поліцейських профспілок низки європейських країн (Великої Британії, Франції, Німеччини та Польщі) зроблено висновок, що їхня участь спрямована на забезпечення таких основних трудових прав правоохоронців, як заробітна плата, умови праці, пенсійне забезпечення, право на укладання колективних угод і ведення колективних переговорів з адміністрацією, а також право на страйк, хоча у Великій Британії вона дозволено частково, а в Німеччині заборонено.

Майже подібним чином організовано діяльність поліцейських профспілок у США, але відповідне законодавство дещо варіюється залежно від штату, що зумовлено широкою децентралізацією як публічної влади взагалі, так і системи охорони правопорядку, зокрема. У переважній більшості штатів передбачено право поліцейських профспілок на ведення колективних переговорів. Наймасовіші страйки американських поліцейських відбулися в м. Бостон 1919 р. та м. Балтімор 1974 р. На відміну від США поліція Канади організована за централізованою (британською) моделлю, що зумовлює наявність єдиного загальнонаціонального профспілкового органу – Канадської поліцейської асоціації, яка об'єднує всіх атестованих та вільнонайманих працівників, у т. ч. пенсіонерів.

На підставі викладено автором сформульовано пропозиції з розширення сфери діяльності профспілок поліцейських України для ефективного забезпечення соціально-трудових прав працівників Національної поліції.

***Ключові слова:*** *профспілка поліцейських, трудові та професійні права поліцейських, забезпечення, захист, колективні переговори, страйк.*

## CURRENT ISSUES OF LAW ENFORCEMENT AND ITS HUMAN RESOURCES

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# PECULIARITIES OF APPLICATION BY POLICE OF MEASURES OF ADMINISTRATIVE RESPONSIBILITY FOR COMMITTING AN OFFENSE AND THE PROCEDURE FOR APPEALING AGAINST THEIR APPLICATION: FOREIGN EXPERIENCE AND ITS IMPLEMENTATION IN UKRAINE

**Abstract.** The article examines the peculiarities of the application of measures of administrative responsibility by police for committing an offense, as well as the procedure for appealing against their use in foreign countries and its implementation in Ukraine.

The certain guideline for improving the activities of the Ukrainian police can be the activities of the Austrian police to give a fairly broad power to impose significant fines on persons who have committed administrative offenses, which are inherently close to criminal offenses.

***Keywords:*** *measures of administrative responsibility, the order of their application by police officers, features of appeal of the decision of police officers, foreign experience, directions of implementation.*

**Relevance of the study.** Among the bodies of administrative-tort jurisdiction that consider cases of administrative offenses and make decisions in these cases, the bodies of the National Police have the greatest powers. The need for a comparative study of the application of police measures of administrative liability for offenses, as well as the procedure for appealing their use in Ukraine and abroad is due to the desire to adapt national legislation to EU standards and the need to implement in the Ukrainian police best practices in policing.

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**Recent publications review.** It should be noted that the comparative analysis of the peculiarities of the use of administrative measures by police for committing offenses in Ukraine and some foreign countries was a partial subject of study within the broader legal issues of administrative liability and their effectiveness in the scientific works of many scientists: O. Bandurka, V.Bass, S. Bratelya, S. Bratkova, O. Bezpalova, O. Jafarova, T. Kolomoyets, V. Kolpakova, S. Konstantinova, O. Kuzmenko, M. Loshitsky, T. Minka, R. Myronyuk, V. Olefir, I. Pastukh, M. Plugatyr, V. Sokurenko, O. Yunin and others [1-13].

At the same time, insufficient attention was paid to a separate systematic analysis of the peculiarities of police measures of administrative responsibility for committing offenses and the procedure for appealing them in Ukraine and some foreign countries, which determines the relevance of research on this topic within the scientific article.

**The article's objective.** To fulfill the purpose of the study below, we will try to set and solve a number of scientific problems, namely: to determine the state of legislative support for the application of administrative liability for offenses and the procedure for appealing in Ukraine and in leading foreign countries, which Ukraine focuses on in its European destinations development; to determine the powers of police officers to apply these measures to influence violators in these countries, to assess their effectiveness, to identify best European police practices in this area and to identify some proposals to improve the efficiency of the police of Ukraine.

**Discussion.** The analysis of normative sources regulating the powers of police officers in Ukraine to apply measures of administrative responsibility indicates that the main ones are as follows: [1]; 2) the Law of Ukraine "On the National Police" defines the powers of police officers to draw up case files on administrative offenses, which are detected by them and for which police officers apply measures of administrative responsibility [2]; 3) features of the procedure for registration of materials on administrative offenses by police, their consideration and adoption and implementation of decisions are regulated by departmental NPA, in particular: order of the Ministry of Internal Affairs of Ukraine of November 7, 2015 № 1395 "On approval traffic, recorded not in automatic mode" [3]; Order of the Ministry of Internal Affairs of November 6, 2015 № 1376 "On approval of the Instruction on registration of materials on administrative offenses in the police" [4], Order of the Ministry of Internal Affairs of January 13, 2020 № 113/34396 "On approval of the Instruction on registration of materials on administrative offenses in areas of road safety, recorded in automatic mode" [5].

It should be noted that the breadth of public relations, which are under the protection of the police, has led to a much larger, compared to other sectoral bodies, the scope of its jurisdiction. According to the current legislation (Article 222 of the Code of Administrative Offenses), the police have the right to consider and decide cases on a wide range of administrative offenses. These include cases of: violation of public order, traffic rules, rules to ensure traffic safety, rules for the use of vehicles, rules aimed at ensuring the safety of goods on transport, as well as illegal leave and illegal purchase of gasoline or other fuels and lubricants (in terms of exceeding the standards for the content of pollutants in the exhaust gases of vehicles). Although the police resolve a significant number of cases of administrative offenses, an important feature of its administrative and jurisdictional activities is that the dominant direction of these activities is to ensure public safety and order [6, p.130].

Analysis of procedural legislation, and in particular sections 3.4 of the Code of Administrative Offenses makes it possible to establish that police officers apply measures of administrative responsibility for committing administrative offenses, the jurisdiction of which is established by Article 222 of the Code of Administrative Offenses in two procedures: general and simplified.

The general procedure involves the following actions of the police officer:

– detection of the offense (establishment of the legal composition of the offense), in accordance with its qualifications for the general part of the Code of Administrative Offenses;

– identification of the offender (based on the presentation of documents confirming his identity) or identification of information databases to which police officers have access;

– fixation of the fact of an administrative offense in a procedural document - a protocol on an administrative offense;

– collection of evidence of the offense committed by the person: on the basis of identification and questioning of witnesses of the offense, the victim in case of its presence and the offender; inspection and seizure of things and documents from a person; drawing up a scheme of a traffic accident; sending materials for examination (for example, for drugs);

– registration of case materials on administrative offense (generalization of collected procedural documents);

– sending materials for consideration under the jurisdiction: to the head of the police body, if the official police officer who identified, recorded the offense and drew up the case file is not endowed with the authority to consider it; to the court (through the head of the police), if this category of case is under the jurisdiction of the court on the basis of Art. 221 CUoAO;

– consideration of the case by an official police officer or police chief within the time and in the manner prescribed by the Code of Administrative Offenses, usually within 15 days with the summons of the person suspected of the offense;

– decision-making by an official police officer or police chief as a result of consideration of the case (usually on the application of an administrative penalty in the form of a fine);

– accompanying the consideration of the case of an administrative offense in court (providing additional materials, ensuring the appearance and appearance of the participants in the trial);

– ensuring the execution of a court decision on the application of an administrative penalty in the form of administrative arrest (escorting a person to the place of administrative arrest).

In addition to the general procedure for bringing a person to administrative responsibility by a police officer, the legislation defines the grounds and the procedure for simplified proceedings, which is regulated by Article 279-1 of the Code of Administrative Offenses.

Simplified proceedings for registration of case materials on an administrative offense by the police are carried out on the following grounds and according to the following procedure:

– the basis for the application of simplified proceedings is the detection of administrative offenses in the field of road safety recorded automatically or if violations of the rules of stopping, parking, parking of vehicles recorded in the mode of photography (video), i.e. only in case of violations in road safety;

– in case of detection of this violation according to the photo of video recording in case of violation the policeman immediately makes a decision in the case of an administrative offense and hands a copy to the person who committed the offense for execution;

– in case of violation of traffic rules by means of automatic photo-video recording, in case of absence of the violator but presence of the car by which this violation was committed, the policeman is obliged to place on the windshield of the vehicle a copy of the decision on bringing to administrative responsibility. responsible person, at the scene of the offense) or notification of bringing to administrative responsibility (if technical capabilities do not allow to identify the responsible person at the scene of the offense);

– in case of violation of traffic rules by means of automatic photo-video recording, in case of absence of the violator and the car by which this violation was committed, the policeman is obliged according to the Unified State Register of Vehicles and, if necessary - according to the Unified State Register of Legal persons, natural persons - entrepreneurs and public formations to establish the responsible person, owner or owner of the vehicle. This person is sent a notice of bringing him to administrative responsibility. The notice of administrative prosecution must also contain information on the procedure for execution of the administrative penalty, including details for payment of 50 percent of the fine within 10 banking days from the date of the offense, which will be considered the execution of the administrative penalty in full. At the same time, the authorized police officer who deals with traffic violations recorded by technical means shall issue a decision to impose an administrative penalty for an offense in the field of road safety, recorded automatically, or for violation of the rules of stopping, parking, parking vehicles, recorded in the mode of photography (video recording), which is made without the participation of the person who is brought to administrative responsibility. Information on this offense and the decision to impose an administrative penalty no later than the next working day from the date of establishment of the responsible person, shall be entered in the Register of administrative offenses in the field of road safety;

– voluntary early execution of the police decision on imposition of an administrative penalty within 10 days from the date of issuance provides for the possibility of preferential payment of a fine - in the amount of 50 percent of the fine. In case of non-payment of the fine within 10 days, the decision to impose it is sent to the responsible person at his place of residence (registration) and must be executed within 5 days.

Separately, Chapter 24 of the Code of Administrative Offenses provides for the procedure for appealing against decisions in cases of administrative offenses issued by the police, it has the following features:

– usually the decision in cases of administrative offenses made by the police is appealed

by the person against whom it is made;

– a complaint against a decision of a police officer in a case of an administrative offense may be filed within ten days from the date of the decision, and for decisions in a case of administrative offenses in the field of road safety, recorded automatically – within ten days from the date of entry into force.

– the subject of the complaint is either a higher body (higher official, usually the head of the police department) or a district, district in the city, city or city district court, which considers the complaint in the administrative appeal defined by the Code of Administrative Procedure of Ukraine (hereinafter – CASU);

– the complaint is submitted to the body (official) that issued the decision on the case of an administrative offense and within three days is sent together with the case to the body (official) authorized to consider it accordingly;

– a person who has appealed the decision in the case of an administrative offense is exempt from paying state duty;

– a complaint against a decision of a police officer in a case of an administrative offense is considered within ten days from the date of its receipt;

– as a result of consideration of the complaint against the decision of the police officer in the case of an administrative offense, one of the following decisions may be made: leaving the decision unchanged, and the complaint without satisfaction; cancellation of the decision and sending the case for a new trial; cancellation of the decision and closing of the case; change of the measure of recovery in the direction of its mitigation;

– a copy of the decision on the complaint against the decision of the police officer in the case of an administrative offense within three days is sent to the person against whom it was issued.

In order to perform the research tasks within the framework of this scientific article, it is expedient to analyze the peculiarities of the application of police measures of administrative responsibility for committing an offense in some foreign countries and to find out the possibilities of its implementation in Ukraine.

In Germany, such an approach has been formed in the application of administrative sanctions by the German police. According to Art. 53 "Police Tasks" of the Federal Law on Administrative Offenses The German police are obliged to be based on the principles of internal conviction, to investigate all the circumstances of an administrative offense and to take all necessary measures to establish the truth [7]. According to this article, the police are endowed with the same rights and responsibilities when investigating administrative offenses as when prosecuting crimes, unless the law provides otherwise. The main normative act, which enshrines the general principles of administrative liability, key concepts, procedural rules for the consideration of cases of administrative offenses, their jurisdiction, the procedure for implementing decisions in cases of administrative offenses, is the Federal Law on Administrative Offenses. A more detailed analysis of this law allows us to state that it provides for three types of negative legal consequences of an administrative offense: 1) an administrative fine; 2) warnings and warnings with the recovery of a sum of money; 3) additional penalties. The administrative tort law of Germany, as well as many other developed European countries, imposes the principles of criminal procedure on the procedures of bringing a person to administrative responsibility, but differentiates them. In particular, in Germany there are three types of proceedings with the application of fines: the imposition of a fine at the scene of the offense; general proceedings in administrative-tort proceedings; court proceedings. The first type is the most simplified, as it is used for minor administrative offenses, if the sanction does not exceed 35 euros. It can be used by many administrative jurisdictions, but most of them are police officers in the performance of their duties related to the detection of administrative offenses at the place of their commission, but only with the consent and admission of guilt by a person who brought to administrative responsibility, which deprives the latter of the right to appeal the decision. The moment of the violator's consent is obligatory, because if it is available, a procedural document (act, protocol) on fixing the administrative offense is drawn up, a copy of which is handed to the violator, or a copy of the certificate of payment (if the fine is paid on the spot), strict reporting. If a person who is brought to administrative responsibility does not admit the fact of committing an administrative offense, or committing an administrative offense for which a fine of more than 35 euros, the police officer carries out a general procedure, which involves summoning and hearing the offender, witnesses, evaluation of evidence, examinations, etc., which ends with the adoption of a procedural document – a decision to impose a fine, which can be appealed in court [8, p. 34].

The consideration of cases of administrative offenses by police bodies and units in the Republic of Austria is quite similar. In this country there is a law "On Administrative Penalties" [9], which provides, as in Germany, three types of administrative proceedings. It is necessary to emphasize the differences and peculiarities of the Austrian model of exercising administrative-tort jurisdiction by the police. Despite the fact that the Austrian administrative law provides for rather severe sanctions for committing administrative offenses, in contrast to the model of our country (for example, a fine of two thousand euros, or imprisonment for up to six months), administrative offenses are not considered by courts but by administrative authorities, including the police. Even appeals in these cases are considered by administrative senates. That is, it can be concluded that in Austria the courts are excluded from the system of administrative jurisdiction. This indicates a high level of trust of citizens in the police and other entities that are authorized to consider cases of administrative offenses by the police [8, p. 5.].

In Switzerland, the procedure for applying administrative measures to violators is regulated by the Swiss Law on Administrative Procedure of 20 December, 1968, which provides for the possibility of considering cases of administrative offenses by the federal and cantonal police [10]. The procedure for dealing with administrative offenses in Switzerland, as in other European countries, is carried out in a simplified and general manner. The latter ends with a ruling in the case, which can be challenged by an objection, which is sent within 30 days to the body or police department that issued the ruling, which in turn send them to court. The simplified version of the proceedings on administrative offenses by the Swiss police is similar to the ones discussed above and does not differ significantly.

In the United Kingdom, police officers are not empowered to hear cases of administrative offenses. They only draw up the relevant documents, send them to the magistrate's court, which decides on the imposition of a penalty. Moreover, the punishment for similar offenses in the UK is much more severe than in Ukraine. For example, for petty hooliganism you can get up to six months in prison [11, p. 26].

If we talk about the consideration of cases of administrative offenses in France, it should be noted that the French administrative tort law is unsystematic and is based on a significant number of sectoral legislation, in contrast to the domestic model. Police officers are mostly involved in detecting and registering offenses, and direct consideration is carried out by a special body – the police tribunal, as a special court set up to deal with petty offenses. Police and gendarmes do not have the right to prosecute those who have committed offenses, they only deal with their registration [12, p. 256; 13].

**Conclusions.** Having analyzed the peculiarities of the application of measures of administrative responsibility by police for committing offenses in Ukraine and abroad, we came to this conclusion. The powers of the police of Ukraine to register and consider cases of administrative offenses and to apply measures of responsibility for their commission are much broader, compared to some similar police units of other countries, which we discussed above, as domestic law has given the police a wide range of administrative and tort powers. drawing up a report on an administrative offense, gathering evidence, the use of detention, inspection and seizure of items and documents, temporary detention of vehicles before the application of administrative penalties – mostly fines. In contrast, the police of most European countries have the power to prevent offenses, detect them and record the fact of their commission in the relevant protocol (act), i.e. the actual suspicion of their commission, the final decision on the guilt of a person and the imposition of a penalty. At the same time, a certain guideline for improving the activities of the Ukrainian police can be the activities of the Austrian police to give a fairly broad power to impose significant fines on persons who have committed administrative offenses, which are inherently close to criminal offenses.

Since the broadest administrative and tort powers are vested in the police to detect, record traffic violations and bring individuals to administrative responsibility below, taking into account foreign experience, we make some suggestions to improve the legal and organizational mechanisms to ensure the implementation of their powers in this area. In particular, in order to respect the rights of citizens in the police and taking into account foreign experience within the national legal doctrine and practice of administrative liability for violations of traffic rules recorded automatically, it is advisable to establish the following:

First, for committing an offense in the field of road safety, recorded in automatic mode to prosecute not the owner of the vehicle, and the driver – the person who actually drove the vehicle at the time of fixing the offense with a technical device operating in automatic mode. Once the offense has been recorded, the vehicle is to be stopped, and if this is not possible, the

obligation to identify the offender rests with the relevant National Police unit. In this case, the identification of the person driving the vehicle at the time of fixing the offense by a technical vehicle operating in automatic mode can be done by using a driver's license with a chip, which would contain the relevant information about the driver. To do this, it is necessary at the legislative level to establish the driver's obligation to fix the driver's license at the top of the windshield of the vehicle.

Second, to establish the administrative responsibility of the owner of the vehicle for improper transfer of the vehicle for driving to another person or evasion of entering information about the proper user of the vehicle in the Unified State Register of Vehicles.

Third, to regulate the procedure for releasing the owner of the vehicle from liability in case of: illegal disposal of the vehicle or its license plates from the owner's possession; being behind the wheel of a vehicle on the legal grounds of another person. In this case, the obligation to provide evidence of his non-involvement in the offense rests with the owner of the vehicle**.**

*Conflict of Interest and other Ethics Statements*

The authors declare no conflict of interest.

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**Роман МИРОНЮК, Данієль СВАТОН, Микола РЕПАН**

**ОСОБЛИВОСТІ ЗАСТОСУВАННЯ ПОЛІЦЕЙСЬКИМИ ЗАХОДІВ АДМІНІСТРАТИВНОЇ ВІДПОВІДАЛЬНОСТІ ЗА ВЧИНЕННЯ ПРАВОПОРУШЕННЯ ТА ПОРЯДОК ОСКАРЖЕННЯ ЇХ ЗАСТОСУВАННЯ: ЗАРУБІЖНИЙ ДОСВІД ТА ВПРОВАДЖЕННЯ ЙОГО В УКРАЇНІ**

**Аноація.** Метою статті є дослідження особливостей застосування поліцейськими заходів адміністративної відповідальності за вчинення правопорушення, а також порядку оскарження їх застосування в зарубіжних країнах та впровадження його в Україні.

На виконання мети дослідження в статті було поставлено та вирішено ряд наукових задач, а саме: з’ясовано стан законодавчого забезпечення застосування заходів адміністративної

відповідальності за вчинення правопорушення та порядку їх оскарження в Україні та в провідних зарубіжних країнах, на які Україна орієнтується в своїх європейських напрямках розвитку; визначено повноваження поліцейських по застосуванню даних заходів впливу на порушників в цих країнах, оцінено їх ефективність, виокремлено передові європейські практики діяльності поліції в цьому напрямку та виокремлено окремі пропозиції для підвищення ефективності діяльності поліції України.

Здійснивши аналіз особливостей застосування поліцейськими заходів адміністративної відповідальності за вчинення правопорушення в Україні та зарубіжних країнах ми прийшли до такого висновку. Повноваження поліції України щодо оформлення та розгляду справ про адміністративні правопорушення та щодо застосування заходів відповідальності за їх вчинення є значно ширшими, порівняно з деякими аналогічними поліцейськими підрозділами інших країн. В той же час як певний орієнтир для удосконалення діяльності поліції України може слугувати діяльність поліції Австрії щодо наділення досить широкими повноваженнями щодо застосування суттєвих штрафних стягнень до осіб, які вчинили адміністративні правопорушення, які за своєю сутністю наближені до кримінальних проступків.

***Ключові слова:*** *заходи адміністративної відповідальності, порядок їх застосування поліцейськими, особливості оскарження рішення поліцейських, зарубіжний досвід, напрямки впровадження.*

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## ROLE OF PUDUCHERRY POLICE SPECIAL TASK FORCE IN CRIME CONTROL

**Abstract.** The article is devoted to the study of the effectiveness of special police units on the example of STF. Some crimes require the police to change their usual process and accept something out of the ordinary so that they can effectively reach the real culprits or solve a complex case that has a wide network. This led to the creation of a new police unit. In Puducherry, India, the Special Task Force (STF) is a unit of the state police that deals with tasks beyond the control of the ordinary criminal police. They are a specialized unit with jurisdiction across the state and often use the means they want to solve crimes. Thus, the most heinous crimes, which often involve sophisticated gangs, are considered by the STF. In this way, the STF has become the type of unit needed to investigate crimes and solve impossible cases with maximum devotion and perseverance.

***Keywords****: crime control, Special Task Force, concept of STF, Puducherry Police, STF officers, efficiency.*

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**Relevance of the study.** It is a well-known fact that police are keepers of law and order in all the countries. Though different countries have different standards for their police teams, including uniforms, they all address the same mission- Protection of Law of the land. However routine the task of the police can be, certain crimes requires the police to change their normal process and adopt something out of the box so that they can effectively reach the true culprits or solve a complicated case that has a wide network. This has given rise to a new entity in the police force called "The Special Task Force". In Puducherry, India, the Special Task Force (STF) is a branch of the State Police that is engaged with tasks that are beyond the means of the regular crime police force. They are a specialized division that has jurisdiction all over the state and often use coveted means to solve the crimes. Hence, the most heinous crimes often involving sophisticated gangs are dealt with by STF.

**Resent publications review**. The concept of STF is not new. It has been used by various agencies across the globe to enforce law and order as reported in many studies. A. Ruotolo Jr. conducted a study titled "MDTs Aid Auto Theft Task Force" wherein a special theft task force was formed to control and stop series of automobile thefts in New Jersey, USA [1]. The task force worked with a team of 26 police officers and in just five months of their operation they recovered 160 vehicles worth USD 1.5 million. They arrested 80 adult auto theft suspects and 101 juvenile suspects. The promising results of the special task force managed to stem the number of auto thefts. It also benefited eastern New Jersey residents by increased police visibility that also ensured adequate protection in high-crime risk neighborhoods. The usefulness of this task force had decreased the auto theft and gave a sense of security for the citizens.

Drug menace is a serious problem in many cities and the city of Kansas was no exception. In order to control the menace, the police there formed a task force as highlighted in the study by D. Barton titled "Kansas City Experience: "Crack" Organized Crime Cooperative Task Force" [2]. The study clearly illustrated the impact of organized gangs on drugs related crimes from the Jamaican or Caribbean basin. The task force in due course of its operations had charged, indicted, or deported many Jamaican nationals. It also managed to seize huge quantities of cocaine, currency, and other valuable assets. The task force has also recovered numerous firearms from the operatives. This study shows how a dedicated force can achieve much more that what a regular police force could do.

Another study related to organized gangs, titled "The Violent Gang Task Force" (VGTF) was conducted by B. Nicholl [3]. The VGTF engaged 130 special officers from 16 large cities and an additional 20 special officers were deployed in smaller urban areas. From the 95 criminal investigations, 2843 members of the gangs were arrested. The task force seized drugs worth USD 156.6 million. They also recovered U.S. currency and property valued at over $8 million. VGTF primarily focused on drug smuggling into the United States through South Florida and the Caribbean. They also targeted 54 different street gangs and rounded up over 1,600 of its members and associates. The study concluded that VGTF initiative was a successful nationwide program which enhanced cooperation among law enforcement agencies and prevented growth of gangsters.

The formation of such task force and also help deal with disaster management and legal issues connected with such incidents. This study showed how law and disaster management agencies namely the Judicial Police system, and Special Fire Police could work together in protecting life and property. Due to swift growth and development in Korean society, there was a marked rise in fire incidents and accidents. Therefore, in the interest of safety a special task force comprising of people with excellent investigative power, such as lawyers, professional veterans in the fire and police department, personnel from firefighting headquarters and frontline fire departments was set up. The study suggested that a STF should be set up in the above agency where planned investigation, judicial cases and enforcement work can be solved more effectively because the local fire stations had a lot of difficulties in handling them [4].

Similarly, S. Hart and his team of researchers depicted the functions and benefits of a fire/police arson task force [5]. This study suggested that the key to the success of this task force was the wealth of experience and resources they had at their disposal. The fire department had the tools and manpower, while the police could process the information. The police officers were able to analyze "how" and "who" of the arson, while the firefighter could pinpoint "where" and "why" of the fire and its origin. The study concluded that an increased percentage of arrests and convictions for arson were observed in communities where such task forces where established.

The establishment of such specialized forces can be of significant help during traffic accidents too. It is not uncommon to see looting and burglary at an accident scene. This largely goes unnoticed and unaccounted for in some places. The study conducted by H. Runyon analyzed the functioning of a specialized traffic task force to deal with traffic accidents and control in New Jersey, USA [6]. The study suggested that the success of the force depended on strong support of the administration. The study describes the importance of a specific organizational structure, selection and training of officers and use of volunteer personnel. They also used varied methods of enforcement. The study suggested that the task force officers reported a higher degree of respect from the motorists. Moreover, there was also a marked decrease in burglary and larceny incidents in the area. Hence, the study concluded that setting up a specialized task force produces greater achievement at no added cost to the police department budget in addition to involving the community volunteers in aiding the law.

Extremism and insurgencies are also serious issues in many places that requires dedicated force to deal with it. Studies have revealed the usefulness of such dedicated forces in dealing with such situation. T. Muhammad highlighted the role of the National Police in Countering Insurgencies in Indonesia through his study [7]. He suggested that there was a significant rise in insurgencies in Indonesia which included radical groups which could do anything to fulfill their religious goals. This forced the Government of Indonesia to set up multiple task forces to control and eliminate the insurgents. The measures suggested for the Police in the study included increasing the effectiveness in countering radical Islamist and separatist insurgents. Inclusion of intelligence and community policing functions, detection and prevention were among many ideas suggested by the author for dealing with armed insurgents. National Police role was very critical to the safety of the Indonesian citizens.

In another counter terrorism related study conducted by Muhammad Faizal bin Abdul Rahman, suggested that to effectively manage the security situation of Singapore, many teams of Special Forces were formed which acted as a hard and thorny armor of the City-State [8]. The study concluded that the special security forces of Singapore played a very crucial role in protecting its people, economy and infrastructure. He added that the special forces of the police force and armed forces have an important role in the intelligence collection to neutralize terrorist threats in cities. Further, the author added that because the setting are by and large civilian in nature, it should essentially be treated as asymmetric warfare which required unconventional methods of engagements.

The bulletin in the United States' Department of Justice B. Reaves reported that a most of large Police departments had full-time specialized forces to deal with a range of crimes such as child abuse, juvenile crime, gangs, domestic violence, tactical operations, terrorism or homeland security, fugitives or warrants, impaired driving and cybercrime [9].

**The article's objective** is to investigate the role of Puducherry Police Special Task Force in crime control and features of STF activity.

**Discussion**. India being a federal structure each state is bestowed with powers to constitute its own STF to deal with problems unique to that region. Such forces are constituted to deal with major criminal or criminal network issues or as a counter insurgency or anti-terrorism measure. Such a special task force was created in the state of Uttar Pradesh in North India through a government order with the following objectives. Intelligence gathering about gangs and mafia gangs and act on such gangs. Prepare action plans for disruptive elements in the state. To take action in coordination with the district police on organized crimes. Take effective action against gang of dacoits and inter-district gangs.

It must be noted that Uttar Pradesh is also the most populous state of the India. The police system India was following the Police Act enacted in the year 1861. This is in force even today. The act at that time was comprised of police forces to cover Provincial Police, Government Railway Police, Municipal Police, Cantonment Police, Town Police, Rural and Road Police, Canal Police, Guards to protect the courts. Since then the Police has maintained communal and social harmony, Law and Order, crime control and security of the state. As crimes and criminals become more sophisticated, a range of specialized branches for combating organized crimes, economic offences etc. have come into being. Modernization has given emphasis to training, technical aids like computers, telecommunications, Forensic science, latest gadgetry, modern weapons and new vehicles [10].

Another northern state of Punjab in India is troubled by serious drug menace. A study was instituted by R. Arora to analyze the challenges that the government faced to control the serious issue [11]. The study suggested many measures including setting up of Special Forces

to gather, share and act on intelligence to effectively counter the menace. The study highlighted the need for coordination from various bodies ranging such as the government, law enforcement agencies, intelligence agencies, sports and youth development and Non-Governmental Organizations and the local community. The study concluded that crimes were closely related to economic status of the border areas.

India also supports a STF Jungle School located in Tamil Nadu, a Southern State of India. This school focused on landmine detection, countering guerrilla warfare, identifying booby traps. They had also trained STF from other states of India, such as the Maharashtra Police. They also trained several law enforcement bodies too. In an interview to an India National Newspaper, a STF Superintendent of Police said that special training involved imparting precision firing and reflex action, detecting landmines. He further highlighted the strenuous training that was given in survival tactics, night movement and camping on unknown terrain. The forces should have the capacity to survive without supplies for weeks by tapping natural food and water. The interview with the Inspector General of Police and the Ex STF chief, highlighted that the training module professionally equipped the forces to stay, fight and finish the enemy in the jungle. They had to complete the task by moving quickly in the night without disturbing wildlife or natural vegetation, observing villages or villagers and bunker making which were some crucial requirements in jungle warfare [12].

All the studies above highlight how with the setting up of STF the law enforcement agencies were able to coordinate better in gathering intelligence inputs and were able to respond in a better and much effective manner to protect the general public from different types of crimes. Hence, Puducherry Police too went in for a customized STF to bring about better enforcement of law and order for the peace loving people of Puducherry as confirmed by a study in France by Cheng Chenga entitled "Improving police services: Evidence from the French Quarter Task Force" that provided evidence that increased police presence tends to reduce crime and that there was a need to properly monitor and employ innovative strategies in order to further improve police services [13].

There are specific fitness requirements for the STF based on their area of operation. In fact many STF bodies globally and in India too specifies certain fitness norms to be selected to the elite group. However, Puducherry is a peaceful coastal town which has not seen any extremist or terror related activities so far and it does not have any jungle or mountains in its geography to warrant such highly fit forces. The nature of crimes that requires STF personnel to get involved in Puducherry is more related to local issues, gangs and drugs rather than any terrorism or cross border activities. This can be confirmed from the Daily Dairy data of STF Puducherry (Table 1) which contains do case of extremism or terrorism. Hence, it is learnt that high standards of physical fitness is not a hard and fast norm here. The annual training programs are deemed fit enough for the STF personnel in the Union Territory of Puducherry. Moreover, STF requires its officers to blend in with the public in reaching areas where a person appearing fit and strong may arouse suspicion. This may constrain the general people from sharing critical information due to inherent fear of police. Hence, the prime factor considered for the STF selection in Puducherry is the officer's integrity, passion to solve crimes, dedication and teamwork.

The mission of STF is to eradicate all organized crimes from society (Puducherry, India). Their objective is to prevent any major law and order problem in Puducherry by collecting intelligence and reporting such information to the concerned police station. They deal with the control and eradication of the illegal sale of narcotics. They continuously monitor movements of criminal or rowdy elements through coveted means and take action wherever necessary. They are tasked with solving crimes like murder, dacoits, kidnappings, extortion, rape, illegal arms and explosives, and such other crimes. They maintain records of all the budding and hardened criminals and monitor them so that any crime if possible can be prevented. For this purpose, they even monitor the activities in the central prison looking for some cues on crimes that were committed and to be committed.

Puducherry is a very popular tourist place, is frequented by hundreds of people not only from India but all over the globe. Further, It has a very cosmopolitan flavor with a widely mixed population, both local and floating. With such a broad mix of people, the possibility of illegal activities in a clandestine manner is quite high. Hence, to gather quick intelligence inputs and solve sophisticated crimes, setting up STF became critical. STF personnel is not like any typical police officer. They have the knack to blend in and look very much like any other civilian. The STF officers have a keen eye for criminals and are very sharp to gather

information about any criminal activities as mentioned above. They keep a continuous tag on known criminals, their associates, their leaders, or handlers. They also regularly follow up on some special clues and trace/track down the individuals wanted/concerned in cases. They collect details, take action, and can also arrest the person or persons, who involve in the crimes that are illegal in Puducherry. The illegal activities include the sale of lottery tickets, gambling, possession/sale or transporting narcotic drugs & psychotropic substances, immoral trafficking, fake and counterfeit currencies, extortion by cargo loading/unloading associations or groups, etc. They wield significant control over the rowdy elements or bad characters or criminal gangs, residing in the state of Puducherry, including those persons indulging in land grabbing (stealing real estate documents or property). Further, they keep every activity of those criminal elements under their surveillance.

STF monitors the active local and non-local ex-convicts to check their criminal activities. They additionally keep watch on suspected persons and supply intelligence to the officer at the level of Superintendent of Police concerned. They perform their patrolling duties in plain clothes in sensitive areas of the town. The officers in plain clothes deputed shall observe the suspects or criminal characters secretly. They take up the specific task of searching and apprehending the accused persons. After the arrest of the accused person, they are required to hand the apprehended person over to the investigating officers concerned with a special report. They are required to keep a keen watch at busy places such as the Bus Stand, Railway Station, market places, and liquor shops.

In the cases where rowdies, criminals, or their associates /relatives are found frequenting the jail and courts, secret surveillance is launched as the release and surrender of the accused are done in such places. The criminals released from jail, often join hands with other criminals who they befriended or join other gangs to commit more heinous crimes. Such people are also shadowed and watched by the STF. They maintain the details of such criminals with photographs. STF also engages in any other work assigned by the senior police officers of Puducherry.

Clear and definite instructions are expected to be given to the STF by the Senior Superintendent of Police (Law & Order) (SSP (L&O). The movement of the members of the STF team is supervised by the Inspector in-charge, who is empowered to issue passports, wherever necessary with written instructions. The Inspector of the team shall brief the SSP (L&O) daily regarding the STF activities. The Sub Divisional Police Officers in Puducherry Region are expected to utilize the services of STF effectively. Whenever any heinous crime is reported, the STF Team shall also be informed forthwith, so that the members of the team will be aware of the incident and act swiftly in apprehending the criminals. All Police forces have more or less the same powers but the responsibilities to the STF officers are more since they deal with hard-core criminals and habitual offenders. Usually, most of the rowdy elements have strong connections with the big shots in the society which they are more than happy to exploit. The local police work in their area of jurisdiction and also have fixed hours of duty. The local police are also more in numbers and deputed for different types of duties. The local police can also be easily visible in their looks and uniform. STF on the other hand is dealing with crimes that are committed or waiting to be committed. They solve the case using intelligence inputs and work in small teams to get to the bottom of the case. They are often engaged in coveted operations and give solid leads to the local police to arrest a criminal.

They do not look much different from the local public and sometimes alter their personality and looks to suit the type that will help them solve the case. They even have powers to arrest or confine the actual criminal even if he is outside the state. STF officers are often working under severe pressure to solve the cases because of the intrusive media. Sometimes when high profile people are involved the pressure to deliver or act in a certain manner becomes higher. Even when very difficult cases or cases pending for a long time are cracked by STF, they remain in the background, unseen and waiting for the next assignment.

The operations data for the past three years that is from 2019 till date is given above (Table 1). STF was formed in the year 2004 in Puducherry by Puducherry Police to curtail the increasing illegal activities of rowdies & bad elements. There was also a need to solve many sensitive cases reported throughout Puducherry. Since, its formation, the STF team has solved and closed several sensitive and blind cases. To this day STF is doing its best to keep control over crimes and illegal activities in Puducherry. Special task force functions under Senior Superintendent of Police Law and Order. Officers and personnel with good integrity and interest in crime-solving are selected to work in this team.

*Table 1*

**How effective has the STF been in serving its objectives in Puducherry**

| Crimes | 2019 | 2020 | 2021 | No of Arrests | Remarks |
|---|---|---|---|---|---|
| Murders | 8 cases | 6 cases | 3 cases | 78 persons | |
| Attempt to Murder | 1 case | 1 case | | 6 persons | |
| Prevention of Murder | 2 cases | 3 cases | 3 cases | 46 persons | |
| Explosives | 1 case | | 4 cases | 13 persons | 9 country bombs |
| Narcotics | 5 cases | 18 cases | 17 cases | 96 persons | 135.2 kilograms |
| Organized Crimes | 7 cases | 1 case | 4 cases | 100 persons | |
| COTPA (Gutka) | | 2 cases | 3 cases | 14 persons | 8 million INR |

*Source: Daily Dairy and Achievement Register of STF [14]*

With the widespread proliferation of the internet and easily accessible technology, criminals these days have also gone hi-tech. The use of a variety of gadgets and technology to commit a crime has only increased manifolds and sometimes the criminals are better versed in their use than the law enforcement officers. Though STF officers do not get any special training in dealing with such technology and gadgets, they rely on a team of cyber professionals who back them up with any required information to help solve the case.

The most striking characteristic of an STF officer is the look of a common man. He should be able to blend in with the public and at the same time be very observant of all the happenings around him. He should not do anything to get unwanted attention on himself. An STF officer demonstrates high intelligence and an eye for detail. The officer should be efficient in building networks, which will help them gather information. STF displays better teamwork as the relationship that they enjoy with each other is much better, the trust factor is much better and their goals are well defined.

The STF officers were of the view that the nature of this work had a profound effect on their routine family matters. The reason being the secretive nature of work which forbids the officers from sharing any information or experience with their family and friends. Further, their travel and moving about is determined by the case leads which often force them to travel out of their home town with very short notice or sometimes without any information. This type of secretive and unpredictable nature of the job puts severe strain on the STF officer's family and social health. Moreover, dealing with well-organized and hardened criminals poses an ever-threatening risk to their lives. To realize the seriousness of their threat to life, it can be said that the criminal has to succeed just once out of any number of attempts to put an end to the STF officer whereas the STF officer has to succeed each time if he has to crack the case or to even just survive.

The same has been brought to light in a study conducted by Ch. Le Scanff [15]. The author implemented a stress management program for the French police Special Forces units. The initial difficulties were overcome so as to successfully run the stress management program. 150 male police officers participated in the program which involved working in three different levels such as organizational, group and individual. The results revealed that the program was well received by the officers which prompted the police administration to extend the program to all the police units. Later, the program was even customized to suit the specific work characteristics like intelligence service or bodyguard detachments.

**Conclusions.** As criminals and crime get more and more sophisticated, many cases go beyond the means of the regular police force. More often than not, unconventional and coveted operations are required to crack the cases or corner the accused. Interestingly, STF can be customized to suit the needs of the area and the crime. Many STF's have a strict fitness norm and Puducherry STF does insist on strict fitness norms, it selects personnel with a criteria that is most suitable to be effective. Hence, STF was just the type of setup required to check crimes and solve impossible cases with utmost dedication and persistence. STF has been a great asset for Puducherry Police and its performance is well documented in the data provided. Perhaps if some help is extended to manage their family and social life, it would be most welcome given the risk and threats that they operate with. So far it is well-done STF.

*Conflict of Interest and other Ethics Statements*

The authors declare no conflict of interest.

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**РОЛЬ СПЕЦІАЛЬНОЇ ГРУППИ ПОЛІЦІЇ ПУДУЧЕРРІ У БОРОТЬБІ ЗІ ЗЛОЧИННІСТЮ**

**Анотація.** Стаття присвячена дослідженню ефективності діяльності спеціальних підрозділів поліції на прикладі STF. Деякі злочини вимагають від поліції змінити свій звичайний процес і прийняти щось нестандартне, щоб вона могла ефективно дістатися до справжніх винних або розкрити складну справу, яка має широку мережу. Це призвело до створення нового підрозділу в поліції.

У Пудучеррі, Індія, Спеціальна оперативна група (STF) – це підрозділ державної поліції, який займається завданнями, які не під силу звичайній кримінальній поліції. Він є спеціалізованим підрозділом, який має юрисдикцію по всьому штату і часто використовує бажані засоби для розкриття злочинів. Отже, найжахливіші злочини, які часто за участю витончених банд, розглядаються STF. Таким чином, STF став саме тим типом підрозділу, який необхідний для перевірки злочинів і розв'язання складних справ з максимальною відданістю та наполегливістю.

***Ключові слова:*** *боротьба зі злочинністю, спеціальна група, концепція STF, поліція Пудучеррі, офіцери STF, ефективність.*

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# PROBLEMS OF THE USE OF SPECIAL MEASURES DURING ADMINISTRATIVE DETENTION

**Abstract.** The administrative and legal support for the use of special means during administrative detention is considered, the existing problems are singled out and the ways of their solution are outlined. On the other hand, a large number of countries resort to administrative detention of illegal migrants due to violations of immigration laws and regulations, including stay after the expiration of the permit, lack of identity card, documents, use of other people's travel documents, not leaving the country after expiration of the established term, etc. The purpose of administrative detention is to guarantee the possibility of another measure, such as deportation or expulsion. Sometimes administrative detention is also allowed for reasons of public safety and public order, in particular. The purpose of this article is to examine in detail the legal framework with which the imprisonment of migrants must comply, in particular with regard to the fundamental principle of international law that no one shall be subjected to arbitrary detention. International human rights norms, principles and standards define the content of this principle. Such norms, principles and standards apply to all persons, including migrants and asylum seekers, as well as to criminal and administrative proceedings.

***Keywords:*** *administrative detention, special means, means of restriction of mobility, protocol on administrative detention.*

**Relevance of the study.** The use of administrative detention is associated with the restriction of the individual's right to liberty, which requires that the police officers diligently comply with the legal provisions governing the use of this measure of restraint. Moreover, the use of administrative detention is often associated with the need to use special means, which requires police officers to have the appropriate level of legal and tactical and special training in order to respect, firstly, human rights and freedoms and, secondly, personal security measures. Unfortunately, today there are frequent cases of violations of the right to liberty by police officers during administrative detention and the use of special equipment. Therefore, the appropriate level of administrative and legal training of police officers depends on their respect for human rights and freedoms during the use of special means of administrative detention.

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**Recent publications review.** Problems of the use of special measures during administrative detention were investigated by such scientists, as: O. Bandurka, O. Skakun, S. Rubinstein, O. Lopaeva, O. Bohatyrova, A. Bohatyrov and others [1-9].

It should be noted that the basic principles of the use of restraints by the police, as well as procedural aspects and limitations on the intensity of use of restraints by the police, are set out in several international instruments, including:

– UN General Assembly Resolution 34/169 Code of Conduct for Law Enforcement Officials;

– Resolution No. 690 (1979) of the Parliamentary Assembly of the Council of Europe "Declaration on Policing";

– Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1990).

In accordance with international standards and the practice of the European Court of Human Rights, Article 29 of the Law of Ukraine "On the National Police" establishes that the reverse police action must be [1, 2]:

1. Lawful, i.e. specified in the laws.

2. Necessary, i.e.: 1) if another method cannot be used for executing the duties of the police; 2) if using another method would be ineffective; 3) if the method would cause the least possible harm to the recipient of the method as well as to other persons.

3. proportionate, that is, that the harm done to the rights and freedoms of persons or to the interests of the public or the state, preserved by law, does not outweigh the benefit for the protection of which it was applied, or the created threat of schooling.

4. Effective, i.e. as long as the application of the police action ensures the fulfillment of the police duties.

These core provisions of international documents are also reflected in national legislation.

According to Article 260 of the Code of Ukraine on Administrative Offences (hereinafter referred to as CAO), administrative detention is imposed in the cases directly stipulated by the laws of Ukraine for the purpose of:

– Suspension of administrative offences when other enforcement measures have been exhausted;

– Identification of a person;

– Drawing up a protocol on administrative offences if it is impossible to draw it up at the place where the offence was committed, if the drawing up of a protocol is compulsory;

– Ensuring an expeditious and correct examination of cases and execution of decisions on administrative offences.

**The article's objective** is to investigate problems of the use of special measures during administrative detention.

**Discussion.** Administrative detention shall be carried out by the National Police when a specific list of administrative offences defined in Article 262 of the Code of Administrative Offences has been committed. It should be noted that this list includes old names of offences (e.g. "domestic violence", although as of June 7, 2018 this offence is called "domestic violence"), as well as acts that are not offences today (e.g. "liquidated speculation"). In addition, this list includes the "image" of police officers, the essence of which is not defined in any legal act and therefore there is no liability for such actions, although the relevant drafts have been developed. Such legislative deficiencies may lead to incomprehension when administrative detention by the police is applied and should be urgently eliminated.

In addition, there are other problematic issues related to the use of administrative detention by police officers. Article 261 of the Code of Administrative Offences is not always complied with; it requires that every administrative detention of an individual be reported to a free secondary legal aid centre, except in cases where the individual defends himself or requests a protection officer. There are various reasons for this situation, starting with a lack of appropriate knowledge of the existence of such a requirement, procedure and numbers, The lack of proper procedural formalization of administrative detention, i.e. the failure to compile a protocol on administrative detention, ended in the absence of such a protocol. It is worth mentioning another problematic issue. The terms of administrative detention as set out in Article 263 of the CAP, namely: administrative detention of a person who has committed an administrative offence may last for not more than three years, except for the cases of drug

trafficking or violation of the cordoned-off procedure – for up to three days, provided that the prosecutor is informed in writing within twenty-eight hours of the detention. The three-year time limit, taking into account that it starts from the moment of actual restriction of liberty of the detained person. As noted above, during administrative detention it may be necessary to use police means of restraint, in particular special devices. It is important that any use of police force, including the use of special devices, is used exclusively for the performance of police duties and must be suspended if:

1) the purpose of its use has been achieved;

2) it is obvious that the purpose of the action cannot be achieved;

3) there is no need for further implementation of such an approach.

Thus, the Law of Ukraine "On the National Police" stipulates that a police officer must immediately stop applying a certain type of coercive measure when the expected result is achieved. The procedure for applying police restraining measures is specified in Article 43 of the Law of Ukraine 'On the National Police'. Thus, the police officer is obliged to notify a person in advance about the use of special measures and give him enough time to comply with the lawful request of the police officer, except in the case of when the call might result in an endangerment to the life or health of the person or the police officer or other serious consequences, or in a situation where such an interruption is unreasonable or impracticable. The question arises about the criteria for "sufficiency of time", which are currently unspecified and therefore have the element of a subjective assessment, that is, an assessment concept, the use of which in legislation, in our view, is unacceptable, because it may lead to a significant violation of human rights and freedoms. The interruption can be made by voice, but from a considerable distance or by appealing to a large group of people – through sound equipment, amplifiers. Again, the criteria for "significant distance" are not legally defined, which should be regarded as a legal gap.

The type and intensity of coercive measures shall be determined taking into account the specific situation, the nature of the offence and the individual characteristics of the person who committed the offence. Such a fragmented formulation of the order of application of police measures of restraint in the legislation is understandable on the one hand, as it is not possible to provide for all possible situations in a legislative act. On the other hand, it needs to be detailed at the level of secondary legislation and to be properly developed in terms of the know-how to use the use of force during the training of police officers. It would be desirable for such training to take place during comprehensive practical exercises involving experts both in legal support for the use of special means during administrative detention and experts in tactical and specialized training [4-7]. Police officers should always remember their duty to provide emergency medical assistance to persons who have suffered as a result of the use of coercive measures. The procedure for the use of police restraint measures includes the identification of the list of persons to whom the use of force materiel is forbidden, except when they commit an armed or group attack, the use of riot police, which threatens the life and health of other persons or police officers, if it is not possible to repulse such an attack or attack by other means and equipment. This list includes: women with obvious signs of pregnancy; minors; and people with obvious signs of disability or old age. It should be noted that it is not always possible in practical conditions to clearly identify clear signs of maternity, old age, presence of disability, and even more the age of the person.

Thus, it is difficult to visually distinguish between a 13-year-old person who is under 14 years old and a 15-year-old person who is not such already. It is important to develop the appropriate skills of police officers during the training. And we must also pay attention to the incorrect title "person with obvious signs of disability", which contradicts the Law of Ukraine "On the principles of social protection of persons with disabilities in Ukraine" from 21. 03.03.1991, which replaces the term "person with disability" with the previously introduced term "invalidv, "person with limited capabilities" and so on [7-9].

**Conclusions.** Police officers may use exclusively the special devices referred to in Article 42 of the Ukrainian Law to fulfill their duties: 1) paper and plastic cribs; 2) contact and contact-distance electric shock devices; 3) arm restraints (handcuffs, communication nets, etc.); 4) devices containing reagents of lacrimal and draining action; 5) devices for baiting means of transport; 6) special marking and flanking devices; 7) service dogs and service horses; 8) devices, grenades and ammunition of light and sound power; 9) Acoustic and micro-village devices; 10) Devices, grenades, ammunition and small air-driven devices for the removal of obstacles and forced entry into premises; 11) devices for the discharging of

cartridges, which are filled with humic or comparable in their properties munitions; 12) devices filled with non-fatal disabling agents; 13) water cannons, armored vehicles and other special transport vehicles. The use of personal protective equipment (helmets, flak jackets and other special equipment) by police officers shall not be considered an option.

It is important that a policeman is obliged to notify his superior in writing about the use of a special device. In the event that a policeman injures or injures a person as a result of using a special device, the commanding officer of such a policeman is obliged to notify the prosecutor concerned without delay. It is noteworthy that there is no definition of a specific time limit for the implementation of this requirement, as the term "ineffectively" is often used as an evaluation term, although it is interpreted in court decisions as "the moment at which there is a real possibility of the implementation of the given obligation". General rules for the use of each of the special means are laid down in Article 43 of the Law of Ukraine "On the National Police". It should be noted that most often of all special means of restraint are used for administrative detention, as well as humus and plastic cages.

It is noteworthy that there is no specific list of barriers. In particular, in par. 3 part. Article 42 (4) of the Law of Ukraine "On National Police" stipulates that the means of restraint include handcuffs, communication nets, etc., i.e. the list is not exhaustive This leads to the use by police officers of such devices as hand-held tools, such as belts and ties. This situation requires a thorough analysis, research of foreign experience on this subject, international and European standards. We strongly believe that it is absolutely necessary to establish an exclusive list of vehicles that can be used at the level of handcuffs at the regulatory level.

Furthermore, it should be noted that if there are certain restrictions on the use of handcuffs, e.g. a policeman is not allowed to use handcuffs for more than 2 years without interruption or without easing their pressure, other means of restraint are not subject to such rules. In this context, the regulation and fixation of the fact of the relaxation of the handcuffs' pressure is also noteworthy. This issue also lacks clear legal regulation, which may lead to harassment of police officers and as a consequence cause harm to the health of detained persons.

Par. Under Part 8 of Article. Article 45 of the Law of Ukraine "On National Police" stipulates that the rules of storage, carrying and use of special equipment available in the uniformed services of the police shall be determined by regulations of the Ministry of Internal Affairs of Ukraine, However, at present there is no official act detailing the provisions of the Law of Ukraine "On the National Police" on the procedure and rules for the use of special equipment. However, this need is urgent and requires a valued approach to the development and implementation of a separate regulation of the Ministry of Internal Affairs of Ukraine on the specified issues. As we can see, there is a set of problematic issues in the use of administrative detention by police officers in general and special equipment during its implementation in particular. Therefore, it is necessary to combine the efforts of researchers and practitioners to solve them, Continue searching for effective forms of training police officers on the use of special equipment during administrative detention, taking into account international experience and European standards.

*Conflict of Interest and other Ethics Statements*

The authors declare no conflict of interest.

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**Віталій ПОКАЙЧУК, Євген ГІДЕНКО, Кіра ЩЕРБИНА**
**ПРОБЛЕМИ ВИКОРИСТАННЯ СПЕЦЗАХОДІВ**
**ПІД ЧАС АДМІНІСТРАТИВНОГО АРЕШТУ**

**Анотація.** Розглянуто адміністративно-правове забезпечення застосування спеціальних засобів при адміністративному затриманні, виокремлено наявні проблеми та окреслено шляхи їх вирішення. З іншого боку, велика кількість країн вдається до адміністративного затримання нелегальних мігрантів у зв'язку з порушеннями імміграційного законодавства та правил, у тому числі перебування після закінчення терміну дії дозволу, відсутність посвідчення особи, документи, використання чужих проїзних документів, невиїзд за межі країни після закінчення встановленого терміну тощо. Метою адміністративного затримання є гарантувати можливість застосування іншого заходу, такого як депортація чи видворення. Іноді адміністративне затримання допускається також з мотивів громадської безпеки та громадського порядку, зокрема.

Метою цієї статті є детально розглянути правову базу, з якою має відповідати позбавлення волі мігрантів, зокрема, що стосується фундаментального принципу міжнародного права, що ніхто не повинен бути підданий свавільному затриманню. Міжнародні норми, принципи та стандарти прав людини визначають зміст цього принципу. Такі норми, принципи та стандарти застосовуються до всіх осіб, включаючи мігрантів та шукачів притулку, а також до кримінальних та адміністративних процесів.

***Ключові слова:*** *адміністративне затримання, спеціальні засоби, засоби обмеження рухомості, протокол про адміністративне затримання.*

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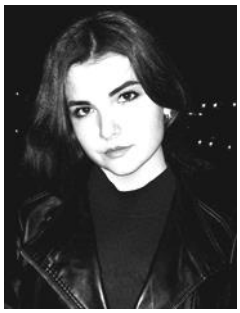

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**SOME ISSUES OF IMPROVING THE METHODS OF TEACHING SPECIAL PHYSICAL TRAINING IN THE ASPECT OF REFORMING THE LAW ENFORCEMENT SYSTEM IN UKRAINE**

**Abstract.** The article attempts to discuss the problems of reforming the law enforcement system of Ukraine as a prerequisite for professional training of future police officers. The relevance of interactive methods of teaching the discipline "Special Physical Training". Updating knowledge about practical policing in the training process. In the context of reforming the system of the Ministry of Internal Affairs of Ukraine, great importance is attached to various aspects of training future police officers. As an organizational and legal, socio-economic and regulatory framework for regulating the police training system. Scientists do not overlook such issues as the problems of professional training of future police

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officers. Today there are quite high requirements for the training of future employees of the National Police. The purpose of this article is: to explore methods for improving special physical training, taking into account the reform of the law enforcement system in Ukraine**.**

***Keywords:*** *reform, law enforcement system, professional training, interactive methods, search, special physical training.*

**Relevance of the study.** In the context of reforming the system of the Ministry of Internal Affairs of Ukraine, great importance is attached to various aspects of training future police officers. As an organizational and legal, socio-economic and regulatory framework for regulating the police training system. Scientists do not overlook such issues as the problems of professional training of future police officers. Today there are quite high requirements for the training of future employees of the National Police.

**Recent publications review.** In the scientific activity of the civil process, problematic issues and gaps in the field of physical training of police officers are effectively investigated. The theoretical basis of this study were – educational literature and scientific works: O. Koristina, O. Pometun, A. Pirozhenko, others [1-8].

**The article's objective** is to explore methods for improving special physical training, taking into account the reform of the law enforcement system in Ukraine.

**Discussion.** In recent years, the issue of training future police officers has been repeatedly discussed. And first of all, do they need a bachelor's degree or is it enough to get initial training for a few months. Regardless of the term of training of future police officers, one of the priority areas of training of future police officers is the formation of professional skills. In contrast to the first group of patrolmen, who underwent initial training for 2.5-3 months, admitted that this period was too short. So far, the process of initial training of a patrol officer lasts about 6 months. As a result, given the contribution of the Free Economic Zone with specific training conditions of the Ministry of Internal Affairs of Ukraine in the training of patrols, given the shortage of police units that arose after certification, the attitude to higher education institutions with specific training conditions of the national education system. Ukraine is owned by the national law enforcement system on the basis of legal education curricula and a bachelor's degree and is not a disadvantage [1].

And it's hard to disagree with that. Thus, taking into account the shortcomings of professional training of police officers gave grounds to argue that the educational process in higher education institutions with specific training conditions of the Ministry of Internal Affairs needs to change. In November 2016, the Concept of Educational Reform was approved by the order of the Ministry of Internal Affairs of Ukraine № 1252 by the order of the Ministry of Internal Affairs of Ukraine № 1252. The purpose of this Concept is to create a scientifically sound methodological basis for innovative development of the Ministry of Internal Affairs, to improve the educational process, to ensure close connection between science and practice, to modernize the training of skilled workers with deep theoretical knowledge and practical skills. This, in turn, should enable police officers to fulfill their responsibilities for the protection of public safety and order, the fight against crime and respect for the rights, freedoms and interests of citizens [2].

Training in higher education institutions with special training conditions of the Ministry of Internal Affairs will be carried out according to the curricula of junior bachelors, which provides for a period of study – 1.5 years (minimum program size – 90 credits), candidates for higher education. education "bachelor". "provides a training period of 3-4 years (minimum program size – 180 credits) and a master's degree training period – 1-1.5 years (minimum program volume – 60-90 credits), as well as training of scientific and pedagogical workers scientific degrees of Doctor of Philosophy and Doctor of Science with the appointment of scientific and scientific-pedagogical employees of the Ministry of Internal Affairs.

At the same time, reforms in the police training system require changes in the approaches and standards of the educational process in higher education institutions with specific training conditions, in particular in special physical training. New standards of departmental education require emphasis on conducting classes using interactive teaching methods. Today, interactive teaching methods are the most effective and suitable for the introduction of knowledge and skills of research and teaching staff in the educational process in higher education institutions with specific training conditions of the Ministry of Internal Affairs. Their application in the educational process in the discipline of "Special physical training" embodies an effective combination of practical skills. The advantage of using

interactive teaching methods in the learning process is that they are based on the active interaction of participants in the practical lesson. The main attention in the implementation of the methodology is paid to the interaction of all applicants for higher education with each other. This approach allows you to interest and activate the maximum number of participants in the educational process. Also, one of the advantages is that more time allows you to keep your attention during the learning process. Also, interactive teaching methods allow you to turn from uninteresting and passive learning activities into a dynamic and lively practice of performing situational tasks. This technique allows not only to ensure the interaction of cadets with the teacher, but also to actively cooperate within the group, i.e. between the participants of the situational task. The main feature of interactive learning is the dialogue between the mentor and the listener [3; 4].

One form of interactive teaching method is search. In essence, this is a competition based on the consistent performance of teams or individual participants of pre-prepared tasks. During the game, teams solve logical problems, search the area, build optimal routes, look for appropriate solutions and advice. Only after solving the next task the team (participant) has the opportunity to move on to the next.

The police search helps to model different practical situations and create conditions for integrated use, improve general and professional qualities, increase the level of competence and encourage coordinated teamwork. The introduction of police quests also contributes to the practical component of higher education, the acquisition of skills to adapt to standard and non-standard tasks, the disclosure of their creative thinking and approach, which are prerequisites for successful practice. The effectiveness of the use of such pedagogical technologies is also based on the application of an individual approach to the formation of professional competencies of the future employee of the National Police of Ukraine.

The urgency of today is to conduct practical classes in the form of police search in higher educational institutions of the Ministry of Internal Affairs, which is an effective tool for consolidating theoretical knowledge and developing practical skills needed for cadets further professional activity [5].

One of the important areas of training future police officers is the acquisition of practical skills in the use of police coercive measures [6]. Special physical training as a discipline is multicomponent and requires constant improvement of teaching methods. To date, although high school graduates are selected to determine their level of physical fitness, this figure is generally not improving every year. Therefore, when teaching the discipline "Special Physical Training" attention should be paid to improving the level of physical fitness of higher education institutions. Therefore, in our opinion, the proportional use of different methods is part of the educational process of special physical training.

Also, one of the new approaches to the introduction of the practical component in the educational processes of higher education institutions is that every research and teaching staff with a special title must serve in the territorial police. Thus, in accordance with the order of the Ministry of Internal Affairs of Ukraine dated 01.12.2017 № 981 "For the practical component in the training of specialists for the National Police of Ukraine" researchers and teachers with special ranks are in professional positions in territorial police departments. This allows you to update practical skills and knowledge during the service. During the work in the position, knowledge is updated for the practical activities of the police in the main areas of work [7].

The use of acquired practical experience in order to improve the quality of practical training of higher education institutions (police) is considered appropriate for the implementation of the following points:

– when compiling work programs for special physical training, it is proposed to take into account the specifics of training of future graduates.

– then, studying these disciplines, to focus on working out technical actions in a pair with the partner, questions of tactics of covering of the partner, etc.

– therefore, the emphasis should be on the acquisition of skills of individual action, assessment of the situation, use of improvised means, etc.

– conducting special physical training classes with the maximum proximity to real non-standard events, cases that may occur directly during the performance of police duties, namely: practical classes in the form of police investigation, taking into account the psychological stability of higher education.

– to pay more time and attention to conducting special outdoor physical education classes in order to model the behavior of future police officers in conditions as close as

possible to real events.

– to dwell in more detail on the study and practice of the technique of striking and protection against shocks of varying complexity.

– to practice the use of methods of keeping indoors

– pay special attention to the correct construction of the behavior of police officers when communicating with suspects indoors and on the street.

– in addition to paying attention to the actions of police officers regarding threats to offenders by improvised means, namely: protection from being hit with a stick, kitchen tools, stone, brick.

– to motivate cadets to work more actively to improve their own level of physical fitness, to cultivate a love of physical culture and sports, because in the future it will allow them to withstand mental and physical stress without reducing the effectiveness of professional activities, as well as master physical activity skills

– given that public order usually involves personnel from all units (especially young people), it is necessary to focus on the development of skills to perform such duties (especially communication skills, patrol tactics during mass events, choosing a continuum of force if necessary), detention the offender with a large crowd, etc.) [8, 9].

**Conclusions**. Based on the fact that the study of techniques, acquaintance with tactical actions and acquisition of practical skills of their application is carried out at the basic level during training in higher education institutions with specific training conditions of the Ministry of Internal Affairs, these proposals can be implemented only with sufficient hours, at least 4 hours . per week in such a discipline as special physical training.

*Conflict of Interest and other Ethics Statements*

The authors declare no conflict of interest.

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**ДЕЯКІ ПИТАННЯ УДОСКОНАЛЕННЯ МЕТОДИКИ НАВЧАННЯ СПЕЦІАЛЬНОЇ ФІЗИЧНОЇ ПІДГОТОВКИ В АСПЕКТІ РЕФОРМУВАННЯ ПРАВООХОРОНОЇ СИСТЕМИ В УКРАЇНІ**

**Анотація.** У статті здійснено спробу обговорення проблем реформування правоохоронної системи України як передумови професійної підготовки майбутніх поліцейських. Актуальність інтерактивної методики викладання дисципліни «Спеціальна фізична підготовка». Актуалізація знань про практичну поліцейську діяльність у процесі навчання.

Метою даної статті є дослідження методів, щодо вдосконалення спеціальної фізичної підготовки, враховуючи реформування правоохоронної системи в Україні. У контексті реформування системи МВС України велике значення надається різним аспектам підготовки майбутніх поліцейських. Як організаційно-правова, соціально-економічна та нормативна база регулювання системи підготовки поліцейських. Не оминають науковці й такі питання, як проблеми професійної підготовки майбутніх поліцейських. Сьогодні є досить високі вимоги до підготовки майбутніх працівників Національної поліції.

***Ключові слова:*** *реформа, правоохоронна система, професійне навчання, інтерактивні методи, пошук, спеціальна фізична підготовка.*

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# TACTICAL TRAINING OF POLICE STAFF FOR ACTION IN EXTREME SITUATIONS: PROBLEMS AND WAYS OF IMPROVEMENT

**Abstract.** Every year the problems of professional training of police officers are paid more and more attention by the leadership of the Ministry of Internal Affairs of Ukraine. Therefore, this article considers the features of tactical preparation for action in extreme situations of existing police officers, as well as future police officers who train higher education institutions with specific training conditions. Existing problems are highlighted and ways to improve them are identified. The article analyzes the errors and problems of this issue, and suggests ways to solve them.

***Keywords:*** *extreme situation, operational situation, tactical training, psychological training, modeling of stressful situations.*

**Relevance of the study.** Police officers are often exposed to risks to their lives in the performance of their duties. Therefore, they must know how to act properly in appropriate situations in order to avoid fatal consequences.

**Recent publications review.** Actual problems of tactical training of police staff for action in extreme situations were investigated by such scientists, as: S. Banakh, V. Bulachek, I. Vynyarchuk , Yu. Yosypiv, T. Shevchenko, I. Vlasenko, O. Mysliva, O. Nykyforova, Iu. Kuntsevych and others [1-7].

**The article's objective** is to establish the appropriateness of the actions of police officers when performing tasks in extreme situations.

**Discussion.** The task of building Ukraine as a democratic state governed by the rule of law, its entry into European and Euro-Atlantic structures requires a comprehensive solution to optimize the composition and size of the National Police, improve its activities, including staffing and training. It is therefore natural that law enforcement agencies in different countries are interested in a professional intergovernmental partnership to most effectively join forces in the fight against common disasters – organized crime, corruption, drug trafficking, illegal migration, human trafficking, cybercrime and other extreme crimes.

On-the-job training is a system of measures aimed at consolidating and updating the necessary knowledge, skills and abilities of a police officer, taking into account the specifics and profile of his / her official activity. One of the main tasks of professional training is to increase the level of knowledge, skills, abilities and professional qualities of police officers in order to ensure their ability to perform tasks of protection of human rights and freedoms, combating crime, maintaining public order and security.

The regulatory framework of the Ministry of Internal Affairs of Ukraine in the field of service and initial training pays sufficient attention to improving the level of knowledge, skills and abilities of law enforcement officers. But insufficient attention is paid to the list and ways to improve the professional qualities of police officers. At the same time, professional qualities

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are basic in the process of acquiring knowledge, skills and abilities.

Every day, in the course of their professional activities, police officers are regularly confronted with extreme situations, such as the possible acquisition of firearms, riots, armed attacks, the detention of armed criminals, etc. Having such conditions, first of all, it is necessary, firstly, to assess the situation, and secondly, to establish a consistent algorithm of actions during which the maximum positive result will be achieved with minimal negative consequences, both for the police officer and for others.

The ability to correctly apply the knowledge, skills and abilities acquired during training for a police officer is necessary to perform tasks in a variety of practical and tactical situations. From this we can conclude that every police officer needs to develop and improve tactical literacy to act in extreme situations. In general, tactical training of police officers in our understanding is a continuous learning process aimed at improving professional knowledge, skills and abilities necessary to determine the nature of behavior and tactical actions in difficult situations of police work. Tactical special training is the most important component of police professionalism and becomes very important during emergencies [6, p. 356-360].

Speaking of extreme situations that sometimes arise, it should be noted that in order to successfully perform the tasks assigned to police officers in a difficult and stressful situation, law enforcement officers must act according to the established algorithm. Knowledge and proper application of such algorithms in practice is an integral part of the training of highly qualified workers.

An important role in the training of police officers in tactical and special training for action in extreme situations is played by higher education institutions with specific training conditions of the Ministry of Internal Affairs, which train future police officers. During classes on tactical-special, physical and fire training, cadets develop professionally important knowledge, skills and abilities that allow them to legally and reasonably perform their duties in extreme conditions [5, p. 135-139].

After analyzing the training process and the peculiarities of the service activities of police officers, it is necessary to identify a number of significant problems. There is a barrier between the formation of tactical skills and abilities with the peculiarities of their practical implementation in extreme conditions. Usually, when the usual conditions are complicated when there is a threat to the personal safety of the police officer and the surrounding citizens, the learned tactics are ineffective, because the sequence of actions is not established correctly. Why is this happening? During the training of a highly qualified specialist, a lot of attention is paid to practice actions in various situations during the service. But when there is danger, he must be ready to perform appropriate (response) actions that would ensure the personal safety and security of others. But, unfortunately, this is not always the case. In our opinion, the problem lies in the fact that more often the tactical training of police officers is replaced by a description and practice of technical actions. However, the complexity of tactical training lies in the fact that it can not be reduced to a description of methods and procedures of technical actions by building certain rules and patterns [1].

Most likely, such training should be manifested in the implementation of established algorithms to achieve the goal in terms of constant illegal behavior of the offender and different circumstances. Improvements to these actions are typical, but at the same time they must have their own uniqueness and originality.

However, it should be noted that working out tactical actions of police officers in extreme situations it is simply impossible to guarantee the corresponding result. He may be affected by the current situation, the offender's behavior, as well as personal preparedness. These factors, unfortunately, are not fully taken into account by police officers, both in training and in real situations in practice. The environment in an extreme situation, time, place of action, the presence of obstacles, weather conditions, etc. very rarely taken into account, let alone used by police officers in tactical actions to achieve their goals. Also, it should be noted that police officers are not always ready for various reactions of the offender to their actions. For example, if during an attempt to detain police officers encounter at least a little support from the offender, very often in their technical actions there is confusion and uncertainty, which complicates the situation. This can be seen as a consequence of the fact that in practical classes, technical actions are improved by the police without resistance and complicating tactical conditions. Such training can be aimed only at simulating actions in complex non-standard situations. To solve this problem, it is necessary to make adjustments to the process of tactical training in higher education institutions with specific training conditions in the system

of the Ministry of Internal Affairs, which train future police officers and study courses of tactical, fire and special training. Cadets need to learn to properly assess the situation, as well as use the mistakes of the offender and reasonably disguise their intentions to take appropriate action to achieve the goal. Tactical training of future police officers should be based on an in-depth study of theoretical issues, the development of operational thinking, the development of skills to identify possible changes in the nature of the offender's actions [2, p. 193-194].

Based on the experience of training police officers for tactical actions in extreme conditions, it should be noted the importance of modeling situations of operational and service activities. When working in a difficult situation, the police officer must use the usual algorithm of action. These skills are acquired through the systematic improvement of technical actions and stable operational thinking in the framework of modeling situations. In the process of training, the police officer must acquire the skills of technical actions specific to a particular extreme situation. Practice of actions during modeling of an operational situation minimizes a possibility of negative consequences and forms careful, and also safe behavior of the police officer [3].

Thus, attention should be paid to the use in the educational process of tactical training not only a wide range of special equipment (imports of explosive devices, airsoft equipment, weapons using blank ammunition, etc.), but also the realism of the simulated situation. As a solution to this problem, we are offered the introduction of special isolated rooms for the implementation of introductory tasks of various professional orientations.

The high level of crime, the presence of a significant amount of illegal firearms coming from the eastern regions of Ukraine, where hostilities continue, lead to a constant likelihood of situations dangerous to the life and health of police officers. Such conditions of professional activity require from employees a high level of tactical training, which is considered to be one of the main components of professional readiness for effective performance of official activities. Scientists are convinced that in the process of tactical training, police officers should be trained to determine the result that is planned to be obtained during motor activities, and design a motor task, develop skills, make effective decisions on how to perform a certain motor action, the moment of motor action, its completion, if necessary, this is due to insufficient modeling in the classroom of practical situations that would be based on real events and involve the use (use) of students (employees) of firearms, as well as the lack of specially designed situational tasks aimed at more effective knowledge acquisition and the formation of the necessary motor skills and abilities [4, p. 251-253].

Also, it should be noted that teachers who train cadets in higher education institutions with specific learning conditions in the system of the Ministry of Internal Affairs, during practical classes should create a learning environment that causes cadets a psychological state similar to that which occurs in practice. The more often the future police officer experiences this state during training, the more he will be confident in his abilities and will gain psychological resilience in an extreme situation.

**Conclusions.** Thus, in the activities of the National Police there is a problem of practical application of the acquired skills and abilities in extreme situations, as police officers are not always ready to change the usual situation and increase emotional stress. Therefore, higher education institutions with specific training conditions in the Ministry of Internal Affairs, which train future police officers, need to increase the effectiveness of tactical training of future employees, as well as practitioners who improve their skills in practical classes using the method of modeling extreme situations with psychological training. The result of such activities will positively affect the state of professional training of police officers.

*Conflict of Interest and other Ethics Statements*

The authors declare no conflict of interest.

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**ТАКТИЧНА ПІДГОТОВКА СПІВРОБІТНИКІВ ПОЛІЦІЇ ДО ДІЙ В ЕКСТРЕМАЛЬНИХ СИТУАЦІЯХ: ПРОБЛЕМИ ТА ШЛЯХИ УДОСКОНАЛЕННЯ**

**Анотація.** Хотілося б зазначити, що за умов погіршення криміногенної обстановки, службово-бойових відряджень, ненормованого робочого дня, збільшенням «силових контактів» із кримінальним світом можна говорити про збільшення ризикованих ситуацій у діяльності співробітників поліції. Говорячи про ризик, необхідно розуміти, що співробітникам поліції висуваються підвищені вимоги, що у свою чергу передбачає вдосконалення професійно значущих особистісних якостей. Відволікаючі чинники та ризик для життя і здоров'я можуть знизити ефективність виконання поставлених перед поліцейським задач або повністю припинити їх виконання. У 2017 було травмовано 1443 особи особового складу Національної поліції України та Національної гвардії. Також було багато випадків групового травмування правоохоронців. Зниження боєздатності та готовності до виконання поставлених задач, підвищення рівня травматизму серед особового складу Національної поліції України передбачають впровадження та забезпечення комплексу заходів. Серед яких підвищення рівня професійної підготовки. Кожного року проблемам професійної підготовки співробітників поліції приділяється все більше уваги з боку керівництва Міністерства внутрішніх справ України. Тому, на нашу думку, у даній статті буде доречно розглянути особливості тактичної підготовки до дій в екстремальних ситуаціях вже діючих співробітників поліції, а також майбутніх поліцейських, які готують вищі навчальні заклади зі специфічними умовами навчання. Висвітлюються існуючі проблеми та визначаються шляхи їх удосконалення. У статті проаналізовані та висвітлені помилки, а також проблеми даного питання та запропоновано шляхи вирішення та удосконалення системи службової підготовки майбутніх працівників.

***Ключові слова:*** *екстремальна ситуація, оперативна обстановка, тактична підготовка, психологічна підготовка, моделювання стресових ситуацій.*

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# METHOD OF SITUATIONAL MODELING IN TACTICAL AND SPECIAL TRAINING OF THE POLICE

**Abstract.** Tactical special training is part of the general professional training of law enforcement officers. The purpose of studying this discipline is to obtain special knowledge by students, the formation of skills and abilities that allow them to solve operational and service and combat tasks in emergencies. Achieving this goal involves the practical study of tactical methods and techniques, using knowledge of various legal disciplines, the use of weapons, physical force, combat and special equipment, communications and special means, studying psychological techniques to overcome fear and other obstacles caused by extreme situation. As for the method of situational modeling, it can be defined as the closest to reality reproduction of an extreme situation that occurs in peacetime or wartime, in order to study and develop algorithms of actions that must be performed to solve operational and service-combat tasks. It should be noted that during the service law enforcement officers may encounter situations that have specific features, for this purpose this method uses a variety of innovative technologies, special equipment that allows students to find themselves in an environment as close as possible to the real and correctly build their algorithm. action. The preparation of employees of the national police units to act in a stressful situation that arises during the performance of operational and service tasks, requires the development of the appropriate skills and abilities in the classroom and training. The application of this method in classes on tactical and special training significantly increases the efficiency of the educational process and practice of actions in an extreme situation; this method requires special training for training. This article highlights the basic principles of the method of situational modeling, its effectiveness and relevance.

***Keywords***: *tactical-special training, method of situational modeling, psychological aspects of police service, tactical training of police officers.*

**Relevance of the study.** Based on the specifics of the subject - the theory and practice of preparation and implementation of combat operations by national police units in extreme situations involves solving the following tasks: «tasks in extreme situations; development of a systematic approach to decision-making and calculation of the time needed to perform tasks in any conditions; mastering by employees of theoretical knowledge and practical skills in the organization and management of actions of elements of a military order in special operation; instilling in staff skills of staff culture in the design of the work card (plan) and other management documents and work with them» [4, p. 5-6]. To solve such complex problems, teachers of the Department of Tactical Special Training should use the experience of national police units in the field, traditional methods and tools, as well as innovative techniques that allow the most effective training in extreme situations, such as situational modeling. From this we can conclude that teachers of experience in the relevant departments have a special value [4, p. 5-6]. As a result of active application of the method of situational modeling, including in classes in educational institutions with specific learning conditions, "the class of situational systems has significantly expanded and terminology has changed". However, this generally productive process also has a negative component. For example, concepts such as "situational task" and "situational modeling" are interpreted ambiguously, which causes


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difficulties in their understanding, even for professionals.

**Recent publications review.** Based on the fact that the subject of tactical special training is one of the fundamental disciplines that the future police officer masters in the educational process, he should be given great attention and ensure the acquisition of the appropriate level of knowledge. To achieve this goal, it is necessary to actively use innovative technologies and to reproduce as much as possible the situations that a police officer may encounter while on duty, the method of situational modeling is one of the best methods to perform the tasks. research and improvement of this method were engaged in such scientists as: V. Chmelyuk, B. Grishchuk, C. Badiora, S. Antonenko, O. Törlo, A. Vasiliev, V. Krivolapchuk, V. Bondarenko, Y. Yosypiv, S. Banach, M. Kurlyak, M. Moskovchuk, M. Morgun and others [1-8].

**The article's objective** is to consider the effectiveness of the method of situational modeling in the tactical and special training of students, to investigate how this method contributes to the assimilation of the studied educational material, the development of acquired knowledge in practice.

**Discussion.** It is obvious that the effective use of the method of analysis in the educational process requires clear and unambiguous definitions of the basic concepts that characterize the technology of situational modeling, including those mentioned above. The situation should be understood as an assessment (analysis, generalization) of a set of characteristics of objects and relationships between them, consisting of permanent and causal relationships that depend on the events that took place. Situational modeling is a generalized description (reflection) of the system by reproducing the situation under study [1, p. 18-20].

The use of this method in classes on tactical special training involves: first, inclusion and full immersion in the reproducible situation; secondly, involvement in the decision-making process related to the exercise of certain powers. Thus the modeling subsystem provides consideration of various variants of the basic situation, studying of features of actions at them, and also consequences of acceptance of these or those decisions. As our own experience shows, conducting a training session on tactical special training using the method of situational modeling is complicated by the need for the teacher to form a database, software and hardware that are necessary to create a simulation environment and its support. The database should include information formats of different formats that provide static and dynamic modes of operation. It is information, communication and audiovisual technologies that are the foundation for building the structure of a new educational environment, the organization of a new type of learning space [6, p. 191].

Thus, according to the teachers of the department of tactical special training, one of the effective ways of learning is the restructuring of the educational space in the classroom (modular reforming). This is done to reproduce the situation in accordance with a particular scenario. Note that the use of modular reforming of educational space is not associated with special material costs, but, of course, requires advance preparation of module tools, including portable templates, panels, other items, hardware, including from the arsenal of national police, allowing to simulate various aspects of a situation with specific conditions of service. In addition, this method helps to form skills of working with modern information, communication and audiovisual technologies [7, p. 154]. It should be noted that the preparation of national police officers to act in a stressful situation that occurs during the performance of operational and service tasks, requires the development of automatic appropriate skills and abilities in classes and training [5, p. 10].

As an example, consider classes on checking documents proving the identity of citizens. When simulating a situation in which the patrol service checks documents in a certain public place, the teacher pays attention to the organizational and legal basis of police officers, relating to the placement of the uniform, which corresponds to the operational situation, the general rules of communication with citizens. (keeping distance from the citizen, polite behavior, ability to give short reasoned answers to questions, etc.) [2, p. 34-35]. Depending on the observance of the above rules by the above rules, the situation with the citizen's behavior is further modeled, the situation is complicated by certain factors, such as being a citizen in a state of alcohol or drug intoxication. The teacher draws attention to the legitimacy of students' actions with an aggressive person, and they, in turn, assessing the degree of danger of his behavior, decide on the use of physical force and special means. The teacher, tracking the actions of the police, with the help of available simulation tools can reproduce a more difficult situation in which students have to check documents in groups of people or such as an armed

citizen, to help a person who suddenly began to feel bad [4, p. 7-10]. It should be noted that in such situations the skills of practical application of knowledge acquired within different disciplines are improved. After the students have worked out the dynamic situations planned in advance for consideration, related to the active response of students to the simulated circumstances, it is advisable to move on to the analytical part of the lesson (again using the method of situational modeling). It is a question of the organization of the corresponding actions that provides carrying out the analysis of the carried-out work.

To enhance the effect of presence, it is advisable to offer students to listen to real recordings of radio conversations of patrols, duty, imitation of special signals, etc., and after the start of modeling a special operation - negotiations of senior functional groups. During the lesson the teacher regulates the intensity of information flows and makes changes to the sequence of their translation. From the moment of receiving information about the emergence of an emergency (crisis) situation on the model of the terrain or board by applying tactical symbols, a geographic information system is created with the ability to study the territory at different levels: city, district, street, house [6, p. 191]. To ensure the visualization of the main idea, it is possible to use a package of standard graphics solutions with the function of quickly making changes to them. Then the students from the audience go to the training ground, where they implement the decisions. At the same time, the lesson takes the form of a business game: students are divided into two groups: criminals who carry out their criminal intent, and police squads, the purpose of which is to stop illegal actions, to conduct lawful detention. The teacher must prepare in advance the forms of regulations, guidelines and other background information that can be used by students to make decisions [3, p. 79-81].

**Conclusions**. To conclude the consideration of the use of the method of situational modeling in classes on tactical special training of national police officers, the following conclusions can be made: this method can be defined as the closest to reality reproduction of an extreme situation that occurs in peacetime or wartime, in order to study with students the algorithms of actions, the implementation of which provides solutions to operational and service and service-combat tasks facing the national police; application of the specified method at classes on tactical and special preparation essentially increases efficiency of training of militiamen to actions in the conditions of an extreme situation; this method requires special training for training, in particular: the use of pre-prepared module-tools (portable templates, panels, other items, hardware, including from the arsenal of national police), which allows you to simulate certain aspects of the extreme situation, ensuring the maximum rapid change of the situation, which reproduces an extreme situation, which creates a surprise effect for students and promotes better mastery of new methods of action, the use of audiovisual tools to bring the simulated situation as close as possible to real, accounting for knowledge of various disciplines; working out for each model of individual and most optimal algorithms of actions, ensuring the safety of students during the lesson.

*Conflict of Interest and other Ethics Statements*

The author declares no conflict of interest.

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**МЕТОД СИТУАЦІЙНОГО МОДЕЛЮВАННЯ**
**У ТАКТИКО-СПЕЦІАЛЬНІЙ ПІДГОТОВЦІ ПРАЦІВНИКІВ ПОЛІЦІЇ**

**Анотація.** Тактико-спеціальна підготовка є частиною загальної професійної підготовки співробітників органів внутрішніх справ. Метою вивчення даної дисципліни є отримання спеціальних знань здобувачами освіти, формування умінь і навичок, що дозволяють їм вирішувати оперативно-службові та службово-бойові завдання в надзвичайних ситуаціях. Досягнення цієї мети передбачає практичне вивчення тактичних способів та прийомів, для цього використовуються знання різних правових дисциплін, особливостей застосування зброї, фізичної сили, бойової та спеціальної техніки, засобів зв'язку та спеціальних засобів, вивчаються психологічні прийоми подолання почуття страху та інших перешкод, зумовлених екстремальною ситуацією.

Що стосується методу ситуаційного моделювання, то його можна визначити як максимально наближене до реальності відтворення тієї чи іншої екстремальної ситуації, що виникає у мирний або воєнний час, з метою вивчення та напрацювання алгоритмів дій, які необхідно виконувати для вирішення оперативно-службових та службово-бойових завдань. Слід зауважити, що під час несення служби правоохоронці можуть зіштовхнутися із ситуаціями, що мають специфічні особливості, саме для цього у даному методі застосовуються різноманітні інноваційні технології, спеціальний інвентар, що дає змогу здобувачам освіти опинитися у обстановці максимально наближеній до реальної та вірно побудувати алгоритм своїх дій. Підготовка співробітників підрозділів національної поліції до дій у стресовій ситуації, що виникає під час виконання оперативно-службових завдань, вимагає відпрацювання до автоматизму відповідних навичок та умінь на заняттях та тренуваннях. Застосування зазначеного методу на заняттях з тактико-спеціальної підготовки суттєво підвищує ефективність навчального процесу та відпрацювання дій в умовах екстремальної ситуації; зазначений метод вимагає особливої підготовки до проведення навчальних занять. Дана стаття висвітлює основні принципи методу ситуаційного моделювання, його дієвість та актуальність.

***Ключові слова:*** *тактико-спеціальна підготовка, метод ситуаційного моделювання, психологічні аспекти несення служби поліцейським, тактична підготовка працівників поліції.*

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**POLICE PRECAUTIONARY MEASURES – DISTINCTION OF THE CONCEPTS OF "READY", "USE", "APPLICATION", AND "ACTIVE APPLICATION" OF FIREARMS**

**Abstract.** The article of the Law of Ukraine "On the National Police" on the use of such coercive measures as firearms has been investigated. Gaps in legislation were analyzed and proposals were prepared to improve the norms and provisions of the law, to ensure the safety of police officers and not violate the rights of citizens. The aim of the article is to establish the specifics and clear interpretation of the concepts for greater study and improvement of the legal framework governing the use of firearms.

The use of firearms is the most severe coercive measure, which is why it is very important for

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police officers to comply with the law in order to prevent emergencies and impose liability on law enforcement officers. The positive fact is that the basic and necessary norms of at least coercion are set out in the current regulations, but there is a question about the accepted terminology and its understanding.

***Keywords:*** *National Police, bringing weapons to a state of readiness, the firearms use, the firearms application, the active firearms application*.

**Relevance of the study.** The stressed and non-standard life situations associated with criminal acts, which a police officer encounters every day, require immediate, clear and effective action, in conditions of severe time pressure, thereby greatly influencing the police officer's actions. The firearms application is a serious task that requires legal preparation to instantly assess the situation and make the right, and most importantly, legal decision to use or use firearms.

Currently, the ability to competently use and use firearms are factors, on the one hand, the observance of personal safety by a police officer, and on the other hand, the protection of the life, health and property of citizens from unlawful encroachments. One of the most important and responsible issues in the current legislation, which is guided by the National Police of Ukraine, is the delimitation of the concepts of "ready", "use", "application" and "active application" of firearms at the disposal of a police officer. In accordance with this, the question very often arises: "How to correctly interpret the norms of legal acts regulating the effectiveness of concepts in practice?" Let's try to find the answer to this question in the context of this scientific article.

**Recent publications review.** Certain aspects of the legal regulation of the use of firearms by police officers were investigated in the works of such scientists as: T. Minka, P. Andrushko, A. Bandurka, Yu.Baulin, V. Videnko, V. Novikov and V. Osadchy and others. However, these issues are still relevant today, since in practice there are still difficulties in their correct and regulated use.

**The article's objective** is to establish the specifics and understandable interpretation of concepts for more study and improvement of the legal framework governing the use of firearms.

The use of firearms is the most severe coercive measure, which is why it is very important to comply with the requirements of the law by police officers, in order to prevent the creation of emergency situations and impose responsibility on law enforcement officers. This updates the research in our scientific article.

**Discussion.** It is positive that the basic and necessary norms for this coercive measure are set out in the current regulatory legal acts, but the question arises about the adopted terminology and its understanding.

In legal acts, there are many terms that are closely related in meaning, but with a thorough acquaintance with their interpretation, we see that in fact, these concepts are delimited and have a clear meaning when applied in different situations. Let's consider and analyze each of the terms separately.

A police officer can pick up a firearm and alert it if he believes that in the current situation, there may be grounds for its application. During the arrest of persons in respect of whom the police officer has suspicions of committing a grave or especially grave crime, as well as when checking the documents of such persons, the police officer can alert a firearm and warn a person about the possibility of its application [1].

Bringing weapons to a state of readiness can be understood to mean that police officers, in order to comply with security measures, must keep them in good working order and safe in relation to themselves and those around them, load and unload weapons in accordance with the appropriate rules. According to some scientists, bringing firearms to a state of readiness includes several elements, these are:

1. Removing a firearm from a holster (special equipment, pouch) or detaching a pistol from a pistol strap;
2. Removing the safety catch from the "protection" position in cases related to shooting;
3. Inserting the cartridge into the chamber.

Not a single legislative or by-law act, regulation or instruction contained the concept of "bringing weapons to a state of readiness". What did the legislator, writing this definition in Art. 46 of the Law of Ukraine "On the National Police", mean [2]?

We believe that the process of bringing the firearm to a state of readiness begins from the moment the firearm is received at the duty unit, namely, the examination of the firearm,

ammunition, equipment, checking the absence of faults and defects, placing the magazine case in the base of the handle. Based on this, readiness is a certain state in which an instant, unhindered use of firearms for its functions is ensured, without time delays and the risk of malfunctions. We must not forget about such an action as "exposing weapons", which should be understood as – the impact on the behavior of persons without using the damaging factors of firearms in the form of causing them harm; removal of a firearm from a holster or other equipment and a visual demonstration of weapons and intentions to use the weapon, in the event that illegal actions do not stop without turning off the fuse and sending the cartridge into the chamber; other open or hidden actions with the weapon of officials in which it is legally located. Today, every fact of sending a cartridge into the chamber, and even more so the application or use of firearms, is carefully checked, while, in our opinion, there are many gaps in the legislation, and we believe that police officers are generally not protected by legislation in terms of the application and use of firearms. The legislation does not contain the concepts of "exposing firearms", "bringing firearms to a state of readiness", it is not spelled out what should be the actions of police officers, when placing a firearm in the protection position, after sending a cartridge into the chamber, in the case when the need to use or use a firearm has ceased exist [2].

The article on the firearm application (Article 46 of the Law of Ukraine "On the National Police") says that a police officer can use such an exceptional measure as firearms only in cases stipulated by law. Such cases are: with and without warning. Further in this article, exceptional cases of the use of firearms are spelled out, as well as cases when its use is allowed without warning. It is obvious that the legislator in this norm does not focus on the terms "application" and "active application". In our opinion, the use of the terms "application" and "active application" of firearms is uncoordinated. Based on the etymological meaning of the term "apply" – to use (to use something with benefit, to use something), to put into practice the application is active behavior. In other words, both phrases – "application of firearms" and "active application of firearms" carry an identical meaning. Therefore, it is unnecessary to focus on the active application of firearms [3].

Having introduced the concept of "active application" into the legislation, the legislator did not disclose its meaning at all, especially since they used a completely different phrase to replace it – "the application of firearms without warning". We can confidently say that firearms are actively used in non-standard situations associated with acute social and state danger.

In our opinion, the moment of removing the safety catch from the "protection" position and sending the cartridge into the chamber is the use of a firearm, and, accordingly, the moment the shot is fired is an active application of the firearm. Under Part 10 of Art. 46 of the Law of Ukraine "A police officer is obliged to inform his supervisor in writing about the use of firearms, as well as to immediately inform the supervisor about the active application of firearms, who, in turn, must inform the central police department and the relevant prosecutor" [1]. The policeman must inform his supervisor in writing, in the form of a report, about the use of firearms in the performance of official duties, namely, sending a cartridge into the chamber and immediately informing about the active application, namely the firing of a shot in order to receive further instructions and take control of the situation by senior officials.

Summing up the above, it would be advisable to use one more separate term "the application of weapons without warning" or "the application of weapons to kill". As we have already established, neither in legal acts, nor in scientific literature there is no unambiguous solution to the question of the content of some terms, this also applies to "use". Certain aspects of this problem were considered, but basically the authors limited themselves to their interpretation in specific normative legal acts. We believe that "use" is a set of actions carried out with firearms by authorized officials in the form of active application, in order to eliminate the conditions for creating dangerous situations, as well as for:

– alarm signaling;

– call for auxiliary forces;

– neutralization of an animal that threatens the life or health of a police officer and other persons [1].

In other words, "use" is associated with the defeat of other targets or a shot into the air, and in no case at people, also never will the object of use be human life and health. Let's consider Part 5 of Art. 46 of the Law of Ukraine "A police officer authorized to use firearms only after warning about the need to stop unlawful actions and the intention to use the coercive measure specified in this article". We see that the essence of the concepts under consideration

is not specifically delineated here, probably because, in order not to repeat the verb "apply" in one sentence, the legislator borrows a verb that has a completely different meaning in the law. The terms "use" and "apply" a firearm refer directly to the actions performed with that firearm. The immediate goal of the active use of firearms is the infliction of physical pressure on a person, destruction of a vehicle or technical means to suppress socially dangerous, harmful actions. Using firearms, government officials take useful and necessary actions to protect society or an individual. The intended use differs significantly from the use of firearms. The motives and conditions for the application or use of weapons are divided according to the degree of danger to society and the situation in it. As a result, at the legal level, there will be disagreements and controversial points in the correctness of their application in practice.

**Conclusions.** The analysis made it possible to conclude that the issue of using firearms today is very acute, because the life and peace of any member of society depends on it. Determining the relevance and completeness of the legal regulation of relations in the field of application of police coercive measures is a problematic aspect at the present time. Police officers should receive clear and understandable instructions through the current legislation regarding the circumstances and procedure for the use of firearms.

The interpretation of the basic concepts in our scientific work can be recommended for disclosing the terminology in the basic legal principles of the Law of Ukraine "On the National Police". We emphasize the need to revise the parts of the law regulating the use of firearms, to fully study and analyze them, to introduce necessary, fundamental changes to the provisions at the legislative level, to improve the practical activities of the National Police of Ukraine, to protect the life and health of citizens, to prevent harm to third parties and causing other uncontrollable consequences.

*Conflict of Interest and other Ethics Statements*
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**ПОПЕРЕДЖУВАЛЬНІ ЗАХОДИ ПОЛІЦІЇ – РОЗМЕЖУВАННЯ ПОНЯТЬ «ГОТОВИЙ», «ВИКОРИСТАННЯ», «ЗАСТОСУВАННЯ» ТА «АКТИВНЕ ЗАСТОСУВАННЯ» ВОГНЕПАЛЬНОЇ ЗБРОЇ**

**Анотація.** Досліджено статтю Закону України «Про Національну поліцію» щодо застосування такого примусового заходу, як вогнепальна зброя. Проаналізовано прогалини у законодавстві та підготовлено пропозиції щодо вдосконалення норм та положень закону, для забезпечення безпеки поліцейських та не порушення прав громадян. Метою статті є встановлення специфіки та зрозумілого трактування понять для більшого вивчення та вдосконалення правової основи, що регламентує застосування вогнепальної зброї.

Застосування вогнепальної зброї є найсуворішим примусовим заходом, через що дуже важливим є дотримання вимог законодавства працівниками поліції, з метою недопущення створення позаштатних ситуацій та накладання відповідальності на працівників правоохоронних органів. Позитивним є той факт, що основні та необхідні норми принаймні примусу викладені в чинних нормативно-правових актах, але виникає питання про прийняту термінологію та її розуміння.

***Ключові слова:*** *національна поліція, приведення зброї в готовність, використання вогнепальної зброї, застосування вогнепальної зброї, активне застосування вогнепальної зброї.*

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# FORMATION OF POLICE OFFICERS PRACTICAL SKILLS OF LAWFUL USE OF FIGHTING TECHNIQUES AT PHYSICAL TRAINING CLASSES

**Abstract.** The article considers the issues of training of police officers to skill to determine the nature of the conflict, the degree of resistance on the part of the offender and the substantiation of the legality of measures of physical influence. The formation of professional skills of legitimate use by the police of combat wrestling techniques when performing professional duties, shall take place in conditions as close as possible to real.

***Keywords:*** *fighting techniques fight, physical strength, legitimacy, confrontation.*

**Relevance of the study.** The operational and service activities of police officers are under the constant influence of a whole range of factors that do not occur in everyday life. They often find themselves in life-threatening situations, both for themselves and others. The emergence of various conflict situations requires the use of combat techniques, special means and firearms. Legislatively justified use of force against violators of law and order in some cases is a component of law enforcement activities.

For police officers with public order responsibilities, the application of measures to apprehend the offender constitutes a duty that they must perform, despite a certain risk. Of particular importance are the system of training and tactics of using combat techniques by police officers in the performance of their duties.

**Recent publications review.** Actual problems of forming the police officers practical skills for lawful use of fighting techniques have been researched by such scientists, as: V. Plisko, M. Nosko, V. Balsevich, S. Antonenko, M. Anufiev, S. Butov, Y. Verenga and others.

**The article's objective** is to study the methods for improving the physical training of police officers, given the reform of the law enforcement system in Ukraine. Analyze the provisions of regulations governing this activity. Identify problems that arise during the interaction of police officers with criminals.

**Discussion.** The most difficult conditions in the service process are group and armed attacks on police officers during their work at the scene, detention and escort of detainees, serving on highways, checking suspects, etc. In such situations, there is a high probability of injury and damage to the employee of varying severity. Complicating the situation are the conditions of attack of criminals: the attackers in a state of alcohol or drug intoxication, mental disorder, a significant advantage of criminals in weapons, numbers, and often a higher level of physical fitness.

One of the main tasks of professional training of police officers is to form in them a constant psychological readiness for an unexpected encounter with an offender or wanted criminal, the ability to master firearms and correctly use combat techniques in the most difficult operational conditions.

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Expectation of an attack by offenders is an integral part of the professional activities of law enforcement. Awareness of the threat, the ability to properly assess the situation and take appropriate action is determined not only by accumulated practical experience and the ability of the nervous system to transform emerging impulses in danger into smart decisions needed to achieve effective results, but also the need to combine their actions with the law.

As a result of the analysis of the deaths and injuries of police officers during operational tasks, it was found that a significant percentage of dead and wounded officers account for the share of violators who used improvised objects. The following items were most often used by criminals as improvised means: an ax, sticks of various lengths, a stone, a bottle, a chair, etc.

The analysis of criminal cases related to the deaths and injuries of employees revealed the following main reasons that led to these consequences:

– Insufficient possession of service weapons and incompetent use of regular weapons in hand-to-hand combat;

– untimely and tactically incorrect use of combat techniques (detention, deterrence);

– inability to use improvised objects during the detention of offenders;

– psychological unpreparedness for confrontation with criminals and offenders.

Practice convincingly shows that only workers who have high moral and psychological qualities, are fully physically developed, have perfect weapons, special means, and have high psychological resilience, formed by hand-to-hand combat techniques with much better trained people, successfully cope with the direct detention of armed criminals.

One of the leading components of physical training of police officers, aimed at training them in the use of combat techniques in the performance of their duties under the law, is technical and tactical training The quality of this training is tested in practice. Therefore, on the one hand, you need to know exactly the circumstances and patterns of wrestling, the form of professional activity, which as a result of all physical training, on the other – be able to properly apply theoretical knowledge under the management of technical and tactical training.

The use of physical measures by police officers is characterized by the presence of encroachment and opposition by the persons to whom these measures are applied. Such encroachment may be evidenced, in particular [1-4]:

– causing damage to health that poses a real threat to the life of the defender or another person (for example, injury to vital organs);

– application of a method of encroachment that poses a real threat to the life of the person being defended or another person (use of weapons or objects used as weapons, strangulation, arson, etc.);

– the imminent threat of violence threatening the life of the defender or another person may be expressed, in particular, in statements of intent to immediately cause death or damage to life, endangering the life of a person, demonstration of weapons or objects used as weapons, explosive devices, if, given the specific situation, there were grounds to fear the implementation of this threat.

That is, it must be understood that the right to use physical force, including combat techniques, arises not only from the beginning of socially dangerous encroachment, but also in the presence of a real threat of the latter, i.e. from the moment when the assailant is ready to commit appropriate action. When deciding on the use of physical force, a police officer must take into account [1-4]:

– object of encroachment;

– the method chosen by the offender to achieve the result, the severity of the consequences that could occur if the encroachment is completed, the need to cause death to the offender, or serious harm to his health to prevent or stop the encroachment;

– place and time of the encroachment preceding the events, the unexpectedness of the encroachment, the number of persons who encroached and defended themselves, the presence of weapons or other objects used as weapons;

– the possibility and condition of the offender (his age and sex, physical and mental condition, etc.);

– other circumstances that may have affected the actual balance of power between the offender and the police officer.

Circumstances and nature of counteraction determine the content and structure of technical and tactical actions of the police. Systematic consideration of situations of confrontation allows to identify elements and stable relations between the opposing parties.

Structural and functional analysis of situations of confrontation, characteristic of the

service activities of police officers, shows that one of the important structural components of the activity is its external conditions. These are, first of all, the most important aspects of the conditions for this activity. For service and combat confrontation, such conditions may be, for example, the height and weight of the detainee, the presence of a weapon, the nature of the resistance, and so on. Giving conditions the status of an independent structural moment of activity is justified by the fact that they coexist with its internal conditions and along with them are the factors that determine it. Not everything, however, in external conditions concerns the maintenance of the existence of its subject. Very specific requirements for external conditions can come from the subject and from the activity. Thus, although the objects that constitute the external conditions of activity exist at the same time as objects that represent its internal conditions, logically they precede them, because they support their existence in the qualities necessary for this activity. Therefore, the typology of practical situations is based on the most significant circumstances that determine the beginning of the confrontation between a police officer and an offender. All the variety of conditions and circumstances of the use of force by police officers, in essence, can be described by a rather small number of features.

Each of these signs in practical situations manifests itself in the form of many states. The specific combinatory of manifestations, in fact, forms the nomenclature of situations. Speaking of the readiness of the attacked party to counter and repel the attack. It is important to note that readiness consists of several factors. However, the most important of them are only two: the ability to see the beginning of the attack and the ability to prepare for its reflection by accepting the rack, which provides the most effective start of defensive and offensive actions – i.e. combat rack. Unlike martial arts, in practical confrontations for one of the parties the moment of the attack can be very, very unobvious. Masking (facial expressions, gestures, relaxed – "natural" posture, even voice and breathing) the moment of the attacker deprives the attacking side, the opportunity to somehow prepare for counteraction and its elimination. Which is one of the important factors in the advantage of the attacking party, and ultimately largely determines the outcome of the attack in its favor.

The training of police officers aims to teach them to confidently determine the nature of the conflict, identify the degree of resistance by the offender and justify the legality of physical action. Sanctions must be fully consistent with the specific actions of offenders to express dissatisfaction; images; threatening gestures; clenched fists; refusal to comply with the requirements; physical resistance; strike task; repulsion; behavior that poses a danger to life or health of others; attempts to use cold steel or firearms. Response tactics, of course, may be the same, but a combined precautionary measure should be recommended to control the situation. In particular, it is necessary to know and be able to apply the best options for action: just being present at the scene; verbal influence; call for reinforcements; measures of physical coercion with the use of blows with hands, feet, blocks, grips, pain techniques that cause minimal injuries, etc. It should be remembered that the less serious the measures of physical influence to stop the crime (provided that the goal is achieved), the higher the professionalism of the police officer.

Law enforcement officers must have sound theoretical training that will allow them to correctly identify the situation and apply appropriate tactics. The use of acquired knowledge in practice is much easier if they are mastered in circumstances as close as possible to the real thing. The presence of constantly changing distractions during training contributes to the development of skills to make the right decisions at the time of the inclusion of instinctive protective mechanisms of the human psyche. The employee acquires the ability to control their own behavior in emergency situations, analyze mistakes, concerned with the awareness of confidence in their abilities.

The following preparedness factors are of special importance during these classes [5-6]:

1. Firm knowledge of the features and difficulties that affect the solution of operational and service tasks. In addition, in the process of physical training classes it is necessary to take into account and use specific situations of professional activity. These include not only acquainting students with all the real difficulties encountered in the performance of official duties, but also important psychogenic factors, such as weapons in the hands of the offender: a gun, knife, stick, broken bottle, ax, and so on. Significant role is played by mentally disturbing factors: women's or children's cries, headlights of oncoming cars, lack of lighting, shots from various weapons, lack of time to make a decision and its implementation, lack of time to rest, etc.;

2. Training in hand-to-hand combat techniques in psychologically stressful conditions.

It is formed by means of modeling the real conditions of operational and service

activities in improving the techniques and actions of hand-to-hand combat. They can be the following means of vocational training:

– performance of appropriate actions in case of simultaneous attack of one or more offenders;

– performance of appropriate actions when the violator uses weapons or improvised objects;

– performance of combat techniques at night, with sound and light obstacles, in various forms of clothing (winter; summer);

– unexpectedly attacking actions of the offender after performing distracting actions.

In this regard, it is worth noting the development of organizational and methodological forms of conducting comprehensive training sessions, including the use of various model situations of hand-to-hand combat in conditions as close as possible to the actual implementation of operational and service tasks.

**Conclusions.** Thus, the use of physical training in the method of modeling conditions and situations of professional activity, will form reliable professional and applied motor skills in combination with high moral and psychological readiness to use them in everyday law enforcement helps to develop in students a certain automatism of behavior in critical situations, which allows to some extent to avoid unjustified losses of personnel and making illegal decisions when using physical force, special means and firearms.

*Conflict of Interest and other Ethics Statements*

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**ФОРМУВАННЯ В ОФІЦЕРІВ ПОЛІЦІЇ ПРАКТИЧНИХ НАВИЧОК ПРАВОМОЧНОГО ВИКОРИСТАННЯ ТЕХНІК БОРОТЬБИ У КЛАСАХ ФІЗИЧНОЇ ПІДГОТОВКИ**

**Анотація.** У статті розглядаються питання навчання співробітників поліції вмінню визначати характер конфлікту, ступінь протидії з боку порушника та обґрунтування правомірності заходів фізичної дії. Формування професійних навичок правомірного застосування працівниками поліції бойових прийомів боротьби під час виконання професійних обов'язків має відбуватися за умов, максимально наближених до реальних.

Метою даної статті є дослідження методів, щодо вдосконалення фізичної підготовки поліцейських, враховуючи реформування правоохоронної системи в Україні. Проаналізувати положення нормативно-правових актів, що регулюють цей вид діяльності. Виявити проблеми, які виникають під час проведення взаємодії поліцейських зі злочинцями.

***Ключові слова:*** *бойові прийоми боротьби, фізична сила, правомірність, протиборство.*

## ISSUES OF PRIVATE LEGAL REGULATION OF SOCIAL RELATIONS

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# SOCIAL PROTECTION OF SOLDIERS OF THE ARMED FORCES OF MODERN AZERBAIJAN

**Abstract.** In modern warfare, one of the key places in motivating servicemen is social protection, which the state guarantees to them and their family members. This is especially important given the "humanization" of the war, which aims to disable the fighters (wounds of varying severity, psychological losses), rather than their elimination. In view of this, modern practices of social support in countries that have successful combat experience seem relevant. One of the latest examples was the war between Azerbaijan and Armenia in Karabakh. A separate aspect of relevance for Ukraine is that both countries are also natives of the USSR and the corresponding model of social protection. Analysis of the current state of the problem in Azerbaijan shows that it has not yet been possible to completely change the inherited practices from the USSR, but there is a positive experience in the form of developing a system of social funds. Moreover, the financing of these funds is based on the principle of public-private partnership, with a clear awareness of the duty to the participants in hostilities.

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

**Relevance of the study.** The recent brilliant military operation of the Azerbaijani army against the Armenian armed forces on the territory of Karabakh, called the "44-day war", clearly showed the world the advantages of modern weapons and methods of warfare over the Soviet past. At the same time, the main actors in any war, and hence the armed forces, are people - servicemen who need from the state certain social guarantees and an adequate level of protection, especially in cases of certain losses - psychological, physical, or life in general. Under such conditions, the success of hostilities directly depends on public policy in this area. Therefore, this article is the first attempt to analyze the current state of social protection of servicemen in Azerbaijan, as a successful example of hostilities to return their own territory, which is certainly extremely relevant for Ukraine, where the number of combatants at the beginning of 2021 was over 400 thousand persons.

**Recent publications review**. One of the main directions of social policy of modern Azerbaijan is to increase the standard of living and prosperity of servicemen. To understand the content of this area of social policy, it is necessary to study legislative acts such as: Constitution of the Republic of Azerbaijan (hereinafter AR) of November 12, 1995, Military


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Doctrine of AR (June 8, 2010, № 1029-IIIQR), Law on Armed Forces of Azerbaijan (October 9, 1991 № 210-XII), the Law "On the Status of Servicemen" (December 25, 1991, № 36), the Law of the AR "On Pension Provision for Servicemen" (April 29, 1992, № 109), the Law "On compulsory state personal insurance of servicemen" (May 20, 1997, № 296-IQ) and others. They contain the relevant legal norms governing public relations in the military-social sphere. Based on them, we will be able to identify its components and mechanisms of its functioning.

**The article's objective** is to investigate the principles and features of social protection the soldiers of the armed forces of modern Azerbaijan.

**Discussion.** Measures of state social policy in the military sphere have a complex structure that requires their classification in order to systematize and streamline. The criteria for classification, on the one hand, are the categories of rights in the military-social sphere, and the second group includes measures of material and intangible nature, which will be discussed later.

The first group includes ensuring the political rights and freedoms of servicemen, freedom of conscience, inviolability of the individual, the right to work, the right to financial and material support, the right to rest, the right to housing, the right to health care, the right to education, the right to pension provision, the right to change the place of service, the right to awards and military ranks, the right to receive assistance and other benefits, the right of families of servicemen to social protection, the right to appeal. The studied areas are grouped by categories of human and civil rights and freedoms in the social sphere, and they are reflected in the Constitution of the Republic of Azerbaijan [1].

The rights themselves are quite abstract, so the rights enshrined in the form of national law are called social and legal guarantees. From this we can conclude that social measures in the military sphere are limited to ensuring the implementation of social and legal guarantees for servicemen.

Socio-legal guarantees of servicemen are recognized as a priority of social policy in the military sphere. And quite often, enshrining in the legal framework of human rights and freedoms may seem a sufficient indicator for social policy based on human rights, because, indeed, human rights materialize the vital needs and fundamental interests of man, the ideas of freedom, equality and justice, and their implementation is able to create conditions for its further self-realization. Isn't this the essence and the need for further readaptation of the military? But often practice shows that the formal enshrinement of human rights in law as guarantees does not correspond to the real state of affairs in their implementation.

It is obvious that the system of social and legal guarantees requires in practice adequate structural mechanisms, which, according to the law, have to be implemented by state bodies, institutions, and administrations. Local executive bodies and municipalities play an important role in creating living conditions, in particular in the field of labor, housing, and social protection of military families. The servicemen also have the right to complain to state bodies, non-governmental organizations and associations, courts, and military administration bodies.

Speaking about the specific mechanisms of control over the observance of the rights and freedoms of servicemen, first of all, it should be noted the existence of the institution of ombudsman, or more precisely - the Commissioner for Human Rights of the AR under the President of the Republic. treaties ratified by Azerbaijan, violated human rights and freedoms [2]. Already under the Commissioner for Human Rights, there is a sector for the protection of the rights of servicemen, which, in fact, has the right to consider complaints from servicemen.

Despite the fact that the mechanism of ensuring the participation of civil society institutions in the protection of the interests of servicemen is not reflected in the norms of the republican legislation, in practice, however, there is a wide range of non-governmental military and combat organizations, about 60 of them. Doctrine Research Center, Center for Protection of Servicemen's Rights, Center for Public Control over the Defense and Security Sector, Center for Democratic Control over the Armed Forces, Public Associations of Veterans of the Armed Forces, Social Protection for Families of National Heroes of Azerbaijan, Social Assistance to Martyrs' Families", "Assistance to the families of missing persons", "Social protection of the families of servicemen", the Association of Reserve and Retired Officers and others. And in 2008, as a result of the merger of several non-governmental public military organizations, a Center for Military Analytical Research was established.

The mechanism of implementation of social policy in the military sphere includes four subsystems: economic, regulatory, organizational, managerial and institutional.

1. The economic mechanism of implementation of social policy in the military-social sphere includes generally accepted methods for the entire social sphere – taxation, social insurance contributions, soft loans, subsidies, wage regulation, income distribution, indexation of cash benefits for servicemen, etc. Among the sources of funding are the state budget, the State Social Protection Fund, the Assistance Fund of the Armed Forces of the AR, the Mortgage Fund at the Central Bank of the AR.

2. The normative-legal mechanism covers the whole spectrum of normative-legal acts, regulates the interaction between subjects and objects of social policy. It includes regulations at both the legislative and executive levels.

3. The organizational and management mechanism includes a set of executive (President, Cabinet of Ministers, ministries (including social profile), committees, foundations), legislative (Milli Mejlis) and judicial bodies that implement social protection and social security measures. Municipalities in general, according to experts, have mostly nominal power (however, they are responsible for providing veterans who have served more than 15 years, housing, or land to build a house) [3]. Network of military NGOs, due to the traditionally closed nature of the military organization, their participation in the decision-making process and monitoring of social protection of servicemen is minimal. given the results of the latter armed conflict, their weight and need cast doubt on the realities of modern warfare and increased state support for the security sector.

4. Finally, the institutional mechanism includes various social practices: social protection, social security, social insurance.

Social protection - a mechanism of interaction between the individual and society; is a system of economic, organizational, administrative, legal measures carried out by society and its local groups (municipality, labor collective, etc.), the state, other social institutions, which are designed to prevent adverse effects on people from the social environment and mitigate the consequences of such actions [4]. Thus, social protection is one of the main mechanisms of social technologies for the practical implementation of social policy goals in the military sphere. Social protection itself is based on and consists of such subsystems as social security, social support and social insurance (Fig. 1). The Institute of Social Services and Social Work in Azerbaijan is in the process of continuing to form and develop (the Law "On Social Service" was adopted only in December 2011).

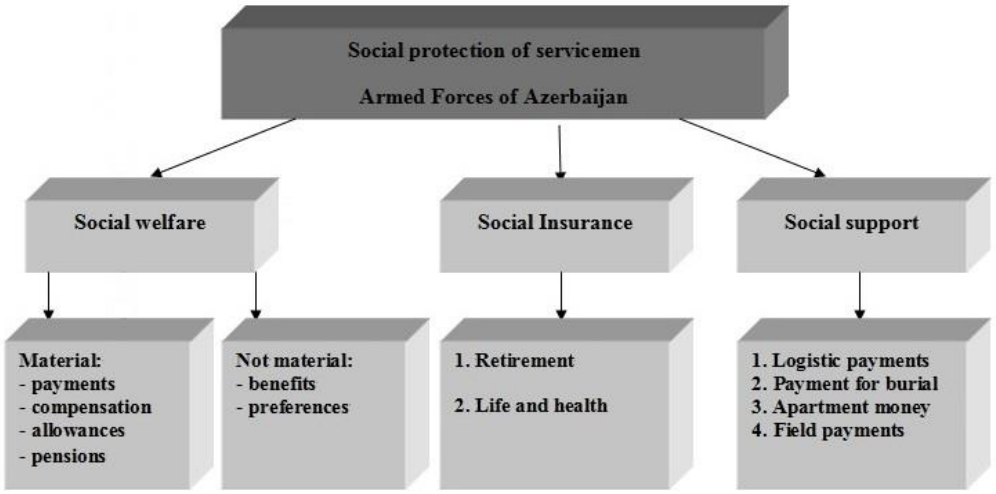


Fig. 1. Social protection of servicemen of Azerbaijan Armed Forces

*Source: developed by author, based on [4-6].*

According to Part I of Art. 38 of the Constitution of the Republic of Azerbaijan, everyone has the right to social security. And Part III of this article states that everyone has the right to social security after reaching the statutory age, in case of illness, disability, loss of breadwinner, disability, unemployment and in other cases provided by law. Social security, therefore, is designed to compensate for the limited opportunities caused by the onset of certain life circumstances (age, disability, hostilities, disasters, etc.). it includes measures of material (social assistance, pensions, etc.) and intangible (benefits, preferences) nature.

Benefits are part of the social security system of servicemen and represent special,

priority rights related to the release or facilitation of conditions for servicemen to comply with statutory norms, rules, responsibilities, living conditions of a material nature [5].

Despite a large-scale reduction in the social benefits of servicemen in 2001, some of them have survived. Depending on the scope of benefits of the serviceman, they can be divided into benefits in the field of labor and military service. According to the system of material support are distinguished: housing, medical care, education, in the field of transportation and postal parcels, pension provision. Material social security of servicemen includes various types of assistance and compensation.

Compensations are such cash payments that are addressed to persons in need of social support in circumstances beyond the control of the recipient [6]. In the case of servicemen, these payments are due to the specifics of their profession and living conditions.

Social support is the provision of one-time financial assistance to state servicemen and bodies of local self-government. It includes assistance to cover travel expenses; for the burial of the family of the deceased pensioner (in the amount of a three-month pension); for the burial of deceased officers, ensigns, midshipmen, servicemen of active-service military service and individual family members of the specified category of servicemen; daily allowance for each day of business trip; financial assistance to pay for accommodation in the place of business trip; money for the time spent on training tasks for combat training during field meetings and outings in training centers, camps, training grounds, alternate airfields, maneuvers and exercises outside the point of permanent deployment of the military unit and unit; and the assistance of heads of local executive bodies in the construction and purchase of building materials to servicemen who have expressed a desire to participate in the construction of private homes or the purchase of houses.

Social insurance is an institution of social protection of the economically active population from the consequences of social risks. This institution differs from the above subsystems by the source of funding, namely, it is formed by insurance contributions of workers and employers, while others are funded by the budget. In the military sphere, a distinction is made between pension insurance and life and health insurance during military service. Of course, the development of the military and combat component of Azerbaijan's social policy was in completely different challenges before and with the beginning of the so-called 44-day war (or the Second Karabakh conflict). In preparation for a possible military operation, funding for the Azerbaijani Armed Forces itself was significantly increased, which raised the prestige of the service and contributed to the recruitment and, of course, moral and psychological readiness of each serviceman to perform tasks, which was successfully demonstrated between September 27 and November 10. 2020. From the point of view of social protection of the service, its imperfection was offset by five key factors:

1.Significant increase in funding of the Armed Forces of the AR and their modernization;

2.Increasing the retention of servicemen of the Armed Forces of the AR;

3.The prestige of military service is created and maintained in the information space and at the level of government institutions;

4. Support by Turkey;

5.Traditional societies of the AR and the religious component of education, which formed the focus on the need to return their own territories.

As a result of the rapid operation in Karabakh and its successful completion, the Armed Forces of the Republic of Azerbaijan had 2,783 dead servicemen, 1,245 wounded, and more than 100 missing. This state of affairs, of course, prompted the need to develop new forms of social support and protection, the basis of which, normatively and institutionally, has already been laid in advance. Thus, on December 8, 2020, the President of the Republic of Azerbaijan Ilham Aliyev signed two decrees – "On the establishment of the" Azerbaijan Army Assistance Fund", which replaced the liquidated" Armed Forces Assistance Fund "(existed since 2002) and" On the establishment of the "Support Fund". wounded in connection with the protection of the territorial integrity of the Republic of Azerbaijan and the families of martyrs (YAŞAT Foundation)" [8]. If the first of them is only partially focused on the social guarantees of the military and combatants, the second is the purpose of existence. In accordance with its program objectives, it was created to form a transparent, effective and accessible platform for providing additional support (financial assistance and other support measures) measures taken by the state in the field of social protection of the following persons: servicemen with disabilities with the protection of the territorial integrity of the Republic of Azerbaijan, and members of the

families of persons who have become martyrs; employees of state bodies (structures) with disabilities obtained in the performance of official duties in the territories liberated from occupation, as well as a result of participation in the elimination of the consequences of hostilities after their completion, or family members of deceased employees.

The State Agency for Provision of Services to Citizens and Social Innovations under the President of Azerbaijan (ASAN) has been appointed as the fund manager. General control over the formation and management of the fund is exercised by the Board of Trustees. It is interesting that the head of the fund was appointed a veteran of the Second Karabakh War Elvin Huseynov (officer of the special forces) [9, 10].

The social sphere covered by the foundation's activities is really huge and includes both war veterans and civilians who suffered during the war and as a result of shelling, explosions on explosive devices, wounded during the city battles. Here we are talking not only about the manufacture of high-tech prostheses and treatment, but also the purchase of drugs, rehabilitation abroad, tuition fees, assistance in employment of veterans, assistance in paying for the needs of children and so on. A special article - helping children of martyrs, widows of martyrs and family members in general. The very status of a "martyr", by the way, is also an element of the social protection system. In the republic, it is provided to persons who died during the struggle for independence of Azerbaijan, victims of the Black January events, who died in the Karabakh war in the early 90's. Alley of Shahids was created in the center of Baku in their memory. Also, servicemen killed in combat operations, killed in the Second Karabakh War, as well as civilians killed in rocket and artillery shelling by Armenians in residential areas during the conflict also have the status of martyrs in Azerbaijan.

**Conclusions.** Thus, the analysis of the structure of the system of social protection of servicemen (Fig. 1) and the basic socio-military legislation gives the author the opportunity to draw the following conclusions:

– the main subject of social policy in the military sphere is the state with its bureaucracy and traditions, prone to the patriarchal nature of power initiatives;

– the possibility of objects of social policy – the military – to be its normative subjects due to the absence and weakness of civil society institutions (political parties, public associations) representing their interests is excluded. At the same time, the most powerful state fund for the implementation of social initiatives and support is headed by a veteran, which testifies to the great trust and role of this social group;

– social policy is based on a human rights approach, ie the provision of largely limited social and legal guarantees for servicemen contained in military and social legislation;

– separation of the status of "martyrs" – fighters for independence, who have significant support from the state, as a tribute to the contribution and the corresponding losses for the independence of the state and the interests of public policy;

The main mechanism of state social policy in the military sphere in practice is social protection, which is represented by a system of preventive measures, one way or another related to the limited social and legal status of this category of population, and the nature of state social policy is compensatory, but with significant state support through the establishment of appropriate institutions, large funding and expansion of services.

*Conflict of Interest and other Ethics Statements*

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**Кирило НЕДРЯ**

**СОЦІАЛЬНИЙ ЗАХИСТ СОЛАТІВ ЗБРОЙНИХ СИЛ СУЧАСНОГО АЗЕРБАЙДЖАНУ**

**Анотація.** В умовах сучасної війни, одне з ключових місць у мотивації військовослужбовців посідає соціальний захист, який держава гарантує їх та членам родин. Особливої актуальності це набуває зважаючи на «гуманізацію» війни, яка спрямована на виведення з ладу бійців (поранень різного ступеню тяжкості, психологічні втрати), а не їхньої ліквідації. Зважаючи на це, актуальними видаються сучасні практики соціальної підтримки у державах, які мають успішний досвід ведення бойових дій. Одним з останніх показових прикладів стала війна Азербайджану та Арменії у Карабасі. Окремий аспект актуальності для України полягає в тому, що обидві держави теж є вихідцями з СРСР та відповідної моделі соціального захисту. Аналіз сучасного стану проблеми в Азербайджані показує, що у повній мірі змінити успадковані практики від СРСР ще не вдалося, однак позитивний досвід у вигляді розвитку системи соціальних фондів є. Причому, фінансування цих фондів будується на принципі державного і приватного партнерства, з чітким усвідомленням обов'язку перед учасниками бойових дій.

Загальні висновки:

– головним суб'єктом соціальної політики у військовій сфері є держава з його бюрократичним апаратом та традиціями, схильними до патріархальної природи владних ініціатив;

– виключається можливість об'єктів соціальної політики – військовослужбовців – бути її нормативними суб'єктами через відсутність і слабкість інститутів громадянського суспільства (політичних партій, громадських об'єднань), що представляють їх інтереси. У той же час, найбільш потужний державний фонд з реалізації соціальних ініціатив та підтримки очолюється ветераном, що свідчить про велику довіру і роль даної соціальної групи;

– в основі соціальної політики лежить підхід, заснований на правах людини, тобто забезпечення в значній мірі обмежених соціально-правових гарантій військовослужбовців, що містяться у військово-соціальному законодавстві;

– виокремлення статусу «шахідів» – борців за незалежність, що мають суттєву підтримку від держави, як данина внеску та відповідним втратам заради незалежності держави та реалізації інтересів державної політики;

– основним механізмом державної соціальної політики у військовій сфері на практиці є соціальний захист, який представлений системою попереджувальних заходів, так чи інакше пов'язаних з обмеженим соціально-правовим статусом даної категорії населення, а сам характер державної соціальної політики щодо них носить компенсуючий характер, однак за значної державної підтримки через створення відповідних інституцій, великого фінансування та розширення сфери послуг.

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

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# REFORMS UNDERTAKEN: SIGNIFICANT RETHINKING OF THE DEFINITION OF CIVIL PROCEDURE LAW

**Abstract.** The article considers the issue of significant rethinking of the definition of civil procedural law. Signs of failure of judicial reforms are characterized. Problems of administration of justice in civil proceedings of Ukraine are investigated. The concept of justice is defined. A description was made, as well as the current state of the courts of Ukraine, their corruption and noted the international experience on this issue. In addition, we raised the issue of civil law as a science: the concept, subject, legal relations and so on. The study identified the fact that the method of this science is absent. Based on the above, it was concluded that the domestic Ukrainian definition of civil procedural law, its tasks and method needs significant changes and clarifications.

***Keywords**: reforms, civil procedural law, courts and judges, corruption, civil law relations, methods of civil procedural law, justice, judiciary, fairness, subject and science of civil procedure.*

**Relevance of the study.** The fact of judicial reform in Ukraine is well known. Every day we are reminded of this by the decisions of the "renewed" Ukrainian courts, from the Constitutional Court to local courts. Judicial reform without exaggeration can be called a priority of modern Ukraine, because without it all other reforms one way or another are reduced to profanity. Without restarting the judicial system, all other fundamental reforms will be blocked. Without fair courts, Ukrainians cannot feel safe in their own country and the government cannot win back the trust of investors. Without guarantees of legitimacy, there will be no development of small and medium-sized businesses, no growth in living standards, and no expansion of the middle class.

In addition, at the same time a reform of legal education and science is looming. But will it not be the same as the results of the failed judicial reform? After all, education and science could be improved without reform. Arguments on this fact are obvious and are given in our study.

**Recent publications review.** The problem of justice in their works raised by such scientists as V. Bihun, A. Berniukov, O. Kolisnyk, O. Vasylenko, Yu. Loboda, B. Malyshev, I. Marochkin, O. Riazantsev, S. Pohrebniak and others. The direct comprehension of justice is reflected in the monograph of V. Bihun, as well as in the collective monograph by V. Bihun, A. Berniukov, S. Pohrebniak and others. Justice and judicial power were considered by I. Marochkin. The issues of civil litigation were covered in the scientific works of scientists O. Kolisnyk and O. Riazantsev. However, to date, there are few relevant studies devoted to the problem of complete rethinking and definition of civil procedural law.

**The article's objective** is to explore the question of substantially rethinking the issue of the definition of civil procedural law

**Discussion.** Justice and legal proceedings are far from being the same thing. Therefore,

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first let us explain the direct concept of civil procedural law, which means – "a totality and system of legal norms governing the order of consideration and resolution of civil cases by the court, the subject of regulation of which are social relations arising in the field of civil proceedings, that is, civil procedural legal relations" [1]. Despite the fact that this approach to the definition of this concept in Ukraine is generally defined, it still causes a number of significant issues:

– first, when we consider "civil procedural law" as a branch of law, and as an academic discipline, and as a relevant system of knowledge, and as a subjective right, and as a "totality and system of legal norms" a logical question arises, how in this case we should interpret the concept of "civil procedural legislation", whose content is the relevant legal norms, which, in turn, regulate certain aspects of social relations, which are the subject of their regulation? The consequence of this lack of clarification and further study of these issues on the basis of traditional purely positivistic legal understanding will be a banal identification of the concepts of "civil procedural law" and "civil procedural legislation";

– secondly, the subject of regulation of civil procedure law is the relevant social relations, and the subject of civil procedure law as a system of knowledge is civil procedural law? It is obvious that there is a "dogma of law", i.e., this statement should be regarded as a provision of a legal nature, accepted without evidence?

– third, in addition, it would not be superfluous to clarify the content of the civil procedure law itself. What does it involve? A "system" or still a "totality" of legal norms? But we should not identify these concepts, because the system is not a totality, and the totality is not a system;

– fourthly, it may also criticize the assertion that it is "public relations in the administration of justice" that constitute the subject matter of civil procedural law. To this end, it is first necessary to clarify the concept of justice, which, in turn, means the purpose and desired result of the activities of the judiciary. It follows that these relations are regulated not only by civil procedural legislation, but also by other normative legal acts. And the regulation of relations in the field of legal proceedings in civil cases, the proper implementation of which constitutes one of the main means of ensuring justice, is the responsibility of the civil procedural legislation.

The confirmation that justice and legal proceedings are not identical concepts is evidenced by a number of general scientific sources and relevant rules of logic, which interprets legal proceedings as the proceedings in the order established by law, and justice – as a form of state activity [2].

It should be noted that the word "justice" is derived from the words "right", "truth", "true", "trial according to truth, according to conscience, according to law", "justice". However, after examining a number of practical court decisions, it is safe to say that truth, justice, and fairness do not always occur in the conduct of legal proceedings. Although, strange as it may seem, it is justice and fairness that should have been the goal of the judiciary. That is, the latter statement is the basis for concluding that one of the directions of the state is justice. Thus, the function that is conducted by the system of relevant bodies, and which is not simply assumed, but also monopolized by the state and constitutes the content of justice. In addition to this, their activity is indeed conducted in the form of legal proceedings. But often the courts also make non-legal decisions. But in this case, the state provides for other institutions directly aimed at resolving contradictions arising from legal relations in the sphere of providing justice. According to the Art. 55 of the Constitution of Ukraine these institutions constitute a system of national means, and when such means are exhausted. and justice has not taken place, the person concerned is entitled to apply to international organizations for the protection of their rights.

That is why the court in conducting judicial proceedings only contributes to the administration of justice, and the duty to ensure it was taken by the state and, above all, through the system of relevant authorities. Therefore, we can define that the subject of procedural law is the civil proceedings, the process, in other words – the activities of courts, persons directly involved in the case (experts, witnesses, interpreters) and other participants in the process, as well as the bodies of judicial execution, regulated by the civil procedural law.

Regarding the courts themselves, I would like to add some results of a study on the state of corruption in Ukraine's judicial system. The study was supported by the governments of Ukraine and the United States through the Millennium Challenge Corporation as part of a two-year threshold program for Ukraine aimed at reducing corruption in the public sector.

The official presentation was attended by the U.S. Ambassador to Ukraine William Taylor. Commenting on the results of the study, he noted, in particular, that "fair competition can only be established under the rule of law, guaranteed by an impartial system of justice – the judicial system. Corruption compromises this system and undermines the rules of fair competition, which complicates economic growth".

The study aimed to determine the attitudes towards corruption and the real experience of encountering corruption in the judicial system by four target groups: citizens and companies that have gone to court, and a professional group of lawyers and prosecutors. A total of 2004 citizens and 527 companies/businesses in all regions of Ukraine were interviewed. A total of 184 attorneys participated in the survey of attorneys, which was conducted in all oblast centers of Ukraine. The study also included a survey of 111 prosecutors, deputy prosecutors, and prosecutorial staff (criminal-judicial department, public prosecution support department, and investigative department) in all oblast centers of Ukraine.

All groups of respondents perceive the prevalence of corruption in the judicial system almost the same. However, the opinion of the professional group of prosecutors and lawyers, who observe the system from the inside, is particularly interesting. About one-third of lawyers and prosecutors perceive corruption as a common occurrence at all stages of court proceedings. Another third of respondents (36-39 %) indicate that it is the pre-trial stage that is the most corrupt. In addition, 64 % of attorneys and prosecutors surveyed believe that the level of corruption in the judicial system has increased over the past year. Traditionally, the level of perception of corruption is much higher than the actual experience of corruption. 19 % of citizens and 37 % of companies that went to court said that they had actually experienced corruption in the judicial system. It is interesting to note that companies were twice as likely to have encountered actual corruption as citizens, which, according to experts, reflects the monetary value of court cases.

From 45 % (attorneys and prosecutors) to 67 % (citizens) of respondents believe that the introduction of the Unified Public Register of all court decisions on the Internet will reduce the level of corruption in the judicial system. At the same time, the majority of citizens and companies generally give the same negative evaluation to the current anti-corruption actions of the government: 70 % of companies, 90 % of attorneys and prosecutors, and 74 % of citizens are convinced of their ineffectiveness.

While presenting the results of the study in Kharkiv, the co-chairman of the Kharkiv Human Rights Group Yevhen Zakharov noted that one of the ways to overcome corruption is the openness of state authorities, in particular, when making public the adopted normative legal acts. In addition, Zakharov stressed that the majority of appeals to the European Court of Human Rights against Ukraine concern violations of the right to a fair trial [9].

Thus, if we consider thousands of claims of Ukrainian citizens against Ukraine in the European Court of Human Rights, most of which the court satisfies in favor of these citizens, the fact of "fairness" of justice of Ukrainian courts becomes evident. So, if we refer to the Art. 2 of the Law of Ukraine "On Judicial System and Status of Judges" we can see the following terms, which tell us that "the court, by administering justice based on the rule of law, ensures everyone the right to a fair trial", then it turns out that in fact everything is not so [3].

In addition, it would be useful to note that the world experience of judicial activity long ago led everyone to the conclusion that the court is primarily a body of the state, which in the interests of the ruling class conducts in the established procedural order of consideration of civil and criminal cases. It is the class essence of the state which created it that determines the forms of its organization and activity. Often the court acts as a means of protecting the interests of the exploiters in exploitative states. Therefore, the class selection of judges is characteristic of the courts of all exploitative states. And this, together with class legislation, enables the ruling classes to use it to suppress the workers. At the same time, famous political classics, during the characterization of the bourgeois court, noted that this court only portrayed itself as a defense of order, but in reality, was a blind, subtle instrument of miserable suppression of the exploited, which defended the interests of the moneybag. Also, Valentyna Danishevska, president of the Supreme Court, noted that the judiciary and the public share a key goal: to provide independent, impartial, fair justice that people trust. "We see successes, but we also see that. That if the conditions for independent justice are not in place, nothing will lead to the proper outcome. That is, in parallel with the way we're reviewing the philosophy of judicial selection, we need to talk more about whether there are conditions for the virtuous professional we want to see in the judicial system to remain that way for as long as they will work", the

speaker explained [4].

Given that Ukraine has become not only a bourgeois, but also a clan-oligarchic power, the following question is quite relevant: won't Ukrainian courts consequently become the same "blind, thin instruments of miserable suppression of the exploited, who simply defend the interests of the moneybag" and are there appropriate mechanisms to prevent this problem in this state?

It is unimportant to note about the courts - they are the very basis of corruption throughout the country. After all, without defeating corruption among judges, it makes no sense to fight it in other spheres of life as well. After all, it is the courts that ultimately decide who is corrupt and who is not. And in recent years, officials, police, prosecutors and the SBU have talked a lot about the fight against corruption. But the "effectiveness" of this "struggle" is eloquently proved by the official data of the State Department of Ukraine on the execution of punishments: there is not a single corrupt judge in places not so distant. The last judge who went to prison went free more than a year ago, it was an officer of justice from Ivano-Frankivsk, who got burned on a bribe.

What to say, when the Ukrainian courts are worse than corruption. These are the results of the survey conducted at the end of October by the European Business Association (EBA), Dragon Capital investment company and the Center for Economic Strategy. Corruption, which topped the list during the polls, has moved to the second place [5].

However, there is a question that has been bothering many concerned Ukrainians of late: can a court cleanse itself? The Explanatory Dictionary explains self-cleansing as "the action of freeing oneself from something superfluous, interfering with someone else's" [6]. However, this is indeed the case, there are superfluous people in the judicial system, who hinder it, pulling it down with all their efforts.

Reformers and politicians of all ranks are unanimously crying out about the fact that the judicial system does not want to cleanse itself of bribe-taking judges, corrupt judges, judges who render unjust decisions, that corporatism is quite common among judges, the judicial system protects "its own" in any case. Thus, the judicial system does not exempt scoundrels in robes, but even on the contrary, supports and protects them in every possible way. Ideas arise about establishing criminal liability for judges if they fail to notify law enforcement agencies about the commission of corruption offenses by their colleagues, etc.

At the same time, the Parliamentary Assembly of the Council of Europe notes in its Resolution 1703 that corruption is deeply entrenched in many Councils of Europe member states. The Assembly is concerned that some states have a "fashion" to flatly deny that they have the problem of corruption in courts. This cannot be said about Ukraine. We don't have any problems with it, only lazy people don't shout about corruption in courts.

Therefore, the Parliamentary Assembly of the Council of Europe calls upon member states to establish a mechanism for inspection of the activities of lower-level courts by higher-level courts or representatives of the body of judicial self-government - the Judicial Council of Ukraine or the Supreme Council of Justice [7].

The Council of Judges of Ukraine has conducted numerous inspections of some courts in Ukraine, but such powers of the Council of Judges are nowhere enshrined in law. Therefore, in our opinion, court audits are necessary, especially at the present time when Ukrainian society demands that the judicial system cleanse itself. However, this requires an appropriate legal regulation. That is, first of all, it is necessary to clearly define the body that will be able to conduct these inspections, clearly define the cases when these inspections should be conducted, as well as to characterize the powers of inspectors.

Thus, given the above, we can conclude that the Ukrainian state should be at the legislative level immediately to implement the resolution of the Parliamentary Assembly of the Council of Europe № 1703 on corruption in the judicial system, to introduce an effective mechanism of inspection of the courts of Ukraine to reduce the risks of corruption activities.

As for the definition of the concept of method, in the special literature it is interpreted only in general terms. In particular, it is interpreted that it is "a totality of means and ways of impact on the behavior of subjects of civil procedural legal relations, enshrined in the norms of civil procedural law. It is conditioned by the specific properties of the subject of regulation of the civil procedural law, those social functions that this branch of law performs, and its organic connection with the branches of substantive law" [8].

In other words, this definition interprets not the method of legal regulation, but the "method of law". At the same time, given that the concept of "law" both in the objective

understanding as a system of norms, and in the subjective understanding as a subjective right, and as a leading system of knowledge itself is a means that simultaneously performs the function of method. Thus, from the above it follows that the method has its own method, which from the logical point of view is unquestionable.

Quite big doubts are also caused by the fact that it would seem that all the problems of civil-law legislation can be solved relying on only one method. On this basis, the following question arises: wouldn't it be more logical to first define not "method of law", but "methods of legal regulation", and then proceed from the fact that these methods form a corresponding system, the characteristic of which remains undisclosed, and therefore requires appropriate scientific efforts?

The convincing assertion that "in content the method of civil procedural law is imperative-dispositive and characterized by normative definition: the grounds for emergence, development and termination of civil procedural legal relations, the nature of legal relations between its subjects; procedural legal position of court, body of judicial execution, participants of civil proceedings; civil procedural actions - their content, form, procedure of execution; civil procedural sanctions" does not stand. After all, it is quite obvious that each of these features is also typical for each of the other branches, at least for the procedural law.

And speaking about the imperative and dispositive method, their essence is determined not by their content, but primarily by the nature of influence on the subjects of certain legal relations, which is why they are also used to a greater or lesser extent in each of the varieties of legal regulation. However, it is widely known that the imperative method provides for a mandatory for implementation state command, non-compliance with which entails negative legal consequences, that is, sanctions. Exactly this method is characteristic of public-law relations. And as for the dispositive method - this method is an opportunity for the subjects of legal relations to choose one of the ways of action proposed by these norms, provided for by the relevant rules of law. Therefore, it is characteristic precisely for private legal relations. At the same time, both imperative and dispositive method, to a greater or lesser extent, is used in the process of solving problematic issues in the sphere of each type of legal regulation.

**Conclusions.** Consequently, the reasoning outlined above in this article leads to the conclusion that the Ukrainian definition of civil procedural law, its objectives and method requires significant changes and clarifications. And if we talk about the direct definition of the method of civil procedural law, it is absent in our country. Then a logical question arises: who, in such a case, will work on this problem? - Probably no one. But, once upon a time, before the loud reforms, such an initiative was encouraged. At the same time each such publication provided for a certain fee. And after all these reforms, a Ukrainian scientist, to write and publish in a foreign language (so that not Ukrainian, but, for example, foreigners, to use it even a small, even large discoveries) he needs for this and pay your own three.

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

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**ВПРОВАДЖЕНІ РЕФОРМИ: СУТТЄВЕ ПЕРЕОСМИСЛЕННЯ ВИЗНАЧЕННЯ ПРОЦЕДУР ЦИВІЛЬНОГО ПРОЦЕСУАЛЬНОГО ЗАКОНОДАВСТВА**

**Анотація.** Стаття присвячена питанню, яке пов'язано з еволюцією цивільного процесуального законодавства, а саме істотного переосмислення питання визначення цивільного процесуального права. У статті нами, насамперед, було здійснено аналіз та подальше співвідношення понять «правосуддя» та «судочинство», де ми зробили висновок про те, що дані поняття тлумачаться по-різному та у своєму змісті містять далеко й не одне й те ж саме значення. Підтвердженням того, що правосуддя та судочинство зовсім не є тотожними поняттями свідчить й низка загальнонаукових джерел та відповідних правил логіки, які судочинство тлумачиться як провадження у встановленому законом порядку відповідних справ, а правосуддя – як одна із форм діяльності держави Після цього ми звернулися до тлумачного словника для визначення поняття цивільного процесуального правила та одразу виокремили, що даний підхід щодо визначення цього поняття в Україні є загально визначеним, все ж таки він зумовлює виникнення низки суттєвих питань, які надалі розкрили у змісті нашого наукового дослідження. Охарактеризовано ознаки провальності судових реформ, адже без перезапуску судової системи всі інші фундаментальні реформи будуть просто заблоковані. Без чесних судів українці не зможуть відчувати себе в безпеці у власній країні, а влада не зможе повернути довіру інвесторів. Без гарантій законності неможливий розвиток малого і середнього бізнесу, не буде зростання рівня життя і розширення середнього класу. Окрім цього у науковому дослідженні досліджено проблеми здійснення правосуддя в цивільному судочинстві України. Визначається поняття правосуддя, де нами було зауважено, що суд, при здійсненні судочинства тільки сприяє здійсненню правосуддя, а обов'язок його забезпечення взяла на себе держава і, насамперед, за допомогою системи органів відповідної влади. А тому ми зробили висновок по те, що предметом процесуального права є цивільне судочинство, процес, іншими словами – врегульована цивільним процесуальним правом діяльність судів, осіб, що безпосередньо приймають участь у справі (експертів, свідків, перекладачів) та інших учасників процесу, а також органів судового виконання.

Було проведено характеристику, а також сучасний стан судів України, їх корумпованість та зазначено міжнародний досвід з-приводу даної проблеми. Беручи до уваги те, що Україна стала не тільки буржуазною, а й клановo-олігархічною державою, досить актуальним виступає наступне питання: а чи не стануть внаслідок цього й українські суди такими ж «сліпим, тонким знаряддям нещасного придушення експлуатованих, які просто обстоюють інтереси грошового мішка» та чи існують у цій державі відповідні механізми запобігання даній проблемі?

Окрім цього нами було порушено питання щодо визначення цивільного права як науки: поняття, предмет, правові відносини тощо. У дослідженні визначили той факт, що метод даної науки взагалі відсутній. Адже досить великі сумніви й викликає і те, що, начебто, усі проблеми цивільно-правового законодавства можна розв'язали спираючись тільки на один метод. Виходячи з цього, виникає наступне питання: а чи не логічніше було б спочатку визначити не «метод права», а «методи правового регулювання», а потім виходити із того, що дані методи утворюють відповідну систему, характеристика якої залишається ще не розкритою, а тому й потребує відповідних наукових зусиль?

На основі вищевикладеного зробили висновок про те, що вітчизняне українське визначення цивільного процесуального права, його завдань та методу потребує суттєвих змін та уточнень.

***Ключові слова**: реформи, цивільне процесуальне право, суди та судді, корупція, цивільно-правові відносини, методи цивільного процесуального права, правосуддя, судочинство, справедливість, предмет та наука цивільного процесу.*

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# PRESIDENTIAL SETTLEMENT OF ECONOMIC DISPUTES

**Abstract.** The article examines the general principles and legal nature of pre-trial settlement of commercial disputes. The current state of pre-trial settlement of commercial disputes is considered. The importance of preserving this institute is substantiated and the ways of its improvement are suggested. The importance of the institution of claims for the settlement of disputes between business entities without interference in this dispute by the courts is also highlighted.

***Keywords:*** *pre-trial settlement of commercial disputes, claim, business entity, commercial litigation.*

**Relevance of the study.** In the course of economic activity disputes between the parties are inevitable. Given that each dispute has significant advantages, the speed of resolution is particularly important. Due to the fact that filing a lawsuit or appeal against the opposing party will not actually have legal consequences and will not have a significant impact on the further resolution of disputes in the commercial court, the parties usually do not apply to the commercial court for pre-trial settlement.

Pre-trial settlement of commercial disputes plays an important role for business entities and the entire judicial organization. This remedy is used by the parties at their own discretion to resolve commercial disputes directly and expeditiously, but it helps to "relieve" the court of a large number of lawsuits. However, the current Ukrainian legislation still has certain shortcomings and inconsistencies that need to be resolved.

In modern science there is no single approach to defining the concept and essence of pre-trial settlement of economic disputes. In addition, the concept of "pre-trial settlement of a commercial dispute" is not enshrined in the Commercial Code of Ukraine or in the Commercial Procedure Code of Ukraine, but only indicates the duty of economic relations violated the property rights or legitimate interests of other entities, to restore them.

**Recent publications review.** The issue of pre-trial settlement of commercial disputes has been studied by prominent scientists, in particular such as: V. Sherbyna, B. Reznikova, O. Belyanevych, however, the dynamics of development of public relations and the practice of judicial protection of the rights of economic entities have prompted the popularization of an alternative way of resolving economic disputes through pre-trial settlement.

**The article's objective** is to clarify the essence of the pre-trial procedure of commercial disputes, to identify the strengths and weaknesses of the institution of pre-trial settlement of commercial disputes.

**Discussion**. In the legal literature, pre-trial settlement of commercial disputes is also understood as oral negotiations, communications, lawsuits and other measures aimed at resolving disputes and conflicts between business entities, without referring the dispute to the commercial court. Analysis of this definition of pre-trial settlement of commercial disputes

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allows to determine the characteristics of specific institutions:

– presence of conflict;

– active actions to protect and restore violated rights;

– special tools to restore violated rights;

– resolution of the conflict directly by the participants of specific legal relations without the involvement of other persons or bodies.

An important factor in the pre-trial settlement of commercial disputes is that procedures can only be applied at this stage at the request of the entity. At the same time, even the enshrinement in the contract of a mandatory pre-trial procedure for settling a dispute does not deprive either party of the right to go to court immediately, without first settling its legal relationship in a pre-trial procedure. It should be noted that according to Art. 6 of the Commercial Procedural Code of Ukraine pre-trial settlement of disputes is carried out by filing a written claim, which is sent by registered or valuable letter or delivered against a receipt. Part 2 of this article stipulates that enterprises and organizations whose rights and legitimate interests have been violated, in order to directly resolve the dispute with the violator of these rights and interests, apply to him with a written claim.

We believe that a claim here should be understood as a legal means of ensuring that the parties to the contract protect their rights and legitimate interests. Therefore, V. Chernadchuk specifically pointed out that, as a material claim of one party in a disputed legal relationship against the other party, the parties themselves can resolve conflicts without the intervention of the commercial court [1, p. 54]. Thus, the pre-trial settlement of commercial disputes is that the parties independently apply measures aimed at resolving the existing dispute between them before entering into a legal relationship with the court, by filing a claim against the counterparty who violated the terms of the contract.

It should be noted that until 2002, pre-trial settlement of commercial disputes was a mandatory stage of the economic process. So in. 63 of the Commercial Procedure Code of Ukraine stipulates that if no evidence of pre-trial settlement of the dispute is provided, the statement of claim will be returned [6]. The first step towards solving this problem was the decision of the Plenum of the Supreme Court of Ukraine "On the application of the Constitution of Ukraine in the administration of justice" from 1.11.1996 № 9, in paragraph 8 of which with reference to Art. 124 of the Constitution of Ukraine states: "The court has no right to deny a person a statement of claim or complaint only on the grounds that his claims may be considered in the pre-trial procedure provided by law" [2].

Subsequently, in the decision of the Constitutional Court of Ukraine in the case on the constitutional appeal of the Limited Liability Company "Trading House" Campus Cotton Club "on the official interpretation of the provisions of Part 2 of Art. 124 of the Constitution of Ukraine (case on pre-trial settlement of disputes) "dated 09.07.2002 № 15-rp / 2002 it was determined that the establishment by law or contract of pre-trial settlement of a dispute on the will of the parties is not a restriction of jurisdiction . Thus, the Constitutional Court of Ukraine has established that the existence of contractual rules for pre-trial settlement of disputes is not an obstacle to filing a lawsuit [3].

Given the position of the Constitutional Court of Ukraine, the following conclusions can be drawn about the importance of pre-trial settlement of commercial disputes: pre-trial settlement is not the responsibility of the party; pre-trial settlement of a commercial dispute does not contradict the constitutional principle of administration of justice exclusively by a court; pre-trial settlement of a commercial dispute is an additional method of legal protection; the established right of a person to use out-of-court alternative methods of protection of rights and legitimate interests cannot be challenged; during the application of pre-trial settlement of a commercial dispute, the parties are not deprived of the right to go to court to resolve the conflict [4, p. 185]. According to Art. 6 of the Commercial Procedural Code of Ukraine, the claim must be stated only in writing in compliance with the requirements for the content and its main details. It is necessary to clearly and exhaustively state information about the parties to the dispute, give their full name, postal and bank details with reference to current legislation and the terms of the agreement. The claim must be meaningful, outlining the essence of the dispute, defining the subject of the claim, justifying its factual circumstances with reference to legal norms [6].

Filing a claim is a subjective right of legal entities, while responding to a claim in the prescribed manner and within the prescribed period is their legal obligation. The claim received from the applicant must be considered, as a general rule, no later than one month from the date

of its receipt. In the event that the rules or contract binding on both parties provide for the right to re-inspect defective products by the manufacturer, claims related to the quality and completeness of products must be considered no later than two months.

At the same time, the greatest difficulties in practice arise when deciding on the method of sending a claim by the applicant to the other party. Probably the most effective way of those listed in the article of Art. 6 of the Commercial Procedure Code of Ukraine is the delivery of a claim against a receipt, while sending a letter of recommendation or a valuable letter may have negative consequences. Thus, there are common cases of abuse by creditors, who instead of the claim send the party to the contract advertising materials, various brochures, prices or even blank envelopes, receiving as proof of sending a fiscal check.

After consideration of the claim, the debtor must provide an answer to the applicant in due time, in which he informs about its recognition (full or partial) or about the refusal to satisfy it. The answer is made in writing, and its content must contain the full name and postal details of the company or organization to which the answer is sent: the date and number of the answer, the date and number of the claim to which the answer is given.

The essence of the claim is to persuade the debtor to fulfill his obligations voluntarily, thus avoiding further recourse to the courts. Therefore, the text of the claim should set out both the requirements for repayment of the debt and the possible negative consequences for the debtor in case of late satisfaction of the requirements. Such consequences may be the imposition of court costs on the debtor in case the applicant goes to court, the cost of services of a lawyer, expert, the amount of accrued interest, 3 % per annum, inflation index for overdue, fine, seizure of bank accounts to secure the claim. The negative consequences for the debtor will be that in any case he will repay the amount of the debt or fulfill other obligations to the applicant, but in the case of going to court and subject to penalties, such payment of the debt will be much higher.

There is an opinion that the preparation of claim materials does not require special technical knowledge (they have employees of departments-executors, who at any time provide the necessary data and explanations), and legal, because the legal validity of the requirements is a successful pre-trial settlement [4, p.214]. In the literature, claims work is defined as a set of organizational and legal actions of the legal service and structural units of the enterprise for the preparation, consideration of claims and lawsuits, substantiation of their necessary documents to protect the rights and interests of the enterprise [5, p. 158].

When organizing claims work, the legal service should be guided by the General Regulation on the Legal Service of the Ministry, other executive body, state enterprise, institution and organization approved by the Resolution of the Cabinet of Ministers of Ukraine dated 27.11.2008 № 1040 [3], which states that the main task legal service is the organization of legal work aimed at the correct application, strict compliance and prevention of non-compliance with legislation, other regulations by the executive body, enterprise, their managers and employees in the performance of their tasks and responsibilities, as well as representation of interests executive body, enterprise in the courts.

The benefits of pre-trial dispute resolution are quite large, as they save time and money for the applicant and the debtor. If the claim is not upheld, the person who filed it can always apply to the commercial court, and the existing claim will already serve as a statement of claim. The advantage of pre-trial settlement of the dispute is also that such a procedure will allow the party to maintain a normal relationship with the counterparty and the business reputation of the company.

Also, the reality of such an order of settlement of economic disputes that arise is ensured by the presence of legal advisers in the vast majority of enterprises and organizations, as well as the growing legal literacy of managers of enterprises and organizations. The success of such a dispute resolution procedure depends, first of all, on the seriousness of the attitude to the claims work both on the part of the claimants and on the part of those to whom they are addressed. If the claim is made thoughtfully, thoroughly, convincingly, with reference to legal norms and it is considered seriously, it is a guarantee of settlement of the conflict by the parties without bringing it to the commercial court [1, p. 96].

**Conclusions.** Based on the study, it is possible to conclude that the legal nature of pre-trial settlement of commercial disputes is to obtain an additional means of protecting the rights and interests of participants in economic relations. The application or refusal to apply this legal institution is an exclusive right and not an obligation of the parties (except as provided by law). The practice of out-of-court settlement of a dispute through the filing of a claim and its actual

consideration needs to be improved and used, which will certainly help to resolve a specific dispute quickly and reduce the workload of the courts.

The need to preserve the institution of pre-trial settlement of commercial disputes is obvious, however, with further improvement of the procedure in the areas identified in the study. We believe that the development of an effective legal mechanism for the implementation of the recognized claim and the establishment of sanctions for violation of the terms of consideration of the claim may be the subject of further research.

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

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**ПРЕЗИДЕНТСЬКЕ ВИРІШЕННЯ ЕКОНОМІЧНИХ СПОРІВ**

**Анотація.** Стаття присвячена розгляду інституту досудового врегулювання господарських спорів в Україні. Проаналізовано положення чинного Господарсько-процесуального законодавства на предмет ефективності механізму досудового врегулювання господарських спорів. Визначено ключові аспекти досудового врегулювання господарських спорів, а саме, поняття, мету та завдання досудового врегулювання господарських спорів, також окреслено основні вимоги для вирішення господарських спорів без звернення до суду. Досліджено інститут претензії, який слугує основним офіційним документом для можливості вирішення господарських спорів у досудовому порядку. Окрім цього, охарактеризовано основні вимоги до форми та змісту претензії, визначено строки розгляду претензії, зміст та строки відповіді на претензії. Окреслено основні проблемні питання, пов'язані з розглядом та відповідями на претензії. Проаналізовано значення інституту досудового врегулювання господарських спорів для учасників господарських правовідносин, адже можливість вирішення господарських спорів без звернення до суду є досить поширеною практикою закордоном.

Крім вищевказаних аспектів було досліджено медіацію як одну з реальних можливостей вирішення спірних питань між учасниками господарських відносин. Зазначено, що медіація полягає в залученні третьої сторони (медіатора) за допомогою якого вирішуються спірні питання, що полягають в порушенні прав чи обов'язків однієї сторони господарських відносин по відношенню до іншої. Також зазначено історію розвитку інститут медіації закордоном, яка почалась в 60-х роках в США. Позначено, що медіація може використовуватися в будь яких правовідносинах, не лише в господарських, адже медіація полягає в тому, що коли двоє та більше учасників спільно вирішують залучити третю сторону для вирішення конфлікту без звернення до суду. Розглянувши вищевказані питання зроблено відповідні висновки щодо значення можливості вирішення господарських спорів без звернення до суду, а саме, в досудовому порядку, також зазначено, що медіація є основним методом вирішення господарських спорів без звернення до суду.

***Ключові слова:*** *досудове врегулювання господарських спорів, претензія, медіація, медіатор, третя сторона.*

# COMBATING OFFENCES: ADMINISTRATIVE-LEGAL, CRIMINAL-LEGAL AND CRIMINOLOGICAL ASPECTS

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## DETERMINANTS OF VIOLENT CRIME

**Abstract.** The criminological problem of crime detection has a deliberative character and does not find an explicit solution by scientific collaboration. There is no doubt that the determination of crime is a kind of social determination, which in its turn is an element of the philosophical doctrine of the highest level of abstraction – dialectical determinism – general law on universal connection, interdependence and intersectionality between subjects, phenomena, processes, events of nature and society. The philosophical statements about general objective interrelation of all phenomena and processes of the world are connected with the doctrine of determinism, which embodies the active form of this interrelation.

Serious violent crimes against life and health of a human provided by law, having a criminal-legal commonality, for a set of determining criminogenic phenomena, as well as the structure of the conflict in the specific life situation are not identical. A significant number of researches, conducted by foreign and domestic scientists, are devoted to the problems of the conflict, especially the criminogenic conflict, its structure, the reasons for the existence and the mechanism of its development. The structural elements of any conflict can be the different personal and individual specificities of the participants in the conflicts.

We can identify the determinants of violent crimes, the main of which are the following: 1) general causes of crime (social, economic, psychological, political, etc.); 2) self-determination of violent crime (on the basis of criminal violence there are new manifestations of violence, the development of criminal traditions and customs on its background); 3) domestic violence, which becomes a breeding ground for the formation of violent ways of resolving conflicts not only in intra-family relations, but also outside of the family; 4) negative social phenomena (background phenomena) that are directly interrelated with violent crime: alcoholism, drug abuse, prostitution, begging, freeloading. They are a condition and a ground for violence. Mental disorders that occur in parents and their children due to constant drinking and taking drugs are also one of the causes of criminal violence.

This list should not be considered closed, because in addition to the above reasons and conditions of violent crime, there are many other no less important, no less fatal ones, however, even taking some of them into account in the organization of preventive work will improve the fight against violent crime.

***Keywords:*** *violence, crime, punishment, determination, defects of consciousness.*

**Relevance of the study.** The criminological problem of crime detection has a deliberative character and does not find an explicit solution by scientific collaboration. There is no doubt that the determination of crime is a kind of social determination, which in its turn is an element of the philosophical doctrine of the highest level of abstraction – dialectical determinism – general law on universal connection, interdependence and intersectionality


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between subjects, phenomena, processes, events of nature and society. The philosophical statements about general objective interrelation of all phenomena and processes of the world are connected with the doctrine of determinism, which embodies the active form of this interrelation.

Serious violent crimes against life and health of a human provided by law, having a criminal-legal commonality, for a set of determining criminogenic phenomena, as well as the structure of the conflict in the specific life situation are not identical. A significant number of researches, conducted by foreign and domestic scientists, are devoted to the problems of the conflict, especially the criminogenic conflict, its structure, the reasons for the existence and the mechanism of its development. The structural elements of any conflict can be the different personal and individual specificities of the participants in the conflicts.

**Recent publications review.** Research on the determinants of violent crime has been carried out by many researchers, for example. A. Iosypiv, E. Bafiya, V. Golina, N. Kuznetsova, V. Orekhov and others.

**The article's objective** is to study the essence of the determinants of violent crime in Ukraine.

**Discussion.** In general, the essence of the problem is as follows. All known criminological approaches to the explanation of crime detection can be conditionally grouped into two main ones: 1) with the predominance of objective determinants of crime; 2) with the predominance of subjective determinants of crime.

The former devote causative role to the environment, and the predetermining one – to the people, the others - on the contrary. Adherents of the first approach apply a multifactorial method and link the determinants of crime with the imperfections of social system, shortcomings and miscalculations of social policy and administration, legislative regulation of public relations and, in part, with defective legal awareness of society members [1, p. 121-122]. In other words, the primary role in causing of crime is assigned to the objective factors of public life, while the determining role is performed by the conscience of individuals, who committed a crime. Such universality, simplicity, and conventionality of explanation of the origin of a crime is appealing.

According to the logic of the supporters of this idea, it turns out that the social environment (macro and micro), which is external to the offender, is the basis of causality. That is, the determinants of human activity lie in the sphere of social existence, and not in the social consciousness, and, accordingly, precautionary measures should be aimed at eliminating the social contradictions and shortcomings of this environment, which, in the result, should lead, if not to the elimination, to, at least, a significant reduction in the crime rate. But then, the question arises: how to be in the case, when due to the current crisis it is objectively impossible to improve the material conditions of existence of the environment, in particular youth, or to arrange the sphere of everyday life and leisure [2, p. 133] ?

The objectivity of the detection of violent crime is quite conditional, because it is a dialectical contradiction of subjectivity, the highest level of abstract thinking. Functioning, development, reproduction of the investigated crime first of all depend on collective wrongful activity of people of a certain structure of personal directedness. These people do not live in isolation, they dissolved among all population groups, thus the highest concentration of the violent – oriented carriers was recorded in the deviant youth environment. We understand the situation in terms of the socio-cultural space of youth existence as a socio-demographic group of the population [3, p. 78].

The deviant person interacts, exchanges energy and information with other social groups, structurally enters to the part of the general system of the social organization, forms under the influence of various social institutes, processes, social facts. This environment affects the consciousness and will of individuals, representatives of this community, as well as individuals through life, cumulative activity, motivational lines and behavioral programs determine the qualitative content and external form of functioning of this environment.

It is important to understand that external influences only indirectly determine human activity, insofar as they are wringed through consciousness and are regulated by thinking, they are contained by volitional efforts, correlate with the needs and interests and value orientations of people, through the prism of which they can noticeably bend and modify in motivation of determined effort [1, p. 119].

Summarizing these data, we answer the question about the specific groups of features of the person, which are the basis of the subjective determinants of violent crimes, allocation of

which were proposed by A. Iosypiv [1, p. 120]: 1) expansion of the non-adaptive to the law-abidingness population layer, expansion of criminal views and subcultures, and with it, the primitivism and stereotype of interpersonal relations based on disregard for human beings, violence and alcohol abuse give rise to conflict, aggressiveness, often a violent way of addressing the specific life situations; 2) criminogenic crime, which is caused by the socio-economic psychology of people, which is based on something that does not disappear for centuries, doesn't depend on the stage of the society development. the desire to accumulate money and material values, abducting of other people's things, to unjust enrichment, wealth, opulence, etc.; 3) various forms of victim behavior of victims; 4) weak criminological sensitization of the population about violent crime, which significantly complicates applying of precautionary measures; 5) deterioration of the socio-psychological climate at work, in the family, in the relations between the spouses, which is caused by the deviating behaviour of different participants of relations; 6) unprecedented dissemination in the media, in the cinema, on the television of the cult of power and club law, violence, sexual promiscuity, debauchery, mockery of yourself, money power, which reduces the immunity of the human personality, inflames low tempers, permissiveness, criminal business, justifies «cool» behavior [4, p. 44-46]. Just look at modern cinema - the vast majority of film and television products are focused on the justification of violence and making a heroes of bandits and criminals. Such information can encourage forceful violation, because carries with it stereotypes of behavior. People appeared, ready to kill anyone by order and for money; 7) weakening of social control over crime. Social control is constantly lag behind the criminal boundless, because there is no (or weakly adjusted) system of advanced self-defense.

Should bear in mind that the analyzed type of crime is a phenomenon of public life, it is an integral part of a more general system – criminality in general, and at the highest level of theoretical generalizations, the determination of these phenomena is interconnected and interdependent [5, p. 33-34]. Since the violent crime belongs to the class of phenomena of public life, it can be argued that it is affected by the provisions of the social determinism – teaching about the relationship of people in the process of subject-specific activity, interpersonal interaction, inclusion in social relations.

In other words, violent crime in its activities is a product (consequence) of socially dangerous activity of people, the result of the selection of violence as a way of illicit enrichment. It follows that the immediate cause of the analyzed type of crime is criminologically oriented collective consciousness and psychology, and not some superhuman forces of nature and society, although the influence of previous on the public consciousness and will is not rejected, because they are found in other non-causative determinative connections (statistical, correlative, functional, connections of conditions, etc.) [6, p. 570]. It convincingly combines rational and irrational elements, conscious and unconscious moments. Needs, interests, motivational lines, goal-setting tendencies, which give social connections not strict, but stochastic nature – in mass activity of people intertwine and objectivize.

Thus, in the first approximation to the solution of the problem, we state that the cause of violent crime, as a type of social determination, should be explored in the area of defect of mind and will of deviant youth, because, in our opinion, the immediate cause of the criminal activity of young people has a socio-psychological origin. The last statement touches the problem of crime detection, its most controversial position.

And the most important: in case of unfavorable scenario of life, given a category of people, will be actively looking for alternative for legal sources to meet their needs and interests, will oppose its own individual position to the requirements of moral and legal norms, basic values of coexistence, will form micro-units and circles of like-minded people.

It is thought that the connection between the states of common consciousness and the existence of the past and the present will lead to one-moment changes of the person for the better. People's thinking is inherent, acquired criminogenic experience, formed negative traits, personality orientation automatically do not change only influenced by external objective factors of environment. It is necessary to combine time and systemic environmental changes with the psychological correction of consciousness and will of the carriers of the root cause of crime - persons who have criminogenic orientation with regard to obtaining material benefits by means of criminal violence. It is not only needed that objective changes in social life have mirrored in the minds of the masses, but, also, needed a subjective perception of their positive content, the establishment of a receptive attitude to them, that is, for them there must be a support, a corresponding basis in the thinking of people [7, p. 21-22].

The use of an objective approach to the explanation of the causes of crime and its manifestations is based on the acquisition of knowledge from cause to effect, when the real conditions of social life, which are based in this historical period of time, are recognized in the meaning of the cause, under the influence of which the person who committed the crime is formed. However, for such a development of knowledge in the scheme the environment – a person, another important causal link – a person – the crime (as a social fact), is being lost and its not worth to jump through it, otherwise, happens that the society (environment) implicitly produces a criminal phenomenon, with which it is impossible to agree.

The cause of the previous cause is not the cause of the consequence (event of the crime), it can only be its condition, obviously, it is more productive to look for the immediate cause, the closest link to the criminal manifestation (consequence). The criminogenic elements of consciousness and psychology of the person of the criminal act as such, and their formation, is nothing else, as a necessary condition that provides criminal act. Out of here, the epistemological emphasis of causality shifts from the objective to the subjective flatness.

With regard to it, it is very problematic to rise from the concrete to the abstract level, where the determination of violent crime of life is actually taking place. The marked contradiction for today is partially removed thanks to efforts of social psychology - branch of knowledge that emerged on the border of general psychology and sociology. This science studies the masses of mental phenomena and processes, laws and mechanisms of the relationship between the individual and society.

The socio-psychological sphere of determination of criminal phenomena in criminology is generally considered to be the average level of abstraction, the sphere of action of the causality of the micro-environment of the person, those small social groups in which the life of each of us flows (family, labor collective, household environment, informal leisure companies, circle of friends). That is, these are everyday conditions for the formation of personality in the everyday flow of life and activity, the usual communicative process.

Socio-psychological determinants of crime and its manifestations are formed from top to bottom, from society to the individual and his psyche and consciousness, under the influence and even to some extent due to the "pressure" of general negative phenomena and processes that develop in the socio-political, socio-economical, socio-cultural, moral-psychological, household-leisure, social-health-improving and other spheres of social life. However, this does not mean that the phenomena of social existence immediately give rise to the corresponding phenomena of consciousness and psychoforms in the flatness: phenomenon – psycho-form of reflection by public consciousness [4, p. 133].

In our opinion, the predominance of criminogenic elements over non-criminogenic ones in the public consciousness and psychology of certain circles of youth, which entails a change in the perception and attitude towards the mass psychological readiness to receive the material benefit criminally. Such an attitude psychologically adjusts a significant number of people to violent crimes, therefore, we consider it a determinant of the highest level of abstraction, which inevitably causes the phenomenon of violent crime in society.

Concerning doubts about the possibility of the spread of the action of socio-psychological factors on the general level, we note some obsolescence of the criminological knowledge, inconsistency to the level of development of progressive scientific thought. The existence of individuals is integrated into the existence of a small social group, while the individual and group consciousness and psychology interpenetrate and interdependence, that is, new reality appears. From this it becomes clear that the so-called large social groups, their consciousness and psychology are formed from the integrative characteristics of small groups. At the highest level of observance, the public consciousness and psychology do not appear out of nowhere [8, p. 97].

The existence, consciousness and psychology of large social groups are made of the material of integrated small groups of people, saturated with the spirit of the everyday psychology, morality, social imaginations, way of thinking, attitudes and experiences. Living in the same kind of environmental conditions, representatives of the same homogeneous social group have a more or less similar order of life, have a similar lifestyle, and their opinions on common social problems and challenges of the present coincide in many ways.

During communications, a variety of activities, a common solution of urgent life problems, people exchange thoughts, personal experience, come to the joint position, at the same time the elements of individual consciousness and psyche are partially connected, integrate into the collective mind, common ideas and assessments of the surrounding reality, on

the basis of which appear massive attitudes and feelings, fears and hopes, and public opinion is being formed [4, p. 44].

Thus, for example, there is a general anxiety with the problem of determining the sources of means of subsistence in the crisis period, which is subject to mass thinking from the angle of social expectations and aspirations, people's assessment of their capabilities, determination of the permissible limit of alternative solutions. Comprehension takes place on the emotional-sensory and rational levels, accompanied by daily discussions and prevailing mindsets, relies on existing common ideas, morality, correlation of general and individual interests, in this way a general opinion is formed, a common position, which is secretly or openly shared by many.

It should also be determined what causes such order, unifies the collective position. Until now, it was believed that these are exclusively similar living conditions of social groups, the same external factors of the social environment, which reconstruct social consciousness and psychology. This is correct only in part, in view of the complete stratification of the society and the stable socio-economic situation in the country.

Now about what applied relevance the discussion provisions of the criminological theory of determination in the study of the problem of child determination have. Declared by us position of observance of the socio-psychological approach at clarification of determination of violent crime and its manifestations is a logical continuation of the reasoned conclusions based on the results of knowledge of the identity of the perpetrator. We will proceed from the previously proved position on the fact that the causal basis for the commission of criminal behavior is the orientation of violent behavior as an integrative moral and psychological property of the personality of the criminal.

The above gives grounds to think: is the thrust of violent manifestation really spreading to the level of group psychology and consciousness? Of course not. The fact is that in the case of a group or mass interaction, the empathy of individuals is connected only in the part of certain elements, fragmentarily coincides psychology, which in the result are transformed into other whole new elements of the collective psyche, formation of a more general order [1, p. 118]. At this point, the thrust of the person exhausts its action. It remains to figure out: what is this innovation? Specialists in the field of social psychology agree on the thought-hyper-individual psychological composition and spiritual-emotional unity, which express typical. The interesting is classification of the determinants of violent crimes proposed by V. Golina [9, p. 44-46] and characteristics of its elements:

Criminogenic phenomena and processes that determine family and domestic violent crimes:

1. A characteristic feature of this group of crimes is that criminogenic phenomena and processes are intertwined and a complex objective-subjective interpersonal situation is created, which gives rise, as a rule, to stable or periodically criminogenic situations. The recent arise or exist constantly, because often the basis of the conflict is a lasting clash of sides over real or imagined material or spiritual needs and values. Outwardly, they manifest in the form of mutual hostility, hatred, dislike, suspicion, suspicion, jealousy, revenge and so on; quarrels over the immoral behavior of one of the participants in the conflict, material or housing problems, interference of relatives in the family life of spouses and numerous other household and family-household problems. Most of the violent crimes were the result of quarrels, mutual fights, threats, provocations for the part of the victims or encirclement.

2. Crimes are often preceded by aggravation and complication of the conflict in connection with the one-sided or mutual usage of physical force to solve conflict episodes. According to research, in all criminogenic situations, the regularity of the transition from simple quarrels to mutual fights and damage was revealed.

3. An important criminogenic determinant of conflicts and violent crimes is the alcoholization of micro-environments and their direct participants - the degree of conflict incidents. Family-domestic and violent crimes are determined by the shortcomings in the activities of law enforcement agencies, local government agencies, the public, the passivity of close relatives, and so on.

Criminogenic phenomena and processes that determine situational violent crimes:

1. Insufficient material base of cultural and leisure institutions. It is about the inaccessibility of cultural leisure for a large part of the population. Street-friendships of the youth, aimless waste of time, dubious set of daily entertainment, drinking of alcoholic beverages in random places and with random or barely-known people near beer bars, in parks,

backyards or basements; gambling – form a marginal environment and create the same type of criminogenic situations.

2. Low social status of many criminals, caused by demographic, family-specific characteristics (low wages, poor housing conditions and poverty and so on.).

3. Strengthening of mental load and tension in modern conditions.

4. The negative role of the criminal subculture, which is manifested, in particular, in the fact that the behavior of convicted persons in the field of leisure has morbid, often anti-social character.

Increased conflict, excitability, drunkenness, chronic alcoholism, drug addiction, criminal habits, profanity, the frequency of accidental conflicts – all of these make of such people the most probable actors and victims of violent crimes.

5. The contradiction between the status of a person and his inflated orientations creates psychological discomfort, in connection with which, companies, where spends leisure time, are a convenient place for reimbursement of failures in another areas.

6. Reduction of social and preventive control of state bodies, labor collectives, publicity for those spheres of life that contribute to the spread in society of drunkenness, aggression, violence and evil, frustration, mental pathology, fear of crime, criminal lawlessness, organizational and spiritual consolidation of the criminal world, passivity of the population, formalism and incompetence in the work of law enforcement bodies, especially in the field of crime prevention, etc.

Criminogenic phenomena and processes that determine willful murders and grievous bodily harm, which are planned in advance:

1. Unfavorable socio-economic and moral-psychological situation in the country and near abroad. Fundamental and sometimes painful transformation of many spheres of life has caused economic instability in the country, a change in the level of state policy of ideological attitudes of the person regarding property, means of production, frankly self – serving desires of a significant part of the new businessmen and even the proprietary extremism of many of them. Individualism, extortion, legal and moral nihilism appear among all branches of society, more over among marginal layer; limited material resources and the intention to gain access to them, even at the cost of another's life, becomes the dominant of selfishness, the cause of strained interpersonal relations and conflicts in many spheres of human existence, which often end tragically. Social inequality, which in our country manifests itself loudly and unjustifiably cruelly and unfairly, diminishes the importance of the human person as a social value, destroys solidarity in society, removes the moral and legal prohibition "Do not kill!" Decrease in the level of person's inviolability makes the life and health unprotected and available for different criminal manipulations.

2. Lumpenization, marginality, alcoholization of significant groups of the population. Expansion of the population, which is not adaptable to the law-abidingness, spread of criminal views and subcultures, and with it the primitivism and stereotype of interpersonal relations, which are based on humiliation, violence and abuse of alcohol, give rise to conflict, aggression, and often a violent way of solving specific life situations.

3. Criminogenic coerciveness, which is caused by the socio-economic psychology of people, built on something that does not disappear for centuries, does not depend on the stage of development of society, the desire to accumulate money and material values, to unjust enrichment, wealth, luxury, etc.

4. Different forms of victim behavior of victims.

5. Weak criminological awareness of the population about violent crime, which significantly complicates the use of precautionary measures.

6. Deterioration of the social and psychological climate at work, in the family, in the relations, which is caused, in particular, by the deviant behavior of different participants.

7. Unprecedented propaganda in the mass media, in the cinema, on television, the cult of power and club law, violence, sexual perversion, debauchery, humiliation of the person, the power of money, which reduces the inviolability of the human personality, inflames low attachments, permissiveness, criminal business, justifies "cruel" behavior. Such information can encourage violent crimes, because it carries stereotypes of behavior. Appeared people, who are ready to kill anyone on orders and for money.

8. Weakening of social control over crime. Social control is constantly lagging behind criminal lawlessness, because there is no (or poorly established) system of advanced self-defense of society. Precautionary work of all subjects of crime prevention is weakened, proper

work with criminal family troubles is not carried out, law enforcement agencies do not react enough to the onset of violent crime, the level of work of the bodies of internal affairs with the illegal possession of weapons by the citizens has decreased, weak work in places of imprisonment with criminals who committed violent encroachments, etc.

9. Insufficient psychological, physical, legal, technical protection of the person.

Criminogenic phenomena and processes that determine pathological premeditated murders and grievous bodily harm: Criminogenic phenomena that determine this group of crimes may include phenomena of socio-psychological and psychiatric, medical and pedagogical, medical-rehabilitation, organizational-administrative, legal and of another nature. First of all, it is a factor of mental distress of the population in general, as well as in places of deprivation of liberty, where this distress is exacerbated and then manifested in the recurrence of crimes. The rise of mental illness in all economically developed countries of the world is one of the important medical and social problems of our time (personality disorder, neurosis, psychosis, etc.).

Research shows that there is a direct relationship between the duration of criminal activity and the mental disorder of the convicts. The medical and pedagogical spectrum of criminogenic phenomena covers insufficient medical examination of the population for the purpose of establishing persons with mental anomalies. Measures are poorly implemented to combat the problem of alcoholism and narcotization of adolescents, there is no well-thought-out concept of medical and pedagogical influence on adolescents.

Criminogenic determinants of the medical-rehabilitation character are too complex, and some of them have not been studied at all. These include determinants of genetic and physiological origin, the influence of the external environment on the mental activity of man, etc. The country does not have a system of timely detection and registration of persons with mental anomalies, the way of life and behavior of which testify to the real possibility of committing a violent crime, cooperation between medical and law enforcement agencies, constant relevant information exchange between them, counsultation is not provided at the proper level.

The work of health protection bodies, internal affairs bodies and other subjects of crime prevention with persons suffering from mental anomalies has significant shortcomings. There is practically no legal provision for such activities. In addition, literature, movies, television, videos with elements of sex and sadism have a very negative impact on the volatile psyche of minors and young people and forms perverted moral and legal views and ideas of criminals.

Therefore, having analyzed the above approaches to the selection of the determinant of violent crimes and their division into objective and subjective, we can propose the following list of determinants of crimes:

1) Negative influence of the micro-environment;

2) Drunkenness;

3) Unfriendly interpersonal relations;

4) Conflict situations between the offender and the victim. In some cases, they occur suddenly, in others they are the result of the development of persistent hostile situations. In any case, the behavior of the victim, which serves as a victimogenic factor, plays a significant role here;

5) Criminalization of the person which is being expressed in (increase in numbers of convicts and also unemployed and non-students; increase in the amount of criminals that are negatively characterized by place of residence; in the number of conditionally convicted and conditionally released persons; in increase in the number of persons recognized by courts as insane in connection with the commission of socially dangerous acts against life and health of citizens);

6) Insufficient control over convicts in places of deprivation of liberty. In the structure of penitentiary crimes, the encroachment on life and health of a person occupies a prominent place. Most of these crimes are committed on the basis of hostile relations, mutual resentment, quarrels between groups of convicts, which are formed on the basis of signs of association;

7) Shortcomings in the prevention of violent crimes. In analytical works there is no clearly defined focus to the detection of qualitative processes, which determine the determinants, state and tendencies of serious violent crimes. The social, medical and psychological aspects of the problem are not studied. Possibilities of scientific research institutions and educational establishments of the system of Ministry of Internal Affairs of Ukraine are insufficiently used; a number of internal law enforcement agencies do not provide a comprehensive approach to the development and use of measures to prevent violent crimes;

in the process of planning the activities of internal affairs bodies regarding the prevention of these crimes, the appropriate level of possibilities of all services is not taken into account, the concentration of their efforts on the performance of the main tasks is not provided. The system of responding to statements and notifications about domestic conflicts does not provide timely prevention of crimes; there is often no clear connection between the duty units and the district police inspectors, flexibility and maneuverability in managing the available forces and means for the needs of immediate response to signals of scandals, fights, riots; statements and reports on domestic conflicts in many bodies of internal affairs are viewed superficially. The actions of the co-workers, as a rule, are reduced to the issuance of a referral for a forensic examination; despite the objective possibility of obtaining information on the occurrence of a conflict situation, the work on the detection of persons who commit offenses in everyday life is unsatisfactory; in the detection of such persons and situations, the possibilities of publicity are poorly used.

Complaints and statements of citizens concerning violation of criminal cases, materials of forensic medical examinations, private prosecutions, proceedings on marriage are rarely analyzed. Possibilities of the secret apparatus, accounts of medical sobering-ups and also accounts of the persons whom imposed an administrative responsibility for petty hooliganism are badly used; the individual-preventive work does not take into account the need for the primary use of measures aimed at eliminating the causes that cause the conflict situation; the influence on the persons who are on the account is carried out in a stereotyped way, it is reduced only to episodic visiting of apartments by district inspectors of the police; The rules of criminal law on liability for murder, threats of murder and infliction of grievous bodily harm are poorly used; low efficiency of administrative and legal forms of influence on offenders, issuance of official warning are carried out formally, administrative supervision often does not give the desired results; weakened fight against hooliganism on the administrative-legal and preventive lines; no proper control over the acquisition, storage and usage of firearms, by removing it from persons who systematically commit offenses.

8) Deficiencies in the field of the detection of crime offenses (victims among persons, who are being wanted as missing-persons are not detected in a timely manner; in the course of investigation the behavior of the victim before commission of a crime is superficially studied; inspections of the scene of the incident are not always carried out with reports of grievous bodily harm; weakly organized search of criminals by signs. Testimonies of victims, eyewitnesses of the crime and other witnesses are incompletely used; specialization in the detection of crimes against the person has not been completed; insufficiently effective system of receiving information about the processes that take place in the community of convicts and persons who are under pressure, theirs attitudes and intentions; information is not always sent to the territorial authorities regarding persons who try to make a reprisal against witnesses, relatives, friends, neighbors).

As we can see, the determinants of violent crime have their own specifics, they do not act on their own, but in the context with socio-economic, political, culturological and other criminogenic factors. Solving rather difficult question of developing of effective means of overcoming and resisting violent crimes against life and health of the person, it is important to pay attention to the investigation of its causes (organic set of social phenomena and processes, which in interaction with the circumstances play the role of condition, determine the existence of crime as a social phenomenon).

Therefore, among the main reasons and conditions of violent crime, against life and health of a person can be distinguished as follows: 1) Preliminary revaluation of former values and moral principles, increasing recognition by the mass consciousness of the power of money, the material factor as the only value; devaluation of human life, if it is not supported by high material indicators; the cult of cruelty; 2) Legal nihilism, contemptuous attitude to the activities of law enforcement agencies, the influence of criminal subculture; 3) Criminogenic influence of negative conditions in the micro-environment (lasting and purposeful influence on young people by demoralized, often convicted persons, leaders with anti-social activism); family criminal misconduct, which is characterized by manifestations of aggression; 4) Unfavorable housing conditions: rising housing prices, which makes it impossible to buy your own housing (criminal conflicts, and subsequently crimes against life and health, often occur between residents of communal flats, divorced, but living in the same house). After all, a large number of murders are committed for the purpose of taking someone else's house, for example, pensioners, for whom there is no one to take care of; 5) Contemptuous attitude of law

enforcement agencies to the facts of animal abuse, leveling the fact that almost all maniacs and serial killers began their "activity" with the abuse of animals. For the time being, in the Criminal Code of Ukraine, provision 299 "Cruel treatment of animals", despite the large number of facts of commitment of such a crime, only some of them are registered. 7) Improper response of internal affairs bodies to the facts of death threats, persecution of the victim, as well as preparation for the commission of a crime; 8. In the end, the high level of security of the population, which is caused by the improper work of law enforcement agencies and the detection of the facts of illegal production, storage and carrying of cold and firearm weapon.

**Conclusions.** Thus, we can identify the determinants of violent crimes, the main of which are the following: 1) general causes of crime (social, economic, psychological, political, etc.); 2) self-determination of violent crime (on the basis of criminal violence there are new manifestations of violence, the development of criminal traditions and customs on its background); 3) domestic violence, which becomes a breeding ground for the formation of violent ways of resolving conflicts not only in intra-family relations, but also outside of the family; 4) negative social phenomena (background phenomena) that are directly interrelated with violent crime: alcoholism, drug abuse, prostitution, begging, freeloading. They are a condition and a ground for violence. Mental disorders that occur in parents and their children due to constant drinking and taking drugs are also one of the causes of criminal violence.

This list should not be considered closed, because in addition to the above reasons and conditions of violent crime, there are many other no less important, no less fatal ones, however, even taking some of them into account in the organization of preventive work will improve the fight against violent crime.

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

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**Костянтин МАРИСЮК**

**ДЕТЕРМІНАНТИ НАСИЛЬНИЦЬКОЇ ЗЛОЧИННОСТІ**

**Анотація.** Кримінологічна проблема детермінації злочинності має дискусійний характер і не знаходить однозначного вирішення науковим співтовариством. Не викликає заперечень, що детермінація злочинності – різновид соціальної детермінації, котра у свою чергу є складовою філософського вчення найвищого рівня абстракції – діалектичного детермінізму – загального закону про універсальний зв'язок, взаємозалежність та взаємообумовленість між предметами, явищами, процесами, подіями природи і суспільства. З філософськими положеннями про загальний об'єктивний взаємозв'язок всіх явищ і процесів світу пов'язане вчення про детермінізм, який уособлює активну форму цього взаємозв'язку.

Передбачені законом тяжкі насильницькі злочини проти життя і здоров'я особи, маючи кримінально-правову видову спільність, за набором детермінуючих їх криміногенних явищ, а

також структурою конфлікту в конкретній життєвій ситуації неоднакові. Девіантна особа взаємодіє, обмінюється енергією та інформацією з іншими соціальними групами, структурно входить до загальної системи суспільної організації, формується під впливом різних соціальних інститутів, процесів, соціальних фактів. Означене середовище впливає на свідомість і волю фізичних осіб, представників цієї спільноти, рівно як і останні через спосіб життя, сукупну діяльність, мотиваційні лінії і поведінкові програми визначають якісний зміст і зовнішню форму функціювання даного середовища.

Важливо розуміти, що зовнішні впливи лише опосередковано зумовлюють людську активність, оскільки заломлюються через свідомість й упорядковуються мисленням, стримуються вольовими зусиллями, співвідносяться із потребами та інтересами, ціннісними орієнтаціями людей, крізь призму яких можуть помітно викривлятися й модифікуватися у мотивації цілеспрямованої діяльності. Причинність насильницької злочинності як вид соціальної детермінації слід шукати у площині дефектів свідомості і волі девіантної молоді, бо, на наш погляд, безпосередня причинність кримінальної активності молодих людей має соціально-психологічне походження.

***Ключові слова:*** *насильство, злочинність, злочин, покарання, детермінація, дефекти свідомості.*

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## DOCTRINAL FRAMEWORK OF DEVELOPING A SAFE-ORIENTED DIMENSION OF THE FUNCTIONING OF PRISONS OF THE MINISTRY OF JUSTICE OF UKRAINE

**Abstract.** The author's analysis of the conceptual apparatus in the field of penitentiary security is carried out in the article. Author's definitions of such concepts as: "security in the penitentiary system", "danger in the process of execution / serving sentences in places of detention of the Ministry of Justice of Ukraine", "penitentiary threat", "personal security during execution / serving sentences", "right of convicts", "for personal safety".

***Keywords:*** *security, danger, threat, personal security, right of convicts to personal security.*

**Relevance of the study**. The current state of reform (development) of the penitentiary system of Ukraine [1], and the doctrine of domestic criminal executive (penitentiary) law [2; 3; 4; 5; 6; 7; 8] put new approaches to understanding the traditional categories to the practice of execution of punishments in this area. One of such categories is "security" in the penitentiary (penitentiary) sphere of legal relations.

**Recent publications review.** Within the framework of the criminal-executive development and criminological principles of security-oriented functioning of places of

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detention of the Ministry of Justice of Ukraine, it is important to understand the relevant conceptual apparatus. Some of the concepts have already been sufficiently developed by modern branch science (A. Bogatyrev, I. Bogatyrev, M. Gromov, B. Kazak, I. Kolb, O. Kolb, I. Kopotun, R. Pidvysotsky, I. Yakovets, etc.), and some need new approaches to their understanding, modernization or primary scientific substantiation.

**The article's objective.** The aim of the article is the author's analysis of the conceptual apparatus in the field of penitentiary security, designed to lay the foundation for security-oriented measurement of the functioning of places of detention of the Ministry of Justice of Ukraine.

**Discussion.** The need to develop appropriate principles is due to the dialectical relationship "danger – security". The use of the dialectical method gave rise to the connection between the categories of "security", "danger", "threat", "personal security", "right of convicts to personal security" in the context of developing criminal-executive and criminological principles of security-oriented functioning places of detention of the Ministry of Justice of Ukraine. Thus, based on the results of studying explanatory and special legal dictionaries, it should be noted that "security" in the penitentiary system should be understood as the state of protection of convicts, staff and others from dangers and threats during execution and serving sentences in prisons of the Ministry of Justice of Ukraine. It ultimately contributes to the goal of protecting the interests of the individual, society and the state. In addition to ensuring security in the process of execution/serving of sentences, the achievement of this goal, under Part 1 of Art. 1 of the Criminal Executive Code (CEC) of Ukraine (ie means of achieving it) helps to create conditions for correction and resocialization of convicts, prevention of new criminal offenses by convicts and others, as well as prevention of torture and inhuman or degrading treatment, treatment of convicts [9].

Therefore, it is unclear why the state of protection of convicts and staff is not enshrined in this list. Therefore, although at the doctrinal level, we propose to resolve this issue by setting out Part 1 of Art. 1 of the CEC of Ukraine in the following wording: "1. Criminal-executive legislation of Ukraine regulates the procedure and conditions of execution and serving of criminal punishments to protect the interests of the individual, society and the state by creating conditions for security of convicts, staff of penitentiaries and other persons, correction and resocialization of convicts, prevention of new criminal offenses both convicts and others, as well as the prevention of torture and inhuman or degrading treatment of convicts".

In turn, the "danger" in the execution/serving of sentences in places of detention of the Ministry of Justice of Ukraine is represented by some factors, the elimination (through anti-criminogenic influence) which ideally results – the state of penitentiary security. Among the factors of penitentiary danger, based on the results of scientific and empirical (including author's) research, we include such as:

– violence among convicts, staff and in different variations the interaction of such categories;

– stratification of convicts within the unspoken norms of criminal (prison) subculture, which can cause such latent forms of violence as psychological, economic, sexual;

– penitentiary crime, the "crown" of which in the context of penitentiary danger is violent crime in places of detention;

– various forms of abuse of staff of penitentiary institutions concerning convicts, which is manifested in all four forms of penitentiary violence – physical, psychological, economic, sexual;

– non-violent illegal actions of penitentiary staff, often related to corruption, resulting in various types of the latent both penitentiary and post-penitentiary threats to the penitentiary system and society and the state as a whole. In this case, the local danger (the level of penitentiary institutions) grows into a sectoral (level of the penitentiary system), and then – the national (national level) as a result of the impact on the state, dynamics, trends and structure of recidivism (post-penitentiary) crime.

It should be noted that the close connection of penitentiary security with public security (ie the connection of sectoral and national levels) is noted by both Ukrainian [10] and foreign [11, p. 5; 12, p. 4-10] scientists.

Thus, "danger" is the main system-forming property of "security". Therefore, in a broad sense, "security" is seen as a state in which: a) there is no danger; b) there is no danger because there is protection from it. In this case, it is customary to talk about the means and measures to ensure the security of the individual, society and the state. It should be noted that the concept

of understanding "security" as "protection from danger" is prevalent in modern domestic and foreign science. However, not the only one.

Opponents of this view argue that the category of "security" implies the presence of danger, and therefore security exists only when there is no danger at all. That is, according to B. Kazak, this is a state when danger is completely excluded [13, p. 15].

We believe that both positions deserve the right to exist both in theory and in practice. However, concerning the penitentiary system, due to the criminogenic composition of convicts, we consider it appropriate to consider penitentiary security as a state of protection from penitentiary dangers. Thus, one of the main signs of danger is the possibility of harm to the interests protected by law. That is, depending on the object and scope of the danger is present in the personal, material, environmental and other spheres of social life. The development of more or less objectively existing dangers can create one or another threat - the next element in the chain of concepts we study.

Starting with the analysis of the concept of "threat" in the penitentiary system, we note that it is closely related to the concept of "danger", but is not identical to it. These two seemingly identical concepts are static-dynamic, in which danger is a static phenomenon and a threat is dynamic. We will also pay attention to such moments.

First, it can be said that a threat is a real danger when, for example, a convict has a plan to commit violence against another convict or staff of a penitentiary institution. Secondly, different penitentiary threats have different degrees of danger, depending on the severity of the planned crime, the situation, means, tools and other aspects of the crime, and so on. Therefore, it is necessary to define "penitentiary threat" as realized at a certain stage (preparation, attempted penitentiary crime, or other manifestations of illegal behavior during execution/serving a sentence) the possibility of harming legally protected interests, which has, compared to an objectively existing danger, formal expression and transfer to the sphere of a potential victim of such a threat.

Consideration of penitentiary danger and penitentiary threat is not an end in itself. In any case, it is important to clarify these issues to achieve a socially significant goal. This goal is to ensure "personal security" in the implementation of criminal enforcement policy. The study of special scientific sources did not make it possible to find a universal definition of this term. Thus, some scholars equate the concept of "security" with "personal security", although the former has a broader socio-legal nature and extends not only to the personal sphere, but also to production, operational, economic, and ultimately national.

In turn, the explanatory dictionary of the Ukrainian language offers the following meanings of the adjective "personal": 1) one that is the property of a particular individual, belongs to him; personal; 2) which directly relates to a person related to him; which expresses the characteristic features, the inner essence of a person; 3) which is carried out directly, without third parties; which is carried out by someone on their own behalf [14, p. 504].

According to the results of the study, we can define "personal safety" during the execution/serving of punishment as a state of protection of life and health, honor and dignity, inviolability of convicts, staff of penitentiary institutions and other persons from potential and perceived threats and dangers due to the specifics of the functioning of the penitentiary system.

Ensuring the security of the staff of penitentiary institutions and personal security is possible due to dynamic security, which is characterized by the development of positive relationships with convicts, their employment, established trusting relationships with them and effective communication that allows staff to be confidential among the convicts.

The next concept among the above is "the right of convicts to personal security." It is the most voluminous due to its legislative enshrinement in Art. 10 of the Criminal Enforcement Code of Ukraine. Although not normatively defined, we consider it necessary to provide an author's definition of "the right of convicts to personal safety" – a set of state-guaranteed in the face of officials of penitentiary institutions (through the definition of many obligations of staff) powers of convicts in the absence of danger, as well as to protect their lives and health from various forms of violence and other dangers to life and health while serving/serving a sentence of arrest, restriction of liberty, detention in a disciplinary battalion of servicemen or imprisonment.

Highlighting among the priorities of personal safety of life and health of a person, as indicated in this definition, in Art. 10 of the Criminal Enforcement Code of Ukraine, is confirmed by the empirical results of the study. Yes, to the question "Indicate what do you associate the concept of" personal safety of convicts "with?" 97% of the practitioners we

surveyed indicated that there was no danger to life and health.

At the same time, the legislator correctly defined in Part 1 of Art. 1 of the Criminal Enforcement Code of Ukraine the subject of criminal-executive legal regulation (the dual process of execution and serving of sentence) and paid attention to consolidating only the "right of convicts to personal safety" (Article 10 of the Criminal Enforcement Code of Ukraine), "forgetting" punishment. It is appropriate to emphasize that the relevant issue is not regulated in the Law of Ukraine "On the State Penitentiary Service of Ukraine".

Therefore, in order to reconcile the interests of the two subjects of the process of execution/serving of sentences, adhering to those defined in Art. 5 of the Criminal Enforcement Code of Ukraine principles, as justice and mutual responsibility of the state and the convict, we consider it appropriate to legislate the mechanism of realization of the right of personnel of bodies and institutions of execution of punishments for personal safety.

**Conclusions.** Thus, we conclude that the mechanism of personal safety of convicts as a comprehensive institution for preventing violence in places of detention of the Ministry of Justice of Ukraine is an institutional entity that includes a system of international and national regulations, special subjects, forms and methods of their activities on ensuring the right of convicts to personal safety.

It is important to realize that the subjects of personal safety of convicts are not only the staff of penitentiary institutions of the Ministry of Justice of Ukraine but also international institutions (members of the European Committee for the Prevention of Torture or Inhuman or Degrading Treatment or Punishment ), other officials of the Ukrainian state (the Commissioner for Human Rights of the Verkhovna Rada of Ukraine or specially authorized representatives, as well as other persons specified in Part 1 of Article 24 of the Criminal Enforcement Code of Ukraine), lawyers or specialists in law, as well as the public figures (supervisory commissions, boards of trustees, public associations, mass media, religious and charitable organizations, individuals). It is also impossible to reject cases of self-defense of a convict in cases provided by law (for example, the right of a person to self-defense, to act in a state of extreme necessity). The main requirement in all cases is the use of statutory rights and the performance of certain duties by both convicts and staff and others.

*Conflict of Interest and other Ethics Statements*

The authors declare no conflict of interest.

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## ДОКТРИНАЛЬНІ ЗАСАДИ РОЗРОБЛЕННЯ БЕЗПЕКООРІЄНТОВАНОГО ВИМІРУ ФУНКЦІОНУВАННЯ МІСЦЬ НЕСВОБОДИ МІНІСТЕРСТВА ЮСТИЦІЇ УКРАЇНИ

**Анотація.** У статті проведено авторський аналіз понятійного апарату у сфері пенітенціарної безпеки, покликаний закласти фундамент для безпекоорієнтованого виміру функціонування місць несвободи Міністерства юстиції України.

Зазначено, що необхідність розроблення відповідних засад зумовлена діалектичним взаємозв'язком «небезпека – безпека». Використання діалектичного методу дало підставу через призму наведених понять визначити зв'язок між категоріями «безпека», «небезпека», «загроза», «особиста безпека», «право засуджених на особисту безпеку» у контексті розроблення кримінально-виконавчих і кримінологічних засад безпекоорієнтованого функціонування місць несвободи Міністерства юстиції України.

Визначено, що під «безпекою» в пенітенціарній системі варто розуміти стан захищеності засуджених, персоналу, інших осіб від небезпек та загроз під час виконання та відбування покарань у місцях несвободи Міністерства юстиції України, що в підсумку сприяє досягненню мети захисту інтересів особи, суспільства і держави.

У свою чергу, «небезпека» у процесі виконання/відбування покарань в місцях несвободи Міністерства юстиції України представлена низкою факторів, усунення (шляхом антикриміногенного впливу) яких в ідеалі має свій результат – стан пенітенціарної убезпеченості (забезпечення безпеки).

Зроблено висновок, що «небезпека» виступає головною системоутворюючою властивістю «безпеки». Тому в широкому розумінні «безпека» розглядається як стан, при якому: а) відсутня небезпека; б) не загрожує небезпека, тому що від неї є захист. У такому разі прийнято говорити про засоби й заходи забезпечення безпеки особи, суспільства і держави. Стосовно пенітенціарної системи, в силу криміногенного складу засуджених, запропоновано розглядати пенітенціарну безпеку саме як стан захищеності від пенітенціарних небезпек.

Аналіз поняття «загроза» в пенітенціарній системі надав підстави констатувати, що воно тісно співвідноситься із поняттям «небезпека», проте не є тотожним йому. Ці два поняття перебувають у зв'язку «статика – динаміка», за яким небезпека є статичним явищем, а загроза – динамічним.

Також звернено увагу на таке: по-перше, загроза є реальною небезпекою, коли, наприклад, у засудженого сформувався задум на вчинення насильства щодо іншого засудженого або персоналу установи виконання покарань; по-друге, різні пенітенціарні загрози мають різні ступені небезпеки, що залежать від тяжкості злочину, що планується, обстановки, засобів, знарядь та інших аспектів вчинюваного злочину тощо.

Визначено «пенітенціарну загрозу» як реалізовану на певній стадії (готування, замах на пенітенціарний злочин, або інші вияви протиправної поведінки під час виконання/відбування покарання) можливість заподіяння шкоди охоронюваним законом інтересам, що має, порівняно з об'єктивно існуючою небезпекою, формальне вираження й перенесення на сферу потенційної жертви такої загрози.

Запропоновано визначення «особистої безпеки» під час виконання/відбування покарання – це стан захищеності життя і здоров'я, честі та гідності, недоторканності засуджених, персоналу

органів і установ виконання покарань та інших осіб від потенційних та уявних загроз і небезпек, зумовлених специфікою функціонування кримінально-виконавчої системи.

Наведено авторське визначення поняття «право засуджених на особисту безпеку» – це сукупність гарантованих державою в особі посадових осіб органів і установ виконання покарань (через визначення низки зобов'язань з боку персоналу) правомочностей засуджених на життєдіяльність в умовах відсутності небезпеки, а також на захист їх життя і здоров'я від різних форм насильства та інших небезпек життю і здоров'ю при виконанні/відбуванні покарання у виді арешту, обмеження волі, тримання в дисциплінарному батальйоні військовослужбовців або позбавлення волі.

***Ключові слова:*** *безпека, небезпека, загроза, особиста безпека, право засуджених на особисту безпеку.*

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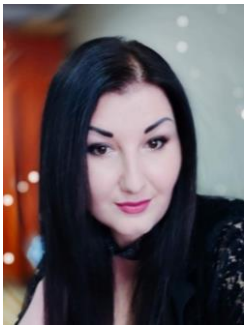

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## SOME ISSUES OF CRIMINOLOGICAL CHARACTERISTICS OF FEMALE CRIME IN UKRAINE

**Abstract.** Some components of the criminological characteristics of women's crime and its place in the structure of general crime have been studied. It was found that over the last five years, despite the fact that the total number of convicts is gradually decreasing, the share of women among all persons convicted of criminal offenses remains in the ratio of men to 1 to 7, remaining at the level of 11-12 %.

Among the criminal offenses committed by women, the most common are traditionally such illegal encroachments on property as theft (in 2020 - 53.7 % of the total number of convicted women). In second place are criminally illegal acts related to the illegal production, manufacture, acquisition, storage, transportation or transfer of narcotic drugs, psychotropic substances or their analogues without the purpose of sale. And such criminal acts as fraud and misappropriation, embezzlement or seizure of another's property by an official abusing his official position are characterized by a fairly high proportion of their commission by women.

***Keywords:*** *criminological characteristics, female crime, structure of female crime.*

**Relevance of the study.** For criminology, the characteristics of the offender is one of the most important issues that requires constant attention. Because the development of appropriate and effective measures to prevent any type of criminal offense must take into account the specific features, properties and qualities that distinguish criminals from law-abiding citizens. And it is the generalized criminological characteristics of certain types and categories of criminals allows to identify their specific features and qualities that contribute to the commission of criminal offenses, to identify criminogenic groups, as well as to predict the criminal behavior of individuals [1, p. 42]. In this context, it will be important to consider individual characteristics of crime among women as part of general crime. Because "a woman is the caregiver of the home", influences the behavior of the husband and the upbringing of

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children, it is mainly she who determines the relationship in the family.

Therefore, it is no exaggeration to say that the involvement of women in criminal activities and the prevalence of female crime affects the morale of society more significantly than the prevalence of male crime [2, p. 114]. It should also be noted that for criminology, the analysis of criminals by gender is of considerable interest, because, although female crime is closely linked to general crime, at the same time, it has certain features determined by the socio-biological and psychological status of women. From men's crime, which dominates in almost all indicators of general crime, women's crime differs in quantitative indicators, features of the structure and nature of crimes, the role of women in crimes committed with men, methods and tools of crime [3, p. 189]. Moreover, modern women's crime has a qualitatively new character. Often a woman not only leads a criminal group, but also organizes and commits the most brutal and sophisticated crimes [4]. At the same time, the opinion of O. Nadion is fair, that the crime rate among women is a kind of indicator of the health of public life [5]. In view of the above, the study of the components of criminological characteristics and current trends in crime among women in Ukraine is a very important issue that requires constant attention from domestic scientists [1-14].

**Recent publications review.** Scientists are almost unanimous in their general assessment of female crime in Ukraine. Thus, according to O. Bronevytska and I. Serkevich "Recently, there has been an increase in female crime in Ukraine, especially with regard to criminal offenses of an aggressive and violent nature, namely: robberies, banditries, infliction of grievous bodily harm. Female crime in Ukraine has doubled since the 2000s. The rate of criminal activity of women is of interest. Despite the upward trend, it is still much lower than among men, and even more so among the general population. For example, if in the 2000s per 100,000 population the rate of criminal activity of women was 97 people, in 2010 – 190. The ratio of female to male crime is 1: 8 (in more developed countries, the number of crimes committed by women, is from 17 % (USA) to 25 % (Germany, the Netherlands). The proportion of women among those who commit certain types of criminal offenses is as follows: theft – 80 %; fraud – 41 %; murder – 12 %; robbery – 8 %; infliction of bodily injuries – 7 %; negligent crimes – 5 % [4; 6, p. 323].

In addition, A. Belikova sees the uniqueness of female crime in the fact that despite the changing social status of women, especially in the last decade, the number of registered criminal offenses committed by women is 5-7 times lower than the same figure among men. This trend is of particular interest, given that the number of women in the country exceeds the number of men [7, p. 117]. If we turn to the data of judicial statistics, the above theses will be confirmed. Thus, according to the Reports on the composition of convicts in 2016, out of 76,217 convicts, women accounted for 11.69 %, in 2017 – 11.27 % (76,804 convicts), in 2018 – 11.8 % (73,569 convicts), in 2019 – 12.2 % (70,375 convicts) and in 2020 – 12.3 % (67,517 convicts) [8]. That is, over the last five years, despite the fact that the total number of convicts is gradually decreasing, the share of women among all persons convicted of criminal offenses remains in the ratio of men as 1 to 7, remaining at 11-12 %.

**The article's objective** is to determine the place of women's crime in the general structure of crime, as well as to find out the structure and features of women's crime in Ukraine.

**Discussion.** One of the reasons for this ratio is that "female crime is blurred, because, firstly, some crimes are committed by women in complicity with men, and secondly, a significant number of men's crimes are committed by women: either as instigators or accomplices, which, as a rule, are not exposed and not prosecuted. Women play a role that is not criminalized by criminal law: consumers of criminally acquired property, provocateurs of the development of certain needs and interests that are satisfied in a deviant way, etc." [2, p. 115]. That is, we can conclude that female crime is characterized by a higher level of latent crime than male. Official statistics do not single out female crime as a separate category, but shows only the number of women who have committed criminal offenses and the number of women convicted of criminal offenses.

However, these data are of some interest to criminology, as they can be used to determine the share of women among all criminals, as well as the structure of crime among women. So, in this publication, we will try to find out which groups of criminal offenses are typical for women by analyzing the data of judicial statistics. To do this, we first consider the data on the share of women among all persons convicted of criminal offenses under separate sections of the Special Part of the Criminal Code of Ukraine (hereinafter - the Criminal Code), for the period 2016 – 2020 (Table 1).

*Table 1*

**The share of women among the total number of convicts under sections of the Special Part of the Criminal Code**

| *Names of sections of the Special Part of the Criminal Code* | *The total number of convicts* | *The number of female convicts* | *The share of women among convicts under the articles of the relevant section* |
|---|---|---|---|
| Crimes against the foundations of national security of Ukraine | 630 | 351 | 55,7 % |
| Criminal offenses against life and health of a person | 30987 | 3911 | 12,6 % |
| Criminal offenses against the will, honor and dignity of the person | 62 | 15 | 24,4 % |
| Criminal offenses against sexual freedom and sexual integrity of a person | 672 | 10 | 1,5 % |
| Criminal offenses against electoral, labor and other personal rights and freedoms of man and citizen | 4464 | 476 | 10,7 % |
| Criminal offenses against property | 197936 | 27579 | 13,9 % |
| Criminal offenses in the sphere of economic activity | 3710 | 662 | 17,8 % |
| Criminal offenses against the environment | 3617 | 48 | 1,3 % |
| Criminal offenses against public safety | 14420 | 512 | 3,6 % |
| Criminal offenses against production safety | 369 | 33 | 8,9 % |
| Criminal offenses against traffic safety and transport operation | 18476 | 582 | 3,2 % |
| Criminal offenses against public order and morality | 7434 | 917 | 12,3 % |
| Criminal offenses in the field of drug trafficking, psychotropic substances, their analogues or precursors and other criminal offenses against public health | 49933 | 5063 | 10,1 % |
| Criminal offenses in the field of protection of state secrets, inviolability of state borders, provision of conscription and mobilization | 2113 | 29 | 1,4 % |
| Criminal offenses against the authority of public authorities, local governments, associations of citizens and criminal offenses against journalists | 6299 | 1156 | 18,4 % |
| Criminal offenses in the field of use of computers, systems and computer networks and telecommunication networks | 221 | 31 | 14 % |
| Criminal offenses in the field of official activity and professional activity related to the provision of public services | 4214 | 618 | 14,7 % |
| Criminal offenses against justice | 6381 | 811 | 12,7 % |
| Criminal offenses against the established order of military service (military criminal offenses) | 12395 | 86 | 0,7 % |
| Criminal offenses against peace, security of mankind and international law and order | 38 | 3 | 7,9 % |
| TOTAL | 364371 | 42893 | 11,8 % |

The analysis of the above data shows that the share of women significantly exceeds the average ratio of the number of convicted men among those convicted of crimes against the foundations of national security of Ukraine. While the share of convicted women is much lower than the average for committing criminal offenses: against sexual freedom and sexual integrity; against the environment; against traffic safety and transport operation; in the field of protection of state secrets, inviolability of state borders, ensuring conscription and mobilization; against the established order of military service. The above data are confirmed by the thesis of I. Kiselyov and V. Ludvik that "the percentage of women and men depends on a particular type of criminal behavior" [9, p. 117]. As A. Belikova notes: "in women's crime the ratio of crimes is in a proportion different from men's crime. The crimes of women are most reflected in the stereotype of their behavior, which has developed under the influence of a characteristic micro-environment or situation in a certain period" [7, p. 117]. So, let's find out

now what is the structure of the population of women convicted of criminal offenses and compare this structure with the structure of the population of convicted men (Table 2).

*Table 2*

**Comparison of the shares of women and men convicted under sections of the Special Part of the Criminal Code in total for the period 2016-2020**

| *Names of sections of the Special Part of the Criminal Code* | *The share of women convicted under the articles of the relevant section among the total number of convicted women* | *The share of men convicted under the articles of the relevant section among the total number of convicted men* |
|---|---|---|
| Crimes against the foundations of national security of Ukraine | 0,82% | 0,09 % |
| Criminal offenses against life and health of a person | 9,12% | 8,42 % |
| Criminal offenses against the will, honor and dignity of the person | 0,03% | 0,01 % |
| Criminal offenses against sexual freedom and sexual integrity of a person | 0,02% | 0,21 % |
| Criminal offenses against electoral, labor and other personal rights and freedoms of man and citizen | 1,11% | 1,24 % |
| Criminal offenses against property | 64,30% | 52,99 % |
| Criminal offenses in the sphere of economic activity | 1,54% | 0,95 % |
| Criminal offenses against the environment | 0,11% | 1,11 % |
| Criminal offenses against public safety | 1,19% | 4,33 % |
| Criminal offenses against production safety | 0,08% | 0,10 % |
| Criminal offenses against traffic safety and transport operation | 1,36% | 5,57 % |
| Criminal offenses against public order and morality | 2,14% | 2,03 % |
| Criminal offenses in the field of drug trafficking, psychotropic substances, their analogues or precursors and other criminal offenses against public health | 11,80% | 13,95 % |
| Criminal offenses in the field of protection of state secrets, inviolability of state borders, provision of conscription and mobilization | 0,07% | 0,65 % |
| Criminal offenses against the authority of public authorities, local governments, associations of citizens and criminal offenses against journalists | 2,70% | 1,60 % |
| Criminal offenses in the field of use of computers, systems and computer networks and telecommunication networks | 0,07% | 0,06 % |
| Criminal offenses in the field of official activity and professional activity related to the provision of public services | 1,44% | 1,12 % |
| Criminal offenses against justice | 1,89% | 1,73 % |
| Criminal offenses against the established order of military service (military criminal offenses) | 0,20% | 3,83 % |
| Criminal offenses against peace, security of mankind and international law and order | 0,01% | 0,01 % |
| TOTAL | 100% | 100 % |

From the above data, in particular, it follows that the largest number of convicted women are persons convicted of criminal offenses against property. According to this indicator, they predominate in the structure of the total number of convicted men. This partially confirms the thesis that "female crime is mostly characterized by mercenary crimes, in particular, related to professional activities" [10, p. 108].

There are two areas of life in which women mostly commit criminal offenses. The first is the sphere of life, where women are mostly pushed to crime by the negative circumstances of family, marriage and neighborly relations. Here, most violent crimes are committed: murder, infliction of bodily harm, hooliganism, etc. [2, p. 189]. According to D. Sliusar "violent

criminal offenses are committed by women, mostly against men, cohabitants, children, close relatives. Motives - unresolved family conflicts, the desire to leave the family, to benefit" [10, p. 108]. For example, in 2020, out of a total of 8296 convicted women, 479 or 5.8 % were convicted of light bodily harm (Article 125 of the Criminal Code), and 151 or 1.8 % - of intentional grievous bodily harm (Article 121 of the Criminal Code).

And the second area of committing criminal offenses is the area where a woman works, performs professional functions related to the possibility of free access to property. These are mostly trade, catering, agriculture, light or food industries. Here women most often commit such mercenary crimes as theft of property by theft, misappropriation, embezzlement or abuse of office [11, p. 152].

For example, the share of convicted women among all persons convicted of misappropriation, embezzlement or seizure of another's property by an official abusing his official position, responsibility for which is provided in Article 191 of the Criminal Code remains quite high. In 2016, it was 45.8 %, in 2017 – 33.7 %, in 2018 – 39.1 %, in 2019 – 46.5 % and in 2020 – 46.4 %. D. Sliusar explains this by saying that "embezzlement occurs not so much because of the easy availability of material values, but because of the inability to earn enough money to purchase various goods. In the difficult economic conditions of modern society, it is the woman who becomes the "breadwinner" of the family, which, of course, imposes on her additional mental and physical stress, which often leads to nervous breakdown" [10, p. 108].

In addition, many women, unable to withstand heavy physical exertion at low-paid jobs, as well as the low prestige of such work, quit it and / or start using alcohol or drugs. That is, the inability to meet material needs through hard physical labor and low wages, the need to satisfy the ever-increasing desire to drink alcohol or drugs, provokes mercenary motivation in women. And “the peculiarity of mercenary motivation is that the subject of the urgent need of women criminals is someone else's material value, which is obtained illegally, for example, by theft. It should be noted that this group of crimes is undergoing "qualitative" changes, i.e. if 10-15 years ago women committed thefts of state, public or collective property, now most of the thefts of citizens' property take place. The most common items of theft are valuables: mobile phones, appliances, jewelry, clothing and money. The decline in living standards leads to more primitive thefts, namely: children's things, food, perfume, alcohol, metal utensils, non-ferrous metals" [12, p. 48]. Statistics confirm these theses.

Thus, in 2020, the share of women among all persons convicted of committing a criminal offense under Part 1 of Article 185 of the Criminal Code "Theft" was 23.7 %, and for committing a criminal offense under Part 1 of Article 190 of the Criminal Code "Fraud" the share of women in general is 35.5 %. While for robbery, the share of women among all convicts was only 4.9 %, and robbery – in general 3.9 %. Moreover, in general, among all convicted women, women convicted of theft predominate: in 2020 – 4457 people or 53.7 %. While the category of women convicted of committing a criminal offense under Article 190 of the Criminal Code "Fraud" took third place (516 people or 6.2 %). A typical example is a criminal offense committed by a 25-year-old unemployed resident of Poltava, who has already been convicted three times for theft. While in her cohabitant's apartment, she saw his mother's leather jacket worth 450 hryvnias. and decided to steal it. Taking the jacket, she climbed out the window with it and sold it for UAH 10. to an unknown man [13, 14].

In addition, it should be noted that one of the most common moral and psychological traits of women criminals is alcohol and drug addiction [3, p. 190]. For example, in 2020, 621 women (7.5 % of the total number of convicted women) were convicted of a criminal offense under Article 309 of the Criminal Code "Illegal production, manufacture, acquisition, storage, transportation or transfer of narcotic drugs, psychotropic substances or their analogues without the purpose of sale". With this indicator, this category of women took second place among all convicted women.

**Conclusions.** Thus, over the last five years, despite the fact that the total number of convicts is gradually declining, the proportion of women among all persons convicted of criminal offenses remains at a ratio of men to 1 to 7, remaining at 11-12 %.

Among the criminal offenses committed by women, the most common are traditionally such illegal encroachments on property as theft (in 2020 – 53.7 % of the total number of convicted women). In second place are criminally illegal acts related to the illegal production, manufacture, acquisition, storage, transportation or transfer of narcotic drugs, psychotropic substances or their analogues without the purpose of sale. And such criminal acts as fraud and

misappropriation, embezzlement or seizure of another's property by an official abusing his official position are characterized by a fairly high proportion of their commission by women.

In addition, the question of why, among all criminal offenses in the last five years, the largest share of women, compared to men, were convicted of crimes against the foundations of national security of Ukraine – 55.7 %, deserves a deeper study. Moreover, in none of the other groups of criminal offenses, the number of convicted women exceeds the number of men. This advantage of women is mainly due to the commission of a crime under Article 110 of the Criminal Code "Encroachment on the territorial integrity and inviolability of Ukraine", as among 533 people convicted of this crime in the period 2016-2020, there were 343 women (64.4 %). The trend towards the above advantage began in 2018, when the share of women was 71 %, and continued in 2019 (72 % of women) and 2020 (72 % of women).

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

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**ДЕЯКІ ПИТАННЯ КРИМІНОЛОГІЧНОЇ ХАРАКТЕРИСТИКИ ЖІНОЧОЇ ЗЛОЧИННОСТІ В УКРАЇНІ**

**Анотація.** Досліджено окремі складові кримінологічної характеристики жіночої злочинності та її місце у структурі загальної злочинності. З'ясовано, що за останні п'ять років, незважаючи на те, що загальна кількість засуджених осіб поступово зменшується, частка жінок серед усіх осіб, яких засуджено за вчинення кримінальних правопорушень, залишається у співвідношенні до чоловіків як 1 до 7, утримуючись на рівні 11-12 %.

Встановлено, що серед кримінальних правопорушень, що вчиняють жінки, найбільш розповсюдженими традиційно залишаються такі протиправні посягання на власність, як крадіжки (у 2020 р. – 53,7 % від загальної кількості засуджених жінок). На другому місці перебувають кримінально протиправні діяння, пов'язані із незаконним виробництвом, виготовленням, придбанням, зберіганням, перевезенням чи пересиланням наркотичних засобів, психотропних речовин або їх аналогів без мети збуту А таким злочинним діянням як шахрайства та привласнення, розтрати або заволодіння чужим майном шляхом зловживання службовою особою своїм службовим становищем є властивим достатньо висока частка їх вчинення жінками.

Наголошується на необхідності дослідження питання того, чому серед усіх кримінальних

правопорушень, за останні п'ять років, найбільшу частку жінок, порівняно з чоловіками, засуджено за вчинення злочинів проти основ національної безпеки України – 55,7 %. При чому, у жодній з інших груп кримінальних правопорушень сукупно, кількість засуджених жінок не переважає кількості чоловіків. Така перевага жінок складається в основному за рахунок вчинення ними злочину, передбаченого ст.110 КК «Посягання на територіальну цілісність і недоторканність України», оскільки серед 533 осіб, засуджених за вчинення цього злочину, за період 2016-2020 рр., було 343 жінки (64,4 %). Тенденції до вищезазначеної переваги почалися з 2018 р., коли частка жінок склала 71 %, і продовжилась у 2019 р. (72 % жінок) та 2020 р. (72 % жінок).

***Ключові слова:*** *кримінологічна характеристика, жіноча злочинність, структура жіночої злочинності.*

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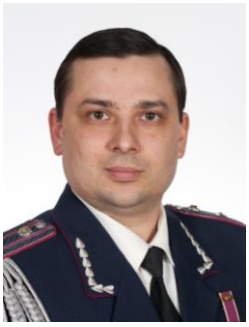

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## FOREIGN EXPERIENCE OF CRIMINAL LEGAL PROTECTION OF PRIVACY

**Abstract.** The authors have studied international practice, as well as the experience of some foreign member states of the European Union in criminal law protection of privacy. The peculiarities of regulating the objective features of the criminal offense of "Violation of privacy" in the Criminal Code of Ukraine, as well as in the criminal law of the United States, the French Republic, Switzerland, the Kingdom of Spain, Poland, Bulgaria.

They emphasized the multifaceted nature of the right to privacy in accordance with the provisions of international human rights law, as well as the need to improve domestic legislation in this area through the introduction of unified terminology.

***Keywords****: privacy, violation of privacy, violation of the inviolability of the home, criminal offenses that infringe on privacy, confidential personal information.*

**Relevance of the study**. The urgency of scientific and theoretical development of the selected issues is primarily due to the urgent need to ensure proper criminal and legal protection of privacy in Ukraine in accordance with generally accepted international practice, as well as taking into account foreign experience in this field. In addition, the results of the analysis of official statistical reports on the results of the investigation of criminal offenses under Article 182 of the Criminal Code of Ukraine "Violation of the right to privacy" show that only a few percent of them were sent to court with indictments. In particular, in the period from 2016 to 2020, 968 such criminal proceedings were opened in Ukraine and only 39 (4 %) of them were sent to court with an indictment, namely: in 2016 – 141 criminal proceedings were opened under Art. 182 of the Criminal Code of Ukraine, of which 4 (3 %) were sent to court with indictments; in 2017, 151 and 0 (0 %), respectively; in 2018 – 177 and 1 (0.5 %); in 2019 – 210 and 23 (11 %); in 2020 – 289 and 11 (4 %) [1]. Therefore, the problems of criminal law protection of privacy are not only scientific but also practical interest, due to the modern

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needs of domestic law enforcement practice.

**Recent publications review**. Scientists such as O. Horpynyuk, Yu. Demyanenko, I. Korol, Ye. Lashchuk, S.. Lykhova, I. Prysyazhnyuk, O. Sosnina and others have made a considerable contribution to the study of the issue of criminal-legal protection of privacy. At the same time, some issues of application of domestic law on criminal liability for invasion of privacy have not yet found a clear solution in the science of criminal law or law enforcement practice, which necessitates their further study.

**The article objective** is to substantiate proposals for improving domestic legislation on criminal liability in this area based on the results of analysis of generally accepted international practice, taking into account the achievements of the doctrine of criminal law and foreign experience in criminal law protection of privacy.

**Discussion**. For the first time in the world, the legal model of the right to privacy was formed in 1928 in the practice of the US Supreme Court thanks to the speech of Judge Louis Brandeis in the case of Olmsted v. USA, in which the Court held that interception of information without physical violation, with the dissenting opinion that "the right to be alone" is the most universal of the rights most valued by all civilized people [2]. It should be noted that almost forty years before that, Louis Brandeis, along with another famous American lawyer Samuel Warren, made one of the first attempts to define this right in his joint publication "Right to privacy" (1890) [3].

After the Second World War there was a legal formation of the right to privacy at the international level with the proclamation of it in Art. 12 of the Universal Declaration of Human Rights (1948): "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence; reputation. Everyone has the right to protection of the law against such interference or encroachment" [4], as well as in Art. 17 of the International Covenant on Civil and Political Rights (1966) [5]. In the European legal tradition, the current scope and content of the concept under study is reflected in the provisions of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) and the practice of its application. In particular, its main content is enshrined in Article 8 of the Convention on the Right to Respect for Private and Family Life, in particular the right of everyone to respect for their private and family life, housing and correspondence. The second part of the analyzed article prohibits interference with the exercise of this right by public authorities, while allowing the possibility of such interference in exceptional cases when it is carried out in accordance with law and is necessary in a democratic society for national and public security or economic well-being. riots or crimes, to protect health or morals or to protect the rights and freedoms of others [6]. Today, the constitutions of almost every country in the world guarantee the right to privacy at the national level. The Basic Law of Ukraine is no exception in Art. 32 enshrines the constitutional right of a person to the inviolability of his personal and family life [7].

In the context of the problem we are considering, it should be noted that scholars rightly emphasize the multifaceted nature of the right to privacy in accordance with the provisions of Art. 30–32 of the Constitution of Ukraine [8, p. 47], as well as the need to improve domestic legislation in this area through the introduction of unified terminology. In particular, the proposal of K. Rezvorovych to replace the definition of "right to privacy" in the normative legal acts of Ukraine with the definition of "the right to private and family life" in order to harmonize the relevant provisions of normative legal acts of different legal force regulating personal life relations and approximation of domestic legislation to European standards [9, p. 99]. Given the specific research purpose, we consider the most optimal research algorithm, which involves clarifying the objective features of the criminal offense under Art. 182 of the Criminal Code of Ukraine "Violation of privacy", establishing the peculiarities of criminal liability for violation of privacy in some foreign countries of the European Union and, finally, the formulation of proposals to improve criminal protection of privacy in Ukraine. According to the current Criminal Code of Ukraine (hereinafter – the Criminal Code), liability for illegal collection, storage, use, destruction, dissemination of confidential personal information or illegal alteration of such information, except as provided by other articles of this Code, Article 182 "Violation of privacy". However, this title of the article is not fully consistent with its disposition, which reflects only the informational aspect of privacy. Thus, the proposal of OP deserves support. Gorpyniuk to state the title of Article 182 of the Criminal Code of Ukraine in the following wording: "Violation of the inviolability of personal information" [10, p. 182].

The analysis of the forms of encroachments provided for in the disposition of Part 1 of Art. 182 of the Criminal Code of Ukraine, namely: collection, storage, use, destruction, dissemination, change of confidential information about the person. A reference to the reference literature, in particular, the explanatory dictionary of the Ukrainian language, made it possible to establish that the word "gathering" is identified with the action on the meaning of "collect", which is defined as putting something together in one place; to accumulate something in one place, etc. [11]. In accordance with Part 1 of Art. 12 of the Law of Ukraine "On Personal Data Protection" collection of personal data is defined as part of the process of their processing, which involves actions to select or organize information about an individual [12]. In the modern science of criminal law, this issue also remains controversial. In particular, some scholars interpret the concept of "collection" as a process of searching, obtaining confidential information in any illegal way [13, p. 46]; others – as a result of this process, i.e. the fact of obtaining (availability) of such information.

Proponents of the second approach are S. Lykhova and I. Zinchenko, who define the illegal collection of confidential information about a person as an unauthorized subject receiving information about the private life of another person, which contains his personal and family secrets without his consent (in any way) [14, p. 271; 15, p. 77], as well as many other scientists (O. Horpynyuk, M. Melnyk, etc.) [10, p. 125; 16, p. 450]. In the context of the researched problems, the proposals of scientists to recognize the observation of another person's private life are of interest [17, pp. 19-20], as an independent way of violating the right to privacy, regardless of whether this information was recorded or not [18, p. 178].

As an argument in support of these proposals, it should be noted that the Prydniprovsky District Court of Cherkassy found guilty of committing a criminal offense under Article 182 of the Criminal Code of Ukraine, a person who for several months illegally listened to (without recording) confidential information about their neighbors manufactured listening device [19].

The analysis of the existing positions in the science of criminal law on the definition of "illegal collection of confidential information about a person" gives grounds to conclude that the criminal offense is considered complete from the moment the perpetrator receives such information, and not from the beginning of the search. In connection with the above, we propose in the text of the disposition of Art. 182 of the Criminal Code of Ukraine, the word "collection" should be replaced by "receipt".

With regard to actions covered by the concept of "illegal dissemination of information", the relevant clarifications on this issue were provided by the Plenum of the Supreme Court of Ukraine (hereinafter - the Supreme Court) in Resolution № 1 of 27 February 2009 on Judicial Practice honor of an individual, as well as the business reputation of individuals and legal entities", from the content of which it can be concluded that the fact of dissemination of information can be stated if it became known to a third party [20]. This understanding of the studied category has been confirmed in the legal literature and in the works of many scholars [15, pp. 79-80; 16, p. 558]. In the context of the studied issue it should be noted that the interpretation of the concept of "dissemination of confidential information" proposed in the science of criminal law, as well as in the explanations of the Supreme Court, which is essentially reduced to its communication, at least to a third party more consistent with the meaning of "disclosure". As an argument in support of this position, we note that according to the Academic Interpretive Dictionary of the Ukrainian language, the word "distribute" means – to make known to many, to distribute or sell something to many; to distribute [11]. That is, in the sense of the word "disseminate" confidential information must be communicated to many persons, not one, third parties. There, the word "confidential" is interpreted as not subject to publicity, trusting, secret [11]. Based on the above, we believe that the legislator's use of the word "distribution" in the disposition of Art. 182 of the Criminal Code of Ukraine is incorrect, because its semantic load does not fully meet the purpose of criminal law protection of confidential information, which, in fact, should be protected from publicity. The above allows you to justify the proposal to replace the disposition of Art. 182 of the Criminal Code of Ukraine the word "distribution" to "disclosure". In turn, "disclosure of confidential information" should be understood as the actions of the perpetrator, as a result of which confidential information became known to an unauthorized person. For example, in Art. 250.12 of the Model Criminal Code of the United States "Violation of privacy" provides for liability for illegal eavesdropping or surveillance, and for violation of "privacy of messages" (illegal interception, disclosure without the consent of the sender or recipient of the existence or content of the message) [21, pp. 189-190].

Unlike US law, criminal law protection of privacy in European countries has its own specifics. For example, not one article is devoted to crimes against privacy, personal appearance and housing, but a separate chapter X in Book II of the Criminal Code of the Kingdom of Spain, consisting of Chapter I "On the disclosure and disclosure of secrets" (Articles 197-201) and Chapter II "On violation of the inviolability of housing, premises of legal entities and premises of public institutions" (Articles 202-204) [22, pp. 104-107]. It should be noted that in accordance with Art. 197 of the Criminal Code of the Kingdom of Spain, a criminal offense is the use of technical means to listen to the transmission, recording and reproduction of sound or images in order to violate the privacy of another person [23, p. 104]

Polish criminal law (Chapter XXIII "Crimes against Freedom" of the Criminal Code of the Republic of Poland) provides for liability for significant violation of the privacy of another person, committed through constant harassment of this person or his closest person (Article 190a); for receiving an image of a naked person or a person during sexual intercourse, using violence, unlawful threat or deception against him for this purpose, or disseminating such an image without the consent of the person (Article 191a); as well as for breaking into someone else's house, apartment, flat, room or fenced area, or for not leaving this place against the requirements of the authorized person (Article 193) [23, pp. 76-77]. In turn, the criminal law protection of the information aspect of privacy is devoted to Art. 267 of this Code, located in Chapter XXXIII "Crimes against the protection of information", which provides for the responsibility of a person for unauthorized access to information not intended for him, opening a closed letter by connecting to a telecommunications network or breaking or bypassing special protection of such information ; for gaining access to part or all of the information system; for embedding or using an eavesdropping, visual device or other device or programming for the purpose of obtaining such information, as well as for disclosing it to another person.

It should be noted that the criminal law protection of privacy, secrecy of correspondence, telephone conversations, postal, telegraphic or other messages, inviolability of housing is carried out by certain rules in the legislation of many other member states of the European Union. For example, in Articles 226-1, 226-2 and 226-4 of the Criminal Code of the French Republic. Section III "Criminal acts against honor and in the secret and private sphere" of the Swiss Criminal Code also contains Art. 179 "Violation of the secrecy of correspondence", Art. 179 bis "Eavesdropping and recording of other people's conversations", Art. 179 ter "Illegal recording of conversations", Art. 179 quarter "Violation of the secret and private sphere through the use of recording and recording equipment" provides for liability for surveillance with such equipment or recording facts from the private sphere of another person, which should not be available to everyone without his consent, as well as for recording or notification to a third party such facts, keeping a record or providing access to it to a third party [24, p. 201-202]. Criminal liability for illegal disclosure of someone else's secret, which can disgrace someone's good name, provided for in Article 145 of the Criminal Code of Bulgaria, for violating the inviolability of housing, premises or vehicle - in Article 170, and for violating the inviolability of correspondence – under Art. 171 of this code [25, p.113, 127-128; 26].

**Conclusions**. The presented analysis of the criminal legislation of some foreign member states of the European Union on the criminal law protection of privacy can be used to improve the legal structure of the criminal offense under Art. 182 of the Criminal Code of Ukraine, in particular, its wording in the new wording: "1. Illegal receipt, storage, use, destruction, disclosure of confidential information about a person or illegal alteration of such information, except as provided by other articles of this Code".

*Conflict of Interest and other Ethics Statements*

The authors declare no conflict of interest.

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**ЗАРУБІЖНИЙ ДОСВІД КРИМІНАЛЬНО-ПРАВОВОЇ ОХОРОНИ НЕДОТОРКАННОСТІ ПРИВАТНОГО ЖИТТЯ**

**Анотація.** У статті досліджено міжнародну практику, а також досвід деяких зарубіжних країн-учасниць Європейського Союзу щодо кримінально-правової охорони недоторканості приватного життя. Встановлено особливості регламентації об'єктивних ознак складу

кримінального правопорушення «Порушення недоторканості приватного життя» в Кримінальному кодексі України, а також у кримінальному законодавстві Сполучених Штатів Америки, Французької Республіки, Швейцарії, Королівства Іспанія, Республіки Польща, Республіки Болгарія. За результатами проведеного аналізу наявних наукових досліджень, довідкової літератури, відповідних положень чинного законодавства України про кримінальну відповідальність за порушення недоторканості приватного життя, а також судової практики додатково обґрунтовано потребу щодо удосконалення нормативно-правового визначення їх кримінально протиправних форм, запропоновано нову редакцію ст. 182 КК України «Порушення недоторканості приватного життя»: «1. Незаконне отримання, зберігання, використання, знищення, розголошення конфіденційної інформації про особу або незаконна зміна такої інформації, крім випадків, передбачених іншими статтями цього Кодексу».

Наголошено на багатоаспектності права на недоторканість приватного життя відповідно до положень міжнародних нормативно-правових актів у сфері прав людини, а також на потребі удосконалення вітчизняного законодавства у цій сфері шляхом впровадження уніфікованої термінології.

***Ключові слова:*** *приватне життя, порушення недоторканності приватного життя, порушення недоторканності житла, кримінальні правопорушення, що посягають на недоторканність приватного життя, конфіденційна інформація про особу.*

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## CRIMINAL OFFENCE AND PUNISHMENT IN THE FIELD OF TRANSPLANTATION: A COMPARATIVE ANALYSIS

**Abstract.** In modern medicine, the health or death of one person is effectively used to save the life or treatment of diseases of another, in science, cosmetology, pharmacology. This is a special method of surgical intervention, which consists in the removal of organs and (or) other anatomical material from the donor with simultaneous implantation of the recipient. Medical progress is inevitably accompanied by legal, economic, social and moral factors. Undoubtedly, from a moral and social point of view, the goal of saving the life and health of the person (recipient) is noble, but the deterioration of health or deprivation of life of the donor – legally ambiguous, even despite his wishes or consent, because undoubted damage to life and health. In addition, cases of consumer attitudes towards the human body have led to the emergence and spread of illegal transplant activities.

The article notes the causes and conditions of the emergence and spread of illegal activities in the field of transplantation, provides known forms, methods and participants. Based on a comparative analysis of legislative models of crimes and punishments in CIS countries with identical legal systems, attention is focused on the need to unify the legal definition of forms and types of criminal activity in the field of transplantation, in particular, ensuring interaction and cooperation with law enforcement agencies. Ways of counteracting crimes in the field of transplantation are considered. Ways of borrowing positive international experience.

**Keywords:** *illegal activity in the field of transplantation, donation, organs and other human anatomical material, crime, punishment.*


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**Relevance of the study.** Illegal activity in the field of transplantation in the twentieth century is a modern criminal phenomenon, one of the complex social problems of the world community. There is various information about the scale of illegal activity in the field of transplantation, but researchers unanimously argue that there is a network of criminal gangs specializing in the receipt and delivery of donors and their organs, and the "shadow" business in this area is transnational in nature.

The high level of unemployment and low income of citizens undoubtedly contributes to the attraction of illegal activities in the field of transplantation, which makes it possible to obtain illegal "earnings", pushes citizens to search for illegal work abroad without knowing the language and qualifications, creates a channel for sending them as potential donors to the crime scene, determines the development of transplant tourism, since the delivery of the canned transplant itself to another region of the country, and even more so outside of it, is less expedient due to the limited shelf life, and requires the presence of air transport and special containers.

The analysis of empirical materials, including the study of investigative and judicial practice in this category of cases shows that the criminal phenomenon we studied, although manifested in various forms, depending on commercial demand for a particular type of donor material, and criminal activity is constantly improving recruitment of victims, there are obviously the most common models of criminal activity and ways to detect, document and investigate it. And the more uniformly they are reflected in the legislation of neighboring countries and approved by the international community, the more likely it is to prosecute criminal groups operating in the field of transplantation at the transnational level.

**Recent publications review.** Problems of law regulation of transplantation, some criminal law and forensic aspects of liability for illegal activities and criminal offence in this area have long been the subject of scientific research of scientists: M. Avdeev, F. Berdychevsky, I. Gorelik, V. Glushkov, Ya Drgonets, A. Krasikov, M. Malein, M. Maleina, M. Shargorodsky, P. Hollender, P. Holmes. In the field of modern domestic science of criminal law, crimes in the field of transplantation were investigated by S. Hrynchak, V. Gryshchuk, A. Musienko, D. Protsenko, O. Sapronov, G. Chebotaryova and foreign – Z. Volozh, D. Kobyakov, O. Kustova, N. Pavlova, S. Tikhonova.

Issues of criminal liability and combating trafficking in human beings, in particular, for the purpose of human exploitation as a donor are mentioned in the scientific works of A Wilks, T. Voznaya, S. Denisov, V. Ivashchenko, V. Kozak, V. Kuts, Yu. Lyzogub, A. Orleans, V. Pidgorodinsky, S. Kapitanchuk and others [1-14].

The works of these scientists, of course, have significant scientific and practical significance, although in fact they have lost their relevance, because they rely on outdated legislation in the field, do not take into account their criminological conditionality, new methods and technologies for detecting and investigating crimes.

**The article's objective** is criminal offence and punishment in the field of transplantation in the same country in a visual comparative analysis.

**Discussion.** The fundamental principles of the legality of transplantation are enshrined in such international legal documents as the Resolution on the Harmonization of the Legislation of the Member States on the Seizure, Transplantation and Transplantation of Human Body Materials No. (78) 29 (11.05.78), Venice Declarations on Terminal State (01.08.68 ) and incurable diseases (01.10.83), Sydney Declaration on Death (03.10.83), Council of Europe recommendations on the use of human embryos and fetuses for diagnostics, therapy, research, industry and trade (24.09.86), Declaration on transplantation human organs (10/30/87), Regulation on in-vitro fertilization and embryo transplantation (10/01/87), Regulation on fetal tissue transplantation (09/01/89), Resolution on the attitude of doctors to the problem of human organ transplantation (09/01/94), Convention on the protection of human rights and dignity in relation to the application of the achievements of biology and medicine: the Convention on the Rights of Love and Biomedicine (04.04.97), and Additional Protocol Against the Cloning of Human Beings (01.12.98).

These documents recommend to the governments of all countries to provide for legal and disciplinary responsibility for obtaining financial or other benefits from the human body or its embryos; taking organs and tissues of a person without written consent, under pressure, to ascertain the death of the brain or with a purpose, is not curative; abortion for the purpose of taking fetal materials; the use of transplantation instead of another effective treatment; human cloning.

UN Convention on the Rights of the Child (20.11.89) with the Optional Protocol to it on the sale of children, child prostitution and pornography; The UN Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking

in Persons, Especially Women and Children (15.11.2000) also calls for the criminalization of the exploitation, smuggling and trafficking of children for any purpose, including offering, transfer or receipt of a child by any means for the purpose of transferring her organs for reward, attempt to commit these acts, aiding and complicity in them, as well as participation in crimes that are of a transnational nature.

In the legislation of each individual country in the world, these principles and requirements are introduced in various aspects, in connection with which, unequal manipulations in the field of transplantation are criminalized, and therefore the accompanying previous or subsequent illegal actions, as well as significantly different penalties. Moreover, it is inexplicable, but it is a fact that the punishment in neighboring countries with the same legal system and common historical roots can be diametrically opposite.

For example, in order to ensure liability for transplant-related criminal activity, the Criminal Code of Ukraine provides for a system of actions including receipt, circulation (trade or sale, movement, wooden, storage, exchange) and use (transplantation, production of bioimplants) of human organs or tissues (Art. . 143), as well as forced donation of human blood (Art. 144).While in Ukraine only a living donor is recognized as a victim, in a number of neighboring countries both the deceased donor and close relatives are recognized as victims of crimes in the field of transplantation (Art. 348 of the Criminal Code of Belarus [2], Art. 133 of the Criminal Code of Uzbekistan [3], Art. 139 of the Criminal Code of Latvia [4], Part 1 Art. 163 of the Criminal Code of Belarus, part 1 of Art. 114 of the Criminal Code of Kyrgyzstan [5]).

In the tables below, we have shown a variety of legal models of punishable behavior in the field of transplantation and punishment measures for them in the neighboring countries of Ukraine, which are comparable in terms of the legal system, the content of public relations and the time of criminalization of similar acts, in order to visually make sure that there is no consistency in the issues under consideration, which can negatively affect law enforcement activities in the fight against transnational crime (Tables 1-6).

*Table 1*

**Crime and punishment for violation of the order of transplantation**

| *Article Of the Criminal Code* | *The term of imprisonment for criminal offence in the area of transplantation, which caused by negligence* | |
|---|---|---|
| | *severe or moderate injuries* | *death* |
| Art. 164 Republic of Belarus | up to 3 years (part 1) | from 3 to 7 years (part 2) |
| Art. 125 Republic of Armenia [6] | up to 2 years (part 1) | up to 3 years (part 2) |
| Art. 115 Kyrgyz Republic | up to 3 years (part 1) | up to 5 years (part 2) |
| Art. 121 Republic of Tajikistan [7] | up to 3 years (part 1) | from 3 to 5 years (part 2) |
| Ukraine | up to 3 years (part 1 Art. 143) | |
| | up to 2 years (Art. 128) | from 3 to 5 years (part 1 Art. 119) |

*Table 2*

**Crime and punishment for premeditated murder of a donor**

| *Article Of the Criminal Code* | *The purpose of the murder* | *Punishment in the form of imprisonment* |
|---|---|---|
| 120.2.5 Republic of Azerbaijan [8] | use of organs or tissues of the victim | from 12 to 15 years |
| p. 9 of Part 2 of Art. 139 Republic of Belarus | obtaining a transplant or using anatomical materials from a corpse | from 5 to 25 years |
| p. 14 of Part 2 of Art. 104 Republic of Armenia | use of body parts or tissues of the victim | from 8 to 15 years |
| p. N of Part 1 of Art. 109 Georgia [9] | transplantation or other use of organs, parts of organs or tissues of the victim's body | from 10 to 20 years |
| p. M of Part 2 of Art. 96 Republic of Kazakhstan [10] | use of organs or tissues of the victim | from 10 to 20 years |
| p. 12 of Part 2 of Art. 97 Kyrgyz Republic | use of the victim's organ or tissues | from 12 to 20 years |
| p. 12 of Part 2 of Art. 129 Republic of Lithuania [11] | obtaining any organ or tissue of the victim for transplantation | from 5 to 20 years |
| p. l of Part 2 of Art. 145 Republic of Moldova [12] | taking and (or) using or selling organs or tissues of the victim | from 20 to 25 years |
| p. M of Part 2 of Art. 105 Russian Federation | use of organs or tissues of the victim | from 8 to 20 years |
| p. N of Part 2 of Art. 104 Republic of Tajikistan | use of organs or tissues of the victim | from 15 to 25 years |
| p. N of Part 2 of Art. KK Republic of Uzbekistan | obtaining a graft or using corpse parts | from 15 to 20 years |
| p. 6 of Part 2 of Art. 115 Ukraine | qualifies as selfish purpose | from 10 to 15 years life imprisonment, confiscation of property |

*Table 3*

**Crime and punishment for inflicting bodily harm on a donor**

| *Article Of the Criminal Code* | *Purpose* | *Punishment in the form of imprisonment* |
|---|---|---|
| Art. 126.2.5 Republic of Azerbaijan | use of organs or tissues of the victim | from 6 to 11 years |
| p. 4 of Part 2 Art. 147 Republic of Belarus | obtaining a transplant | from 5 to 10 years |
| p. 13 of Part 2 Art. 112 Republic of Armenia | use of body parts or tissues of the victim | from 5 to 10 years |
| p. H of Part.2 Art. 117 KK Georgia | transplantation or other use of organs, parts of organs or tissues of the victim's body | from 5 to 12 years |
| p. И of Part 2 Art. 103 Republic of Kazakhstan | use of organs or tissues of the victim | from 4 to 8 years |
| p. 7 of Part 2 Art. 104 Kyrgyz Republic | use of organs or tissues of the victim | from 6 to 10 years |
| p. 12 of Part 2 Art. 135 Republic of Lithuania | obtaining any organ or tissue of the victim for transplantation | from 2 to 12 years |
| p. D of Part 3 Art. 151 Republic of Moldova | seizure and (or) use or sale of organs or tissues of the victim | from 8 to 15 years |
| p. Ж of Part 2 Art. 111 Russian Federation | use of organs or tissues of the victim for transplantation | from 3 to 10 years |
| p. O of Part 2 Art. 110 Republic of Tajikistan | use of organs or tissues of the victim | from 8 to 15 years |
| p. И of Part. 2 Art. 104 Republic of Uzbekistan | obtaining a transplant | from 8 to 10 years |

*Table 4*

**Crime and punishment for coerced organ or tissue donation**

| *Article Of the Criminal Code* | *The offence* | *Punishment in the form of imprisonment* |
|---|---|---|
| Art. 137.2 Republic of Azerbaijan | coercion to take human organs or tissues for transplantation through violence or threat of use | up to 4 years |
| Art. 134 Georgia | coercion to take human organs, parts of organs or tissues to be taken for treatment, transplantation, experimentation or the manufacture of medicinal products | up to 4 years |
| Art. 163 Republic of Belarus | coercion a person to donate his or her organs or tissue for transplantation with the threat of violence against him or her relatives | up to 2 years |
| Art. 126 Republic of Armenia | coercion a person to donate for the purpose of transplantation or scientific experiments of parts of the body or tissue (donation), committed through the use of violence or the threat of its use | up to 4 years |
| Art. 113 Republic of Kazakhstan | coercion to the seizure or illegal removal of human organs or tissues for transplantation or other use, and the conclusion of illegal agreements concerning human organs and tissues | up to 5 years |
| Art. 122 Republic of Tajikistan | coercion to the taking of organs or tissues of a victim for transplantation committed with violence or the threat of its use against him or his relatives, or the threat of destruction of his property | up to 3 years |
| Art. 158 Republic of Moldova | coercion a person to the removal of organs or tissues for the purpose of transplantation or other purposes, committed through violence or with the threat of its use | up to 5 years |
| Art. 120 Russian Federation | coercion to the taking or threat of transplantation of human organs or tissues for transplantation | up to 4 years |
| Art. 139 Latvian Republic | illegal taking of tissues and organs of a living or dead person for the purpose of their use in medicine | up to 5 years |
| Part 2 Art. 143 Ukraine | removal from a person by coercion or acted fraudulently his organs or tissues for the purpose of their transplantation | up to 5 years |

Our research of investigative and judicial practice shows that the variety of corpus delicti (ways of describing the legislative model, qualifying features, especially the purpose of the crime that is part of it) significantly affects the variety of qualifications of criminal activity in different countries. On the one hand, it helps in documenting more forms of criminal activity and holding the perpetrators accountable for it, on the other hand, it complicates international law enforcement cooperation, strengthening the "niche" for transnational forms of crime.

*Table 5*

***Crime and punishment for using a corpse as a donor***

| *Article Of the Criminal Code* | *The offence* | *Punishment* |
|---|---|---|
| Art. 348 Republic of Belarus | illegal removal of organs or tissues from an inanimate donor | imprisonment for up to 3 years |
| Art. 133 Republic of Uzbekistan | removal of organs or tissues of a deceased person for the purpose of their transplantation, conservation for scientific or educational purposes without his lifelong consent | penal servitude up to 3 years |
| Art. 139 Latvian Republic | illegal taking of tissues and organs of a living or dead person for the purpose of their use in medicine, committed by a medical person | imprisonment for up to 5 years |

*Table 6*

**Crime and punishment for trafficking in human transplants**

| *Article Of the Criminal Code* | *The offence* | *Punishment in the form of imprisonment* |
|---|---|---|
| Art. 137.1 Republic of Azerbaijan | illegal purchase and sale of human organs or tissues | up to 3 years |
| Part. 4 Art. 143 Ukraine | trafficking in human anatomical materials | up to 5 years |

Inconsistency in legislative issues always impedes uniform law enforcement practice. Criminals enjoy a liberal attitude towards a certain type of activity in the field of transplantation, gaps in legislation or the lack of responsibility in it for a certain type of illegal activity in a particular country. We are to regret, the states into which donors or donor material are "imported", this criminal business supports the economy, as it helps to develop the market for medical and pharmaceutical services. It seems that the countries-suppliers of "human goods" also have their own interest, since the victims of crime, as a rule, become socially unprotected, marginal or psychologically unstable members of society, whose disappearance reduces the need to provide jobs and social assistance.

These facts further complicate the prosecution of criminal activity in the field of transplantation, which is characterized by the stability, isolation and cohesion of the circle of criminals associated with official and professional duties, their corporatism, which ensures its latency. The analysis of empirical material shows that in most cases illegal activity in the field of transplantation was committed by a group of people in organized forms, in which not only a clear structure and role distribution is carried out, but also professionalization is traced: organizer; customer (recipient, his relatives); a group of medical workers (surgeon, resuscitator, anesthesiologist, operating nurse) and technical personnel; a group of accomplices (statisticians of medical institutions, workers of cemeteries and crematoria, employees of the morgue, prenatal center, forensic medicine bureaus, drivers of vehicles, dealers / traffickers, mercenary kidnappers, recruiters of donors); "Cover" (lawyers, civil servants).

Improving the technical resources of criminal groups and their skills in using information technologies creates conditions for unauthorized interference in confidential donor databases and their use for criminal purposes. Obviously, with the development of mobile Internet technologies and VoIP telephony applications, criminals are becoming less accessible to law enforcement agencies, since modern details of criminal activity are discussed by messengers that have serious connection protection (for example, WhatsApp), and international payment systems Global Money are used in financial transactions and cryptocurrency.

An important area of detecting and preventing crimes in the field of transplantation is both the joint unification of the definition of crimes in the field of transplantation and donation of a representative of the international community, as well as ensuring the interaction of special law enforcement units at the international level, improving their qualifications, joint training and conducting special operations. State policy should be aimed at solving housing problems, education and legal propaganda, providing jobs in the specialty, forming competent state bodies, fighting corruption, stopping illegal migration, without which it is impossible to shade the "black market for human goods".

Systematic ideological influence on the scale of each country should be aimed at replacing consumer psychology, restoring culture, overcoming permissiveness and cruelty, legal nihilism and social alienation. Without this, the potential for each person in the embryo, during life or after death to become a victim of donation for illegal transplantation forms a high level of victimization, and the possibility of complicity in the crime of a potential victim (her desire and consent to illegal donation) mediates the self-reproduction of illegal activities in this area. To identify and prevent the commission of illegal activities in the field of transplantation, it is advisable to carry out operational support for the provision or exchange of transplants of human origin from the point of view of their sources and destination, check the facts of providing loans for the purchase of special medical equipment for the transportation of human organs and tissues; check the legality of the use of targeted funds received from commercial structures; check the activities of business entities that have received or tried to obtain a license to carry out activities in the field of transplantation, including private entrepreneurs in the

medical and cosmetic field, collect materials on their financial condition, the legality of their sources of income; check compliance with the adoption procedure for minors diagnosed with an incurable disease, especially by foreign citizens; carry out a constant exchange of operational information between special units for joint activities.

In addition, it is undoubtedly necessary for the governments of most states to take measures aimed at improving the well-being of citizens by stabilizing the economy, solving social problems, improving the ideological atmosphere in society and improving the legal field, especially the introduction of positive legislative experience, taking measures to unify the requirements for the use of transplantation. and donation, as well as legal models of criminal responsibility for their violation. For example, the experience of individual countries in reducing the shortage of transplants, and hence the conditions for their illegal receipt, has proven itself positively, by legalizing non-genetic donation with material compensation to the donor for damages caused, "cross" donation (providing benefits in a checklist for waiting for a transplant to a donor's family member ), as well as the recognition of the criminal innocence of victims of trafficking in persons recruited as donors regardless of their consent due to their vulnerable state.

**Conclusions.** In conditions of unsatisfactory financing of medicine, its employees focus on self-sufficiency. Modern transplantation has become an area in which, by making illegal transplants, recruiting donors, concluding commercial transactions with them regarding their organs or tissues, it can increase material security against the background of an unfavorable social and unstable economic situation in the state. Therefore, it is relevant to develop a multi-level system of state and public events aimed at eliminating, weakening or neutralizing the causes and conditions for committing crimes in the field of transplantation, material support, training and advanced training of law enforcement officials, as well as the establishment of international cooperation in the fight against organized and transnational crime, including the unification of the legislative definition of crimes in the field of transplantation and the amount of punishment.

*Conflict of Interest and other Ethics Statements*

The author declares no conflict of interest.

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**Оксана МИСЛИВА**
**ЗЛОЧИНИ ТА ПОКАРАННЯ У СФЕРІ ТРАНСПЛАНТАЦІЇ: ПОРІВНЯЛЬНИЙ АНАЛІЗ**

**Анотація.** У сучасній медицині здоров'я або смерть однієї людини ефективно використовується заради порятунку життя або лікування хвороб іншої, у науці, косметології, фармакології. Йдеться про спеціальний метод хірургічного втручання, що полягає у вилученні органів та (або) іншого анатомічного матеріалу у донора з одночасним його вживлянням реципієнту. Медичний прогрес неминуче супроводжують правові, економічні, соціальні та моральні фактори. Без сумніву, з моральної та соціальної точки зору мета порятунку життя і здоров'я людини (реципієнта) благородна, але погіршення стану здоров'я чи позбавлення життя донора – з юридичної точки зору неоднозначна, навіть, незважаючи на його бажання чи згоду, оскільки заподіюється безсумнівна шкода життю та здоров'ю. Крім того, випадки споживчого ставлення до тіла людини призвели до виникнення та поширення незаконної діяльності в сфері трансплантації.

У статті зауважено на причинах і умовах виникнення та поширення незаконної діяльності у сфері трансплантації, наведено відомі форми, способи та учасники вчинення. На підставі порівняльного аналізу законодавчих моделей злочинів та покарань у країнах ближнього зарубіжжя з ідентичною правовою системою акцентовано увагу на необхідності уніфікації законодавчого визначення форм та видів злочинної діяльності у сфері трансплантації, зокрема, забезпечення взаємодії та співпраці з правоохоронними органами інших країн. Розглядаються шляхи протидії злочинам у сфері трансплантації шляхи запозичення позитивного міжнародного досвіду.

***Ключові слова:*** *незаконна діяльність у сфері трансплантації, донорство, органи та інший анатомічний матеріал людини, злочин, покарання*

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**VICTIMIZATION OF A WOMAN VICTIM OF GENDER-BASED VIOLENCE**

**Abstract**. The article analyzes the properties of a woman - a victim of gender-based violence. The author notes that the origins of gender-based violence stem from the historical inequality of women and men. The most common type of gender-based violence is intimate partner domestic violence. Gender-based violence is not only the product of marginalized environments. Any woman, regardless of her status and position in society, can become a victim of violence. Women suffer four times as much from such violence as men. The victimization of a victim of gender-based violence is manifested in a conscious finding in a social situation in which she exposes herself to the risk of becoming a victim of a crime by her actions.

**Keywords:** *gender, conditional violence, domestic violence, victim, victimization, victimology*.


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**Relevance of the study.** Freedom from violence is one of the fundamental human rights. In today's dynamically developing world, violence against women and men is a complex, structural and social problem. The roots of gender-based violence stem from historical inequalities between women and men. In this regard, ensuring equal rights for women and men both at the legislative and law enforcement levels is central to preventing and countering gender-based violence.

In order to effectively counteract any destructive phenomenon, it is necessary first of all to study and understand its essence, characteristic features. Traditionally, the special interest of practitioners and scientists is the personality of the offender, his attitude to the perfect act, motivation, awareness of wrongfulness. However, the analysis of victimization and its components allows a deeper understanding of the phenomenon of the victim, to develop the necessary and socially justified measures for the victimological prevention of offenses. The study of victimization allows us to get an answer to the main question of victimology: as a result of the influence of what reasons and under what conditions do some persons become victims of crimes, while others will pass this danger?

**Recent publications review**. The phenomenon of victim behavior remains insufficiently developed in criminological science. Certain aspects of this problem were studied in the works of V. Vasilevich, V. Golina, B. Golovkin, A. Dzhuzhi, V. Kvashis, N. Kulakova, A. Litvinov, Yu. Levchenko, G. Khetinga, L. Frank, V. Minskoy, E. Moiseev, V. Polubinsky, V. Rivman, V. Rybalskoy, V. Tulyakov, G. Chechelya, L. Frank and others [1-9]. Through the efforts of these and other scientists, the conceptual apparatus of victimology was formulated, general ideas about victim behavior were developed, its mechanism was considered, a classification of such behavior was developed, a typology of victims of crime was proposed.

Despite fundamental research, scientists continue to seek answers to the questions: why the human psyche does not recognize the criminal danger well; how people become victims of crime; what is the peculiarity of victim behavior; how victim behavior influences the choice of a particular person as a victim of a crime; what are the features of the thinking of a victim of a crime in a situation of interaction with a criminal? [1, pp. 201, 202].

Even more questions arise when it comes to the victimological component of gender-based violence (gender-based violence). In this regard, the purpose of the article is to study the victimological characteristics of victims of gender-based violence, to establish the factors that influence acceptance, to create a situation of physical, mental, economic or sexual violence or the threat of such violence.

**The article's objective** is to investigate the features of a woman victim of gender based violence.

**Discussion.** According to the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men" dated September 8, 2005, No. 2866-IV, gender-based violence is acts aimed at persons because of their gender, or customs and traditions widespread in society (stereotypical notions on the social functions (position, duties, etc.) of women and men), or acts that primarily concern persons of a certain gender or violate them disproportionately, which cause physical, sexual, psychological or economic harm or suffering, including threats of such actions, in a public or private life [2].

As a result of the sociological research, it was found that the most widespread type of gender-based violence is domestic violence by a marriage partner. Women suffer from such violence four times more than men [3]. According to the United Nations, every second murder is committed by a family member or former partner. According to the official statistics of the General Prosecutor's Office of Ukraine for 2020, 49,728 criminal offenses were committed against women. Also, in 2020, 3,165 crimes related to domestic violence were registered, which is 20 % (611 crimes) more than in 2019. For 10 months of 2021, 4,146 criminal offenses were registered. The number of registered crimes under Art. 1261 of the Criminal Code of Ukraine "Domestic Violence": in 2019, 1,068 crimes were registered, and in 2020 – 2,212 (+ 51.71 %) crimes, for 10 months of 2021 – 2,194 crimes. The number of appeals to the prosecutor's office on the facts of domestic violence is actively increasing: 140 thousand in 2019, more than 200 thousand against the background of quarantine restrictions in 2020. 86 % of requests come from women, 12 % from men and 2 % from children. Every day, law enforcement officers register about 570 reports from victims of violence [4].

Domestic violence is not a one-time occurrence, it is not an isolated case of violent behavior of an aggressive husband, and it is not just an outdated custom. At its core, domestic violence and the threat of violence are mechanisms of power and control that exist to deprive

women of freedom and opportunities for self-realization, and in the context of general discrimination against women in the world are one of the manifestations of general violence against women [5, p. 2]. In connection with the current trend towards an increase in the facts of gender-based violence, it is important to establish the personality traits that make it victimized. Victimize of a victim of gender-based violence is manifested in a conscious finding in a social situation in which she, by her actions, exposes herself to the danger of becoming a victim of a crime. According to the dynamic concept of crime and criminal behavior, the victim of a crime is seen as an active subject of the criminalization process (G. Hentig).

According to A. Elizarov, the prerequisites for the formation of victim behavior in women in the family may be the consequences of violence experienced in childhood. Considering this issue, the scientist notes the development in people who experienced violence in childhood, such qualities as loyalty to their tormentors, readiness for self-sacrifice, a tendency to choose a negative personality as a leader, as well as traits of a codependent personality (the desire to help others to the detriment of oneself, acceptance on themselves guilt and responsibility, dependence on the environment) [6, p. 36].

The study of scientific and judicial materials allows us to form a classic portrait of a victim of domestic violence as the most widespread type of gender-based violence: this is a woman who has given birth several times, performing a "standard", historically established female task – to protect the family hearth; financially dependent on her husband, as a result of which she is constantly subjected to psychological and economic violence, as she is forced to ask her husband for money and report on where she spent it. The society has formed and rooted in the minds of people of the belief that in order to meet social expectations, women should put the family above all else. More than half (51 %) of women believe that their friends would agree that “it is important for a husband to show his wife / partner who is in charge”. Almost every fifth woman (19 %) believes that sexual intercourse with a woman without her consent is justified if it occurs between spouses or between partners living together. Approximately one in four women (24 %) accuses victims of violence, for example, believing that violence against women is often provoked by the victims themselves [7, p. 3].

Financial dependence on her husband creates total self-doubt, which is accompanied by depression and disappointment in life. Such a woman has to suppress her desires and constantly ask her husband for money. Feeling his superiority over his wife, the abusive husband develops an attitude of control and power over his wife. He ceases to treat her as an equal member of family relations, allowing him to manifest various types of violence against his wife. The victim of domestic violence, as a rule, has come to terms with the role of the victim and does not believe that her life can change. She has low self-esteem. Also, this is a woman who does not know where to go for help or is already disillusioned with the role of law enforcement agencies to help her solve the problem of constant bullying. Self-doubt gives rise to fear of condemnation from relatives and acquaintances. She is afraid that after reporting to the police, the aggression of her rapist husband will be even stronger.

The study showed that women, for the most part, do not have access to appropriate services in the event of violence. Only half of women (50 %) consider themselves somewhat informed about what to do in the event of violence, and about half of women (47 %) consider themselves to be little informed or do not know at all what to do in such situations [7, p. 6]. The victimhood of a woman has traditionally been formed in the process of upbringing and the formation of family values. If a child has observed such violence in his family, then when she herself is in the role of a wife, and violence is used against her, such a situation is perceived as normal, since it corresponds to a subconsciously formed family model. It should be noted that the victimization of a woman who is a victim of violence is conditioned by the following social stereotypes: "the task of a woman is to protect the family hearth", "the man is the head of the family, as he said, so it will be", "a woman – know your place", "beats means she loves" etc. Under the influence of the latter, women develop the conviction that they do not "catch up" with men in various aspects, that they are more stupid, emotionally weaker, they can and should be led. Under the influence of such factors, women develop misogyny, as a result of which they tend to idealize men and are not up to assessing their own capabilities and their own significance.

Also, it is necessary to understand that aggressors in the family, quite often in society, are characterized as successful, positive people, leaders who achieve their goals. Society does not believe that this person can commit violence in the family against relatives, for them he is different, but in the family he has a completely different model of behavior. He is in charge in

the family, he does not accept disobedience. The wives of such husbands also do not want to state their problem, since they will have to prove the facts of violence, collect evidence to fight the positive image of the husband that has developed in society. For example, half (50 %) of female victims did not tell anyone about their serious incident of sexual violence after it happened. For example, some respondents believe that violence is not worth reporting to someone, because it is often not considered something serious enough, and also because no one is able to help them with their opinion. It was found that shame, financial issues, lack of trust in relevant institutions (such as the police) and fear of retaliation by the abuser became a barrier to reporting abuse, as well as a low level of awareness of rights and opportunities to exercise them. Almost half of the women who reported cases of violence to the police remained dissatisfied with the result of such treatment [7, p. 4]. Many victims of violence, who are often subjected to various types of violence from their husbands, develop "Stockholm Syndrome", that is, a kind of self-defense, as a result of which they lose their bearings and distort the perception of reality. With regular violent actions, the woman-victim begins to get used to the violence, and justifies her husband-abuser. This is a defensive reaction of the human psyche to violence, bullying and humiliation. It is easier for the victim's psyche to choose a scenario to justify the rapist than to admit that she is not loved, appreciated, humiliated, beaten, etc. [8, 9].

**Conclusions.** Thus, we note that the victimization of women includes a huge range of personal conditions and properties, a combination of internal and external factors that determine the personal predisposition of women to turn them into a victim of domestic violence. Gender-based violence is not only a product of the marginalized environment. Any woman can become a victim of violence, regardless of her status and position in society.

Only by changing the social perception of violence; active involvement of citizens; raising the level of public awareness about ways to get help; the formation of intolerance among the population towards manifestations of violence: promotion of peaceful coexistence of citizens of different genders; inadmissibility of the victim's conviction (victim blaming); promoting nonviolent relations in the family; adequate qualified assistance from the police, prosecutors, judges, specialists in the social, educational, medical spheres, authorized to prevent and combat domestic violence and gender-based violence, it will become possible to reduce the level of tolerance to gender-based violence and reduce the facts of violence against women. And this, in turn, will contribute to the formation of a non-violent family model, stabilization of the psychological state of women and the economic development of society.

*Conflict of Interest and other Ethics Statements*

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**Вікторія РУФАНОВА**
**ВІКТИМНІСТЬ ЖІНКИ-ЖЕРТВИ ҐЕНДЕРНО ЗУМВОЛЕНОГО НАСИЛЬСТВА**

**Анотація.** У статті аналізуються характерні властивості жінки, схильної стати жертвою ґендерно обумовленого насильства. Автором зазначається, що витоки гендерного насильства походять з історично нерівності жінок і чоловіків.

Найпоширенішим видом гендерного насильства є насильство в сім'ї з боку інтимного партнера. Гендерне насильство є породженням не лише маргінального середовища. Жертвою насильства може стати будь-яка жінка незалежно від статусу та становища у суспільстві. Жінки страждають від такого насильства вчетверо більше, ніж чоловіки. Віктимність жертви ґендерного насильства проявляється в усвідомленому знаходженні в такій соціальній ситуації, в якій вона своїми діями і наражає себе на небезпеку стати жертвою злочину.

Автор доходить висновків, що для зниження рівня віктимності від генедерно зумовленого насильства необхідно: змінити соціальне та індивідуальне сприйняття насильства; підвищувати рівень інформування суспільства щодо способів отримання допомоги; формувати у населення нетерпимість до проявів насильства; здійснювати пропаганду мирного співіснування громадян різних ґендерів; не допускати засудження та звинувачення жертви за те, що вона постраждала від насильства; пропагандувати ненасильницьких взаємини у сім'ї; надавати кваліфіковану допомогу боку поліції, прокурорів, суддів, фахівців соціальної, освітньої, медичної сфер, уповноважених з питань запобігання та протидії домашньому насильству та насильству за ознакою статі.

***Ключові слова:*** *ґендер, ґендерно обумовлене насильство, домашнє насильство, жертва, віктимність, віктимологія.*

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**SECURITY AS A CONDITION FOR ORGANIZING AND CONDUCTING THE INVESTIGATIVE ACTIONS DURING THE PANDEMIC**

**Abstract.** The article is devoted to the consideration of the security of participants in investigative actions in the context of an pandemic. The article considers the content of the concept of «security» and states that its provision is a complex multidimensional system of measures and means in its implementation. It is noted that the provisions of the laws and regulations in question, particularly: They are designed to protect the participants in criminal proceedings from the possibility of pressure and to ensure their physical and mental safety, and do not take into account the condition of carrying out investigative actions such as an pandemic. It is argued that the security of participants in an investigation should be considered as a multidimensional category, which requires a comprehensive approach to its assessment and decision in criminal proceedings. It is noted that due attention should be paid by researchers to the development of reasoned proposals for legislative changes, expanding the rights to ensure the security of criminal operators in the context of an pandemic.

***Keywords:*** *conditions of preparation and conduct of investigative actions, security, pandemic, pressure authorized person, risk of infection.*

**Relevance of the study.** Human activity in general and such a type as the organization and conduct of investigative actions is always accompanied by risks and threats that can affect the results of its implementation. A person, his life and health, honor and dignity, inviolability

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and security are recognized by Article 3 of the Constitution of Ukraine as the highest social value. Ensuring security is a complex multidimensional system of measures and means of its implementation.

**Recent publications review.** The complexity of the category under consideration is determined by research carried out within the framework of such branches of knowledge as: Constitutional law, life safety, psychology, sociology, medicine, criminal procedure, etc. scholars such as A. Ababkova, I. Abakumova, L. Antonova, O. Asmolov, I. Baeva, S. Belov, V. Ganzhin, P. Ermakov, A. Zhukov, O. Zaitsev, Z. Zinatullin, V. Zelenetsky, V. Isipkin, T. Krasnyanskaya, H. Lisie, S. Marchenko, A. Nepomnyashchy, A. Rean, V. Rozin, V. Rubtsov, V. Semykin, K. Chernov, V. Shapakidze, L. Shershnev, S. Shcherba and others. Various aspects of ensuring the safety of the participants in the investigation were paid attention to by such forensic scientists as: V. Bakhin, R. Belkin, V. Bernaz, A. Vasiliev, A. Volobuev, V. Karagodin, V. Konovalova, V. Lukashevich, E. Lukyanchikov, M. Saltevsky, V. Shepitko, K. Chaplinsky, B. Shchur, M. Yablokov and others.

At the same time, the issues of ensuring the safety of participants in investigative actions in the context of the pandemic remained outside the proper attention of scientistsю The lack of recommendations on the activities of authorized persons in appropriate conditions leads to the possibility of negative consequences, in particular: firstly, it is the risk of infection with an infectious disease; secondly, the complexity (not the possibility) of carrying out investigative actions in general; thirdly, the use of the entire complex of tactical techniques. Without an integrated approach to considering the content of the concept of "security" we are studying, it is difficult or almost impossible to solve certain Art. 2 of the Criminal Procedure Code of Ukraine, the task of criminal proceedings on the one hand, and to ensure the rights of its participants guaranteed by the Constitution of Ukraine, on the other. The explanatory dictionary of the Ukrainian language defines "security" as a state when for some reason nothing threatens anyone [1].

**The article's objective** is to highlight security as a condition for organizing and conducting investigative (search) actions during an epidemic (pandemic)

**Discussion.** The Law of Ukraine "On Ensuring the Safety of Persons Participating in Criminal Proceedings" [2] regulates the rights and obligations of bodies ensuring safety, the rights and obligations of persons in need of protection. The security measures defined in Art. 7 of the law under consideration, are implemented by: personal protection, protection of housing and property; issuance of special personal protective equipment and warning of danger; the use of technical means for monitoring and listening to telephone and other conversations, visual observation; replacement of documents and changes in appearance; change of place of work or training; relocation to another place of residence; placement in a school educational institution or institutions of social protection bodies; ensuring the confidentiality of personal information; closed trial [2]. The considered normative legal act aimed at ensuring the safety of participants in criminal proceedings in need of protection.

"Protection", by the Big Explanatory Dictionary, is defined as the prevention of committing something of a prohibition, protection (someone / something from attack, attempt, hostile actions) [3]. The law of Ukraine "On operational-search activity" also requires attention, in which Article 1 of obtaining information in the interests of the safety of citizens, society and the state is determined by one of the tasks of operational-search activity [4].

The positions of scientists in this category also require attention. So, to determine the optimal course of action on the part of law enforcement officials in the application of security tools provides, according to V. Zelenetsky, the need to address the specific situation. The author notes that in practice, in the process of combating crime, different options for the use of the same security measures in different situations are implemented, which allows us to talk about the functional polyvariety of security means [5, p. 116]. The above stipulates the tactics of actions of the relevant subjects of the investigation to ensure security. It asserts B. Shur must be taken, in particular as the most optimal system of measures; a set of tactics for ensuring security; optimal forensic security recommendations; structural dependence of security measures [6, p. 11].

The cited positions of scientists reflect such a widespread pre-trial investigation condition as opposition. To overcome it, the Code of Criminal Procedure of Ukraine [7] gives the right to ensure security measures to such categories of participants in criminal proceedings as: suspect, accused (part 12 of Art. 42 of the Code of Criminal Procedure of Ukraine "to file a petition to conduct procedural actions, to ensure security in relation to oneself, members their

family, close relatives, property, housing, etc."); victim (part 5 of article 56 of the Criminal Procedure Code of Ukraine "if there are appropriate grounds for ensuring security in relation to himself, close relatives or members of his family, property and housing"); witness (part 8 of article 66 of the Code of Criminal Procedure of Ukraine "to file a petition for ensuring security in cases stipulated by law").

The provisions of the articles of the Criminal Procedure Code of Ukraine under consideration are primarily aimed at protecting against the possibility of pressure on the participants in the production and ensuring their physical and mental safety. At the same time, these provisions do not take into account the possibility of organizing and conducting an investigation in general and individual investigative actions in the pandemic in particular. This, in our opinion, necessitates paying due attention to this issue, which would result in well-reasoned proposals for improving legislation with expanding the rights to ensure the safety of participants in criminal proceedings in the pandemic.

The feeling of danger by the relevant participant will not allow him to focus on the course of the procedural actions, which will cause their improper result and complicate the judicial perspective. Therefore, the thesis of V. Pletnets that a directly proportional relationship can be traced between the degree of pressure on the participants in the production and the amount of information provided by them about the circumstances of the incident [8, p. 240], is reflected in the conditions of conducting investigative actions during the pandemic. This is due to the need for the corresponding participant to feel psychological safety. The latter, according to E. Edmondson, is necessary for the most productive activity [9]. So, in the notification by the relevant participant in the risk of infection, it will stipulate the adoption of avoidance measures under any pretext from participating in the investigation, the change of the taken position from a conscientious one to an unfair one, a formal attitude to the conduct of investigative actions with his participation, etc. This will complicate to obtain the required amount of information to establish all the circumstances of a criminal offense and carry out a legal assessment of the actions of its participants.

It should be noted that pandemics of infectious diseases are determined by natural and technogenic hazards [10, p.11]. At the same time, opposition to the pre-trial investigation and the associated influence on the participants in the proceedings can be regarded as a danger that has a social origin and demonstrates the level of formation of society on the one hand and the effectiveness of the institutions of the state created by it, on the other. Such a natural and man-made danger that we are considering as an epidemic (pandemic) acts as a condition for organizing and conducting investigative actions and, depending on the level of threats to the health of participants in criminal proceedings or unauthorized persons, can acquire both imperative and discretionary significance. We do not exclude the possibility of the use by persons not interested in the investigation of the participants in the manipulation by exaggerating the risk of contracting an infectious disease as a way of countering the pre-trial investigation. It should be noted that conditions acquire psychological content as a result of how the person perceives it and, accordingly, how they behave [11, p. 36]. Accordingly, the existing danger may be inspired from the outside and have no grounds for panic in the participants in criminal proceedings.

Thus, the authorized person must take this circumstance into account when organizing and conducting investigative actions. Accordingly, the counteraction and risk of infection with an infectious disease should be assessed as conditions for investigation and conduct of investigative actions. It is advisable to consider them both differentially and in aggregate in each particular case. Determination of the factors in the formation of conditions for the investigation and the conduct of investigative actions will contribute to the perception of the situation as a whole picture, the correct determination of the directions for their elimination and minimization of the possibility of their occurrence. Such an analysis will ensure the comprehensive nature of the activities of authorized persons, in which not a single circumstance will be overlooked. This, in turn, will allow more quickly with less time and resources to comprehensively solve the tasks set for criminal proceedings. The expectation of persons not interested in the investigation on the unexpected nature of their own actions and unpreparedness for this authorized person will not have the expected effect of surprise.

Noteworthy allocated O. Chebotareva four methodical approach to determining risk: engineering, based on statistics, the frequency calculation, probabilistic safety analysis, construction hazard trees; model, based on the construction of models of the action of harmful factors on an individual, social, professional groups, etc., which are based on calculations for

which data are not always available; expert, when the probability of events is determined based on a survey of experienced specialists, that is, experts; sociological, based on a survey of the population [10, p. 13]. The above components of risk determination should be considered in aggregate and comprehensively, which will ensure a holistic perception of this category and its effective use in organizing and conducting investigative actions in the pandemic.

The danger can be eliminated by creating a system of elements that will ensure (prevent) their occurrence. Ensuring the safety of the participants in the investigation should be considered as a condition that determines the amount of evidentiary value of the information received, as well as the amount of time, effort and money spent by authorized persons. The organization and planning of the activities of authorized persons is determined by the postulate of the effectiveness of their investigation in general and investigative actions in particular.

Thus, the subjects of the investigation must organize and carry out investigative actions to ensure the safety of their participants determined by the Constitution and other regulatory legal acts of Ukraine, minimizing the possibility of abuse of this condition by persons not interested in the investigation and obtaining the maximum number of significant ones to establish all the circumstances. criminal data production. Accordingly, the concept "Security" we are studying is a multifaceted and complex category, which necessitates a systematic approach to its study. The search for ways to ensure security should be one of the important measures for the preparation and conduct of investigative actions in the pandemic. The only certain aspects of this problem that we have identified determine the need for further more thorough research in this direction.

**Conclusions.** Our study allows us to note the need for scientists to pay more attention to the issue of developing reasoned proposals for changes in legislation with the expansion of the rights to ensure the safety of participants in criminal proceedings in the pandemic. The feeling of safety by the relevant participant is the key to the effective conduct of procedural actions. Ensuring the safety of the investigators should be considered as a multidimensional category, which necessitates an integrated approach to the assessment and decision in the framework of criminal proceedings. The factors that determine the formation of conditions for the investigation and conduct of investigative actions, it is advisable to consider both separately and in aggregate.

Our further research will focus on considering the features of the organization and tactics of conducting investigative actions in the pandemic.

*Conflict of Interest and other Ethics Statements*

The author declares no conflict of interest.

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**Ірина ДЕМЧЕНКО**

**БЕЗПЕКА ЯК УМОВА ОРГАНІЗАЦІЇ Й ПРОВЕДЕННЯ СЛІДЧИХ ДІЙ ПІД ЧАС ПАНДЕМІЇ**

**Анотація.** Стаття присвячена розгляду питання забезпечення безпеки учасників слідчих дій в умовах пандемії. В статті розглядається змістовне наповнення поняття «безпека» та наголошується, що її забезпечення являє собою складну багатоаспектну систему заходів та засобів в її реалізації.

Зазначається, що положення аналізованих в роботі нормативно-правових актів, у першу чергу, спрямовані на убезпечення від можливості здійснення тиску на учасників провадження та забезпечення їх фізичної та психічної безпеки та не враховують таку умову проведення слідчих дій як пандемія. Стверджується, що відчуття небезпеки відповідним учасником не дозволить зосередитися на ході проведення процесуальних дій, що обумовлюватиме їх неналежний результат та ускладнить судову перспективу. Водночас, відчуття відповідним учасником психологічної безпеки є необхідним для найбільш продуктивної діяльності. Визначається, що усвідомлення відповідним учасником ризику інфікування обумовлюватиме прийняття ним заходів уникнення під будь-яким приводом від участі в розслідуванні, зміну зайнятої позиції з сумлінної на несумлінну, формальне ставлення до проведення за його участі слідчих дій та ін. Підтримується теза В. Плетенця про те, що між ступенем захищеності учасників провадження та кількістю наданих ними відомостей про обставини вчиненої події може простежуватися прямо пропорційна залежність. Наголошується, що пошук шляхів забезпечення безпеки має виступати однією з важливих заходів підготовки та проведення слідчих дій в умовах пандемії.

У висновках наголошується, що забезпечення безпеки учасників розслідування має розглядатися як багатоаспектна категорія, що обумовлює необхідність комплексного підходу до її оцінки та вирішення в рамках кримінального провадження. Крім того, наголошується на необхідності приділення з боку дослідників більшої уваги питанню розробки аргументованих пропозицій до змін в законодавство із розширенням прав на забезпечення безпеки учасників кримінального провадження в умовах пандемії. Чинники та фактори, що обумовлюють формування умов розслідування та проведення слідчих дій, доцільно розглядати як окремо, так і у сукупності.

***Ключові слова:*** *умови підготовки та проведення слідчих дій, забезпечення безпеки, пандемія, тиск, уповноважена особа, ризик інфікування.*

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# MAIN DIRECTIONS OF ADMINISTRATIVE AND LEGAL CONTROL OF ILLEGAL TRAFFICKING OF DRUG SUBSTANCES USING THE INTERNET

**Abstract.** Research on the issue of administrative and legal counteraction to illicit drug trafficking using the Internet. The paper states the existence of an extensive system of preventive research in the field of combating both illicit drug trafficking and tort in general. Based on a three-tier system of anti-anesthesia: general; special and individual.

According to the results of the study, the following conclusions were made: With the development and accessibility of the Internet, a whole system of drug culture promotion emerged, as well as new ways of distributing drugs (so-called bookmarks). Administrative and legal counteraction to illicit drug trafficking using the Internet should be carried out at the following levels: general; special and individual.

***Keywords:*** *drugs, narcotic substances, opposition, Internet, web resource.*

**Relevance of the study.** Prevention plays an important role in combating drug trafficking, its analogues and precursors. Prevention is the precautionary mechanism that does not allow mass criminalization of society with all the negative consequences. With the development of information technology and the comprehensiveness of the Internet, illegal activities in the field of drug trafficking have moved to the virtual sphere, which in turn requires the prevention of illegal behavior in the virtual space. This problem is especially acute with the emergence of so-called "bookmarks", through which the sale of drugs takes place without contact between seller and buyer.

**Recent publications review.** Problems of counteraction to narcotization were studied by scientists-administrators through the object of research, so features of administrative responsibility for offenses in the field of trafficking in narcotic drugs and psychotropic substances were devoted to such works by such scientists as K. Afanasyev, O. Volokh, I. Golosnichenko. etc. [1-5]. The issue of anesthesia of minors was considered separately by scientists A. Sivchuk, N. Yuzikova, I. Cormorant. The general prevention of drug offenses was not left out of consideration by such scientists as A. Musica, A. Savchenko, O. Yarmish, H. Yarmaki. In our study, we will try to reveal the directions of administrative and legal counteraction to illicit drug trafficking using the Internet.

**The article's objective** is to develop areas of administrative and legal counteraction to drug trafficking using the Internet.

**Discussion.** It is worth mentioning the rather extensive system of research on preventive activities in the field of combating both drug trafficking and torts in general. Given the diversity of assets, we consider it appropriate to adopt and use a three-tier system to combat the drugzation of society. In general, according to the accepted systematization of directions of counteraction to illicit trafficking in narcotic drugs, their analogues and precursors it is accepted to divide into: general; special and individual.


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General counteraction includes the activities of the state in general, as well as its bodies and institutions, non-governmental organizations and formations aimed at resolving social, economic, political and cultural-moral contradictions related to drugzation of the population. Exactly the conduct of state and social policy in this direction is the key to effective prevention. Such activities are nationwide and cover long-term social relations. Accordingly, planning is carried out for a long period, usually for 5 years and is reflected in the relevant program approved by the highest executive body.

The subjects of the direction of administrative and legal counteraction to illicit drug trafficking with the use of the Internet are the state represented by the highest state authorities, local self-government bodies, public formations and individual citizens with an active position in life. Religious organizations and their leaders play an important role in this system. According to the analyzed paradigm, this range of actors is designed to influence the causes and conditions that contribute to the spread of drug addiction in society. In counteracting this phenomenon, a set of legal, social, cultural and religious norms is used with the use of the Internet. The object of the general administrative and legal counteraction to the drug addiction of society with the use of the Internet are the subjects of the social sphere. A feature of the object in this area is its division into two main blocks.

The first includes groups of people involved in the distribution of drugs, their analogues and precursors via the Internet. The specificity of this implementation is the lack of direct contact between seller and buyer. The sale of drugs is contactless, through a system of "bookmarks" and non-cash transfers. The Internet is full of advertisements about the possibility of "safe purchase" of narcotic and psychotropic substances. In addition, in public places in large settlements, it is not uncommon for e-mail addresses and links to sites where you can order and purchase these substances to appear. The second specific block of administrative and legal counteraction to illicit drug trafficking using the Internet is the entire virtual system. This is primarily due to the free opportunity to promote drug using. In this approach, the object of such a warning are individuals – users of computer equipment, mainly the Internet, as well as certain groups of network users: prone to drug use or are in unfavorable family or social conditions; have experience of first drug trials, or have friends who use drugs; increased risk; use drugs; are addicted to drugs; wishing to stop using them.

The administrative and legal counteraction to illicit drug trafficking with the use of the Internet at the general level should include: public monitoring of the Internet; creation of "hot lines" to obtain information about the detection of suspicious content; detection, collection and systematization of information with subsequent transfer to the relevant authorities of information on Internet resources promoting drugs; encouraging the development of content on the Internet that advocates for a healthy lifestyle. Among these activities, a special place is occupied by encouraging the development of content on the Internet that campaigns for a healthy lifestyle. This is due to the need to increase the legal literacy of the population, their legal culture and consciousness. At the same time, it is necessary to state an unreasonably small amount of Internet content in this direction. This is primarily due to the lack of attention of the state and the public to this issue.

It is worth noting that the World Wide Web is a fairly mobile phenomenon that is constantly changing and responding quickly to changes and needs in society. This is primarily due to the wide distribution of the network and the ability to access it. Today, due to easy access to the Internet, almost anyone can create a certain electronic resource, including a resource that promotes the use of drugs, as well as distribute the same drugs, their analogues and precursors. Thus, the fight against anesthesia depends not only on the state as a whole and its bodies in particular, but also on the public and individual citizens. Special prevention of drug offenses on the Internet is the localization and neutralization of the negative impact on homogeneous social relations in society, creating a basis for strengthening the legal behavior of citizens [1], establishing the principle of legality and ensuring the irreversibility of punishment for the offense. Carrying out such a large-scale counteraction requires the concentration of the efforts of the entire state with the broad involvement of the population. However, the implementation of such large-scale measures requires the adoption and approval of a long-term state target program with an implementation period of at least five years. Special counteraction to drug trafficking of their analogues and precursors on the Internet should be provided at the state level and includes the activities of law enforcement agencies and special institutions aimed at combating narcotics.

In general, the special impact on the negative effects of the Internet is aimed at:

– creating obstacles to the legalization of funds received for offenses in the field of anesthesia;

– ousting methods of anesthesia of the population from the Internet;

– together with the public monitoring of the network in order to identify, localize, block and identify those involved in the distribution of pro-narcotic content;

– improving methods of detecting such content on the Internet [2].

In order to strengthen the general and special administrative and legal counteraction to illicit drug trafficking using the Internet, the priority tasks are:

1.Ensuring the intensification of activities to identify and stop the activities of sites with pro-narcotic orientation. Emphasis on countering web-resources that distribute drugs, as well as applications to mobile phones that do not use the mobile network but work via the mobile Internet also serve as a means of anesthesia;

2.Creating and ensuring the proper functioning of an effective mechanism for the promotion of Internet resources that promote a healthy lifestyle, have an educational function about the harm of drug health, etc. [3].

To solve the tasks, it is necessary to provide constant monitoring of the Internet.

Continuous monitoring of the network is necessary in order to timely identify and adequately respond to the content posted on the relevant resources, which: offers to purchase drugs, their analogues and precursors; promotes the use of these substances, as well as content that allegedly reveals the safety and misconceptions of society about drugs (as an example, as if smoking marijuana does not pose a threat to physical and mental health).

The system of monitoring Internet sites and applications for mobile devices should be based on the following special principles: priority of primary prevention; clear interaction between prevention units, cyberpolice, the public and individual citizens; causality.

Monitoring should detect and record the following: characteristics of information about the drug posted on the Internet; the dynamics of site visits (total number, time of day and season, if possible, age and gender of persons who visited the site, etc.); the method of network activity of visitors (through network access or a special application in the mobile phone); method of resource promotion (pop-up ads, inscriptions on buildings, etc.); the state of activity of anti-drug sites and other resources; e-mail address of the pro-drug resource, domain; society's readiness to counteract, etc. [4].

Areas of network monitoring:

– control over newly created sites;

– detection of facts of placing information banners;

– tracking the facts of dissemination of information about narcotic substances, their analogues and precursors (for example, sending letters to e-mail boxes or messages in mobile phone applications);

– monitoring and verification of information on social networks (Facebook, Twitter, etc.);

– analysis of information from chats of mobile phone applications.

Standards for the effectiveness of administrative and legal counteraction to illicit drug trafficking using the Internet are:

1) The number of detected and blocked pro-narcotics resources; the number of active anti-drug resources; the amount of time required to detect and block pro-drug resources; identification and prosecution of persons involved in the creation, promotion of pro-drug sites and the actual sale of these substances [4].

2) Establishing clear cooperation in conducting administrative and legal counteraction to illicit drug trafficking using the Internet between prevention units, cyberpolice, and the public. The organization of interaction will allow: to react in time to the facts of registration of sites of a pro-narcotic direction; obtaining information on the facts of posting in public places information on electronic resources for pro-narcotics and their timely destruction; holding joint meetings, briefings, trainings, etc.

3) Introduction of public control and establishment of a system of interaction with the public and citizens.

Public control occupies one of the important places in the life of the state and society. Given the mass digitalization and the growing transition of people's lives to the virtual network, the involvement of citizens in combating narcotics is especially relevant. Establishing a clear system of interaction will allow you to quickly and timely receive information about the registration of a new resource on the Internet, its characteristics, which in turn will provide an

opportunity to respond in a timely manner and terminate their activities. Public control should be aimed, first of all, at improving the effectiveness of administrative and legal counteraction to illicit drug trafficking using the Internet by the relevant state institutions.

The essence of public control should be to monitor the activities of relevant state institutions, identify problems and miscalculations in their activities, disseminate positive results, draw public attention to the problems of narcotics via the Internet, interaction between the public and society in combating narcotics, public performance of certain law enforcement functions. by prior agreement, joint preventive measures, etc.

Individual administrative and legal counteraction to illicit drug trafficking using the Internet is aimed at a specific person who uses the network to purchase drugs, or is reasonably suspected of such actions. The purpose of such activities is to neutralize the negative antisocial behavior of a person who could potentially develop into a criminal activity (drug addiction can push a person to commit a crime). Individual prevention should be based not only on criticism of drug use, but mainly on focusing on positive personal qualities. Individual counteraction must be based on legal methods and provide for the protection of the rights and freedoms of everyone. Measures of individual administrative and legal counteraction to illicit drug trafficking with the use of the Internet include: preventive conversations with persons prone to drug offenses via the Internet; registration of persons prone to committing these offenses; providing legal, social and humanitarian assistance to such persons, paying special attention to the accounts, domains and other Internet resources of such a person; sending relevant messages to the place of study / work of such persons, etc.

**Conclusions.** The article considers the peculiarities of administrative and legal counteraction to drug trafficking using the Internet. The relevance of this direction for modern society in the era of digitalization is determined. According to the results of the study, the following conclusions were made:

1. With the development and availability of the Internet, a whole system of drug culture promotion has emerged, as well as new ways of distributing drugs (so-called bookmarks).

In order to administratively and legally counteract illicit drug trafficking using the Internet, the following is proposed: to constantly monitor the Internet in order to identify resources that promote drug use and offer the sale of such substances, to immediately stop their activities and bring the perpetrators to justice; to ensure constant interaction of the public with the relevant state institutions, with the motto of promoting a healthy lifestyle and timely detection of prohibited content on the Internet.

2. Administrative and legal counteraction to illicit drug trafficking using the Internet should be carried out at the following levels: general; special and individual.

*Conflict of Interest and other Ethics Statements*

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**Андрій ЧАУС**

**ОСНОВНІ НАПРЯМИ АДМІНІСТРАТИВНО-ПРАВОВОЇ ПРОТИДІЇ НЕЗАКОННОМУ ОБІГУ НАРКОТИЧНИХ РЕЧОВИН ІЗ ВИКОРИСТАННЯМ МЕРЕЖІ ІНТЕРНЕТ**

**Анотація.** В роботі констатовано наявність розгалуженої системи досліджень превентивної діяльності в сфері протидії як незаконному обігу наркотичних речовин, так і адміністративним правопорушенням взагалі. Взято за основу трирівневу системи протидії наркотизації: загальну; спеціальну та індивідуальну. Загальна протидія включає в себе діяльність держави взагалі, а також

її органів та інститутів, недержавних організацій та формувань направлену на вирішення соціальних, економічних, політичних та культурно-моральних протиріч пов'язаних із наркотизацією населення. Саме проведення державно-соціальної політики в даному напрямку є запорукою дієвої профілактики.

Спеціальна профілактика наркопорушень в мережі Інтернет являє собою локалізацію та нейтралізацію негативного впливу на однорідні соціальні відносини в суспільстві, створення підґрунтя для укріплення правосвідомої поведінки громадян, встановлення принципу законності та забезпечення безповоротності покарання за вчинене правопорушення.

Індивідуальна адміністративно-правова протидія незаконному обігу наркотичних речовин із використанням мережі Інтернет направлена на конкретну особу, яка використовує мережу для придбання наркотичних засобів, або обґрунтовано підозрюється в таких діях.

За результатами дослідження зроблено висновки:

1. З розвитком та доступністю використання мережі Інтернет виникла ціла система пропаганди нарко-культури, а також нові способи розповсюдження наркотичних речовин (так званих закладок).

2. Адміністративно-правова протидія незаконному обігу наркотичних речовин із використанням мережі Інтернет повинна здійснюватися на наступних рівнях: загальний; спеціальний та індивідуальний.

***Ключові слова**: наркотики, наркотичні речовини, протидія, інтернет, веб-ресурс.*

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## THE RIGHT OF CONVICTS TO HEALTH CARE

**Abstract.** The Article examines the application of imprisonment to persons, which restricts their ability to exercise a number of rights and freedoms, but the state undertakes to provide such persons with access to medical care and treatment. However, the procedure for exercising and ensuring the right to health care has its peculiarities due to the nature of criminal punishment in the form of imprisonment. Despite the great attention of scientists to the definition and legislative consolidation of human and civil rights and freedoms in Ukraine, the complexity of the task of administrative and legal support and establishing guarantees of the right to health of citizens sentenced to imprisonment requires more detailed study. The state of ensuring that convicts exercise their right to health care and adequate medical care has recently been extremely unfavourable. According to prosecutors, the main shortcomings in the organization of health care are insufficient staff, lack of necessary medicines and emergency medical care, untimely detection, diagnosis and prevention of diseases, especially chronic ones and inability to provide proper treatment in remand prisons.

The system of health care facilities that can provide medical care in general and special order should be specifically defined, as these aspects are rather chaotically regulated in the criminal-executive legislation. In addition, the main problem of the imperfect functioning of the program to guarantee the right of the convict to health care is the insufficient material and financial support of penitentiary institutions, as most of them are in extremely unsatisfactory condition and objectively unable to provide normal living conditions.

***Keywords:** ensuring, right to health, legal status, convict, administrative support, legal support, protection of public health, imprisonment in Ukraine.*

**Relevance of the study.** One of the most crucial components of the social and economic rights and freedoms system of the citizens is the right to health care. Health care implies certain measures that are taken by the government bodies and local authorities, their officials, healthcare institutions, private entrepreneurs, medical and pharmaceutical employees, non-governmental organisations and citizens with the purpose of maintaining and restoring


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physical and psychological functions, adequate efficiency and social activity of people throughout their lives [3]. One important aspect of health care is administering medical aid to citizens. In the national legislation medical aid is defined as appropriate actions of trained healthcare professionals aimed at prevention, diagnosis, treatment and rehabilitation in connection with diseases, injuries, poisonings and health conditions as well as pregnancy and labour [2].

**Recent publications review.** Actual problems of the right of convicts to health care were discussed by such scientists, as: O. Bandurka, V. Batyrhareyeva, O. Dubovych, O. Pochans'ka, K. Dolan, A. Wirtz, B. Moazen and others.

**The article's objective** is to investigate the right of convicts to health care.

**Discussion.** The right to life is the most crucial and precious one of the rights and freedoms. Life is one of the main personal and social values of a person and should the person be deprived of it; they cease to exist. The right to life is inherent and integral. Without this right, all other rights don't matter. Therefore, the right to life has the maximum legal protection which is based on the Constitution of Ukraine. Such provisions are reflected in the Central Election Commission of Ukraine (CEC of Ukraine) (Article 7). The right of convicted persons to life and health care and certain elements of their implementation mechanism are defined in art. 10 of the Criminal Procedural Code (CPC) and legal guarantees are defined in the Law of Ukraine "About pre-trial detention", "About ensuring safety of persons participating in criminal proceedings", CPC and bylaws of the Ministry of Justice of Ukraine [4].

Persons sentenced to imprisonment are provided medical aid by a series of medical and sanitary, and preventive medical measures as well as combining free and paid forms of medical aid, provided for in the Law of Ukraine. However, despite the great number of statutory documents which constitute the regulatory foundation for ensuring the right to health care of the convicted persons, as of today, the state of organizing medical aid and providing convicted persons with medical aid are unsatisfactory as the quality of the medical aid provided to the convicted citizens is at a very low level, there is severe shortage of funds, equipment, medicine and qualified staff and the medical professionals remain dependent on the management of the prisons and custodial facilities [1].

Penitentiary institutions ensure sanitary and hygienic anti-epidemic rules are followed. The healthcare institutions of the penitentiary institutions of Ukraine, whose structure includes psychiatric and infection wards, have a regime which allows the isolation of patients as well as substantial supervision over the convicts' behaviour. Preventive medical examination is performed once a year in penitentiary institutions, aimed at detecting and preventing the spread of infections, parasitogenic, somatic and mental illnesses. The right to life includes the whole set of human rights in total, but doesn't fully repeat any of them individually. The right to life means not only refusing from a war, forbidding the homicide or death penalty, but also providing decent living conditions crucial for the person's proper development. Unlike all other types of rights, the right to life is a determining condition which is the foundation for the person's dignity which guarantees the sanctity of the person's physical existence as a human life is viewed as a whole and nondivisible value which is not to be limited [6].

The right to life is ensured by a number of constitutional guarantees. Among them, one of the main guarantees of the right to life is the healthcare system, its constant development, the advances of medicine, improving the supply of medicine, improvement of the system of providing sanitary and anti-epidemic welfare. As far as medical aid is concerned, the right to protection should not be viewed only as sustaining physiological existence of a person, but also the quality of life, the person's internal (psychological) and external (material) state; whether they feel like a fully functional member of society, how socially active they are; the stage of society's adaptation to accepting people with physical or mental [7]. National governmental and local governmental bodies are obliged to use comprehensive measures aimed at improving the quality of people's lives. It is important to keep in mind that even a person, that replies on life support equipment for sustaining their physical existence, is entitled to medical and social aid of the highest quality available. A human life is physiological and psychological functioning of the whole body. Both a free person and a convicted person have equal rights to life, health care and to receiving medical aid. And constant violation of the rights of convicts (providing medical care of insufficient quality), especially of those with mental disorders and other serious medical conditions, is a direct violation of the rights of convicts, as they have the same rights to health care and quality medical aid as free persons [3].

At the same time, one of the key aspects of the legal status of a person, including

convicted persons, can be considered the right to medical aid. The study of the correlation between the right to life and the right to medical aid is adequately supported in terms of medical law [2]. At the beginning of the XXI century, ensuring respect for fundamental human rights and freedoms has become an integral part of the development of a civilized society. A state can only really be considered lawful if it respects the priority of human and civil rights and freedoms. Ukraine, having chosen the path of democratic transformation and integration into the world community, has made a commitment to comply with the provisions of ratified statutory acts [4]. In the past, our state was characterized as having a clear prioritization of the interests of society and the state over the rights, freedoms and legitimate interests of individuals. In terms of medicine, testaments of this were the total numbers of cases, hospital bed occupancy, formulation of the concept of public health, and so on. The indicators and content of an individual's state of health were of bigger interest to a small circle of researchers rather than reflected the real state of affairs regarding the state's care for its citizens. The reality of the law's priority suggests that particular attention should be paid to the status, provision and protection of patients' rights. Nowadays, it is getting clear that receiving medical care is one of the aspects of ensuring the human right to life. In this regard, it seems appropriate at the medical and legal level to comprehensively analyze the origin and ensuring the right to life, as well as to study the issue of medical aid as a means of ensuring the right to life. It is crucial for being able to propose certain ways of improving the legal foundation in the field of health care regarding the protection of patients' rights at the sectoral level [5].

The problem of poor conditions during the detention stage and poor medical care in Ukrainian penitentiary institutions are "a structural problem and it needs to be addressed immediately, as it leads, among other things, to the spread of various diseases and, as a result, deaths and suicides". Admittedly, the low quality and poor quality of medical aid in the penitentiary institutions entails a number of serious consequences, since the persons sentenced to imprisonment, have no access to timely and qualified medical care, it directly leads to an increase in the number of cases and to an increase in mortality rate [6]. Thus, as of January 1, 2020, 88 people in penitentiary institutions died from: AIDS - 22; cardiovascular diseases – 21; tuberculosis – 9; central nervous system diseases – 7; diseases of the digestive system – 3; malignant tumors – 9; respiratory diseases – 8; limb injuries – 1; injuries – 1; suicides – 5; accidents – 2. Apart from these, the number of tuberculosis patients registered in penitentiary institutions accounted for 1923 people, HIV - 4876 people [5].

The key factors that impact the mortality of prisoners are insufficient funding and poor equipment of medical facilities (nearly 70 percent of which is outdated or technically worn out), medicines and lack of qualified personnel, which ultimately leads to poor quality, and in some cases to failure to provide medical care completely. The most common demerits of administering medical aid to convicts include [7]:

– Lack of doctors and other medical professionals at medical units of penitentiary institutions;

– Underequipped medical facilities with lack of medicine;

– Unsatisfactory organization level of administering medical aid to prisoners (absence of hospitals, infection isolation wards, isolation wards for people with mental disorders, etc.);

– Insufficient level of examination of prisoners for HIV infection and provision of medical care to HIV / AIDS patients;

– Lack of measures regarding additional diagnostics of diseases, apart from general mandatory and X-ray examinations;

– Insufficient awareness of the institutions' staff about the provisions and requirements of the international human rights law, standards of treating prisoners, discrepancy between the medical records and the requirements of current legislation, etc. [2].

Protection of the right to medical care for persons in detention, in difficult conditions and convicts serving a sentence. Nearly 90 % of convicts suffer from various diseases, approximately 30 % suffer from socially significant diseases (unofficial statistics are much higher). With the current funding, the right to medical care in the appropriate amount and quality only exists on paper. This is confirmed by the deaths of convicts who did not receive timely and quality medical care [5]. Therefore, there are problems, and the state basically does not take any measures to eliminate them. Legal precedents of the European Court of Human Rights is constantly expanding and does not exclude Ukraine's violation of its obligations under the European Convention for the Protection of Human Rights and Fundamental Freedoms in terms of violation of Article 3 of the 1950 Convention.

It is the duty of the State under Article 3 of the ECHR to create appropriate conditions to ensure that persons in pre-trial detention facilities and penitentiary institutions had access to quality and timely medical care. In particular, Ukraine should provide regular and systematic monitoring, detailed records on the state of health and treatment of prisoners during detention, create conditions necessary for appropriate treatment, supply of medicines, provide medical institutions with qualified professionals and diagnostic equipment for solving issues at an early stage or creating proper conditions for a rapid response. Current situation is unacceptable for the democratic, legal and social state that Ukraine has proclaimed to be in accordance with the Constitution of Ukraine, and, clearly, requires rapid and fundamental changes [5].

Thus, the current state of the convicts' rights to health care, taking into account a number of social, economic and legal factors, remains only declared in statutory acts, which in practice is only exhibited in occasional medical examinations and diagnostics of diseases, because to actually be implemented, this right of persons must comply with the state's obligation to ensure its implementation. However, national legislation is normally limited to establishing general medical rules for convicts that are declared yet cannot be complied with. At the same time, the legislation of Ukraine does not establish any effective mechanisms for exercising the right to health care, nor the responsibility of officials for improper medical care for convicts and for causing harm to the convicts' health. For instance, the Penitentiary Enforcement Code contains a provision according to which every convict has the right to seek advice and treatment from institutions that provide paid medical services, but the relevant regime prohibitions and restrictions due to the nature of criminal punishment do not actually allow convicted citizens to exercise this right. The right of a person sentenced to imprisonment to freely choose a doctor and the medical institution in which they wish to receive treatment also remains only declared on paper, as today Ukraine virtually has no mechanism for providing the convicted with doctors from outside the penitentiary system, even at their own expense.

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**Валерія САВЧЕНКО**

**ПРАВО ЗАСУДЖЕНИХ НА ОХОРОНУ ЗДОРОВ'Я**

**Анотація.** Стаття розглядає питання застосування до осіб позбавлення волі, що обмежує їх можливість реалізації низки прав і свобод, але держава зобов'язується забезпечити таким особам доступ до медичної допомоги та лікування. Проте порядок реалізації та забезпечення права на охорону здоров'я має свої особливості, зумовлені характером кримінального покарання у виді позбавлення волі. Незважаючи на велику увагу науковців до визначення та законодавчого закріплення прав і свобод людини і громадянина в Україні, складність завдання адміністративно-правового забезпечення та встановлення гарантій права на здоров'я громадян, засуджених до позбавлення волі, потребує більш детального вивчення. Стан забезпечення

реалізації засудженими свого права на охорону здоров'я та належне медичне обслуговування останнім часом був вкрай несприятливим. Основними недоліками в організації охорони здоров'я, на думку прокурорів, є нестача кадрів, відсутність необхідних медикаментів та невідкладної медичної допомоги, несвоєчасне виявлення, діагностика та профілактика захворювань, особливо хронічних, а також неможливість забезпечити належне лікування в слідчих ізоляторах. Конкретно слід визначити систему закладів охорони здоров'я, які можуть надавати медичну допомогу загального та спеціального порядку, оскільки ці аспекти досить хаотично врегульовані у кримінально-виконавчому законодавстві. Крім того, основною проблемою недосконалості функціонування програми гарантування права засудженого на охорону здоров'я є недостатнє матеріальне та фінансове забезпечення установ виконання покарань, оскільки більшість із них перебувають у вкрай незадовільному стані та об'єктивно не можуть забезпечити нормальне життя. умови.

***Ключові слова:*** *забезпечення, право на здоров'я, правовий статус, засуджений, адміністративне забезпечення правового забезпечення, охорона здоров'я населення, позбавлення волі в Україні.*

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## FACTORS RELATED TO CRIMINAL OFFENSES AGAINST SEXUAL FREEDOM AND SEXUAL INTEGRITY OF A PERSON N UKRAINE (EMPIRICAL RESEARCH)

**Abstract.** The article deals with the current state of crimes against sexual freedom and sexual integrity of a person in Ukraine. The perception of factors related to crimes against sexual freedom and sexual integrity of a person and some moments in social life, which are closely related to the sexual sphere of relationships by young people, is analyzed. The research is based on the results of the poll of youth aged 18 to 25 years.

***Keywords:*** *current state of crime, sexual freedom, sexual integrity, rape, sexual violence, culture of sexual relations.*

**Relevance of the study.** At the present stage, Ukraine is undergoing radical changes in socio-economic, political and other spheres of society. However, at the same time, there is a decline in living standards of a certain part of the population, the destruction of moral ideals, which has an extremely negative impact on the formation of consciousness of modern society. Of particular concern is the fact that these serious negative changes are manifested in the consciousness and stereotypes of sexual behavior in society, the deformation of sexual morality as one of the spheres of human life. Satisfaction of sexual needs is increasingly carried out in illegal ways.

Sexual freedom and sexual integrity are inalienable natural rights of the individual. The sexual integrity of any person is protected by the state, and encroachment on it and on a person's sexual freedom is one of the most socially dangerous crimes.

Sexual crime is a set of crimes against sexual freedom or sexual integrity, which are committed with the use of physical, mental violence or using the helpless state of the victim to


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satisfy sexual needs in a natural or perverted form [1, p. 201].

**Recent publications review.** The topic of this research is quite relevant and has always been of great interest among scientists. Over the past 10 years, a number of dissertations have been defended, which covered criminal law and criminological aspects of rape and other crimes against sexual freedom and sexual integrity of a person: S. Kosenko, O. Sineoky, A. Lukash, O. Gubanova, T. Lysko, M. Larchenko, A. Dzhuzha.

**The article's objective** is to analyze the results of a survey of young people aged 18 to 25, their perception of criminal offenses against sexual freedom and sexual integrity in general, as well as individual moments in public life that are closely related to sexual relations. And also definition of the basic measures of crime prevention in this sphere.

**Discussion.** It is undeniable that crime is closely linked to society. More precisely, it cannot exist without society and manifests itself only in it. The famous Ukrainian scientist-criminologist A. Zakaliuk pointed out that crime is a phenomenon of public life in the form of unacceptable and dangerous for society mass, relatively stable, multifaceted criminal activity of some members of this society [2, p. 139]. Other scholars, both domestic and foreign, almost unanimously point out that crime exists in a certain society, in a certain territory and at a certain time. Thus, when we talk about crime, we certainly mean that it exists in a certain society, at a certain time, in a certain territory. This means that the study of the "state" of society, which exists in a certain area at a certain time, allows us to establish a link between the peculiarities of its development and functioning, and crime in certain areas.

This view is confirmed, but in fact not refuted in the criminological literature, for example, in the field of criminal offenses against property (theft, robbery, fraud, etc.), researchers often point out the presence of correlated (and sometimes direct) connection, between the level of wealth of citizens, their well-being, and the number of criminal offenses against property committed in the state. Unfortunately, the current situation in Ukraine clearly shows the fairness of this point of view - in recent years the level of welfare of the population has significantly decreased, and at the same time the level of criminal offenses against property has increased.

Given the existing patterns of occurrence and existence of crime in society, we conducted a study of individual factors of perception of young people, the problem of criminal offenses against sexual freedom and sexual integrity in general, as well as individual moments in public life that are closely related to sexual relationships. The influence of modern technologies (in particular, the Internet, social networks, etc.) on the perception of young people in the sexual sphere in general, and relationships between people in this area were also studied. The research was conducted through an anonymous survey of young people aged 18 to 25 years who have an active social life. The research involved both females and males (in the ratio of 47.3 % to 52.7 %, respectively). In the structure of the study, separate blocks of information that intersect with each other were identified.

It should be noted that the study of young people's opinion on this type of crime is promising, because it is at this stage that the foundations and certain "patterns" of behavior are laid, which in the future may lead, including to the fact that a number of actors will become criminals, or a victim. Moreover, according to our recent research in this area, minors and juveniles account for up to 14 % of all victims, and persons aged 18 to 25 years – almost a third of the total [3, p. 185].

First of all, it should be noted that the awareness of members of society of the state of crime in the relevant field and the assessment of the activities of the competent authorities in the field of combating the relevant crimes is of great importance. It is clear that the negative attitude to the activities of law enforcement agencies in the relevant field, and the actual perception of crime by citizens is directly related to both the number and quality of crimes committed. The expectations of members of society on a particular occasion to some extent determine and determine the commission of relevant crimes. Among the respondents, only 3.7 % believe that the current state of crime can be considered satisfactory, but it is not a cause for concern. At the same time, almost 41.3 % of respondents believe that the level of crime in the field of sexual freedom and inviolability is not very high, moderately increasing, in turn, 37.6 % of respondents indicate that crime in this area is average and increasing. According to 17.4 % of respondents, the state of crime in the field of sexual freedom and sexual integrity is seriously increasing and is a cause for concern. In fact, 1/6 of the respondents expresses serious concern about crime in this area, which in our opinion is quite large and has a negative impact on consciousness. At the same time, this indicator indirectly indicates the level of latency of

these crimes (the issue of latency will be examined below).

At the same time, the vast majority of respondents are convinced that these crimes are those that have a high level of public danger. Thus, among all respondents, 32.1 % believe that criminal offenses against sexual freedom and sexual integrity have an average level of public danger (mostly, this is the point of view of males), while 49.5 % indicate that these crimes have a high level of public danger, and 18.3 % are convinced that these crimes have a very high level of public danger. These data indicate a serious attitude of young people to crime in this area. This means that the relevant actions resonate in the minds of the vast majority of people in the country, and therefore the delay and failure to take measures to prevent and detect them clearly has a negative impact on crime in general and in the field in particular.

At the same time, young people are aware of the state of crime, the vast majority of respondents "do not see" the active and effective activities of the state and, in particular, law enforcement agencies in combating crimes against sexual freedom and sexual integrity. Only 13.9 % believe that normal preventive work is being done in this area, and 45.4 % of respondents indicate that there is currently no noticeable result of such activities (although they believe that prevention, in general, is carried out). At the same time, 34.3% of respondents believe that the state and law enforcement agencies do not carry out prevention, in general, they assess the efforts of competent authorities in this area negatively, and 6.5 % of respondents believe that the situation is deteriorating, there is state inaction. In addition, of all respondents – 56.9 % believe that the state does not actually take any measures to combat crimes in this area.

The results obtained from the respondents in relation to the level of latency of criminal offenses against sexual freedom and sexual integrity of a person look interesting. Only 6.4 % of respondents believe that the level of registered criminal offenses in this area coincides with their real number. No more than 29.9 % of respondents believe that there is currently a low level of latency, and only a small number of such criminal offenses are not registered. All other respondents are convinced that the level of latency in this area is significant, while 44.9 % believe that a significant proportion of such crimes are not registered, and 25.7 % are convinced that the vast majority of such criminal offenses are not registered at all. These results look even more interesting in terms of information obtained about the personal awareness of respondents, about the facts of criminal offenses against sexual freedom and sexual integrity of a person, and the facts of law enforcement response to them.

According to the results of the survey, it was found that along with the dominant position (76.1 %) on whether the respondent is aware of the facts of sexual violence (or attempts to commit them) against relatives, friends or acquaintances, a significant proportion (almost 24 %) indicates that it has the relevant information. Thus, 4.6 % of respondents guess about such actions, although the relevant subjects did not tell them about it, 9.2 % of respondents know for sure about the facts of attempts to commit these actions against relatives, friends or acquaintances, and 10.1 % know about facts of sexual acts against this category of persons. At the same time, despite the fact that 84.3 % of respondents are unaware of the facts of improper response of law enforcement agencies to citizens' appeals regarding the facts of committing criminal offenses against sexual freedom and sexual integrity, almost 16% know about such facts. Of these – 12.9 % – in the words of third parties, and 2.8 % – personally and authentically. The latest data are confirmed by the control question, according to which only 7.9 % of respondents attribute the refusal of registration by law enforcement agencies to the reasons for the latency of criminal offenses of this type.

According to the respondents, the main reasons for the latency of criminal offenses against sexual freedom and sexual integrity of a person include: a) refusal of victims to apply to law enforcement agencies out of shame – 68.3 %; b) refusal of the victims to appeal to law enforcement agencies for fear of reprisals, revenge – 22.2 %; c) victims are denied registration of the fact of committing a crime in law enforcement agencies – 7.9 %. In addition, 1.6 % of respondents believe that victims simply do not realize the fact of committing a criminal offense against them. The latter point of view, however absurd it may seem, correlates in some way with the other results of the study, which will be presented below.

Given the appropriate attitude of young people to criminal offenses against sexual freedom and sexual integrity of a person, attention is also drawn to their current awareness of the "guilt" of victims of rape and other crimes related to sexual freedom and sexual integrity. Among all respondents, only 13% (although this is not a small number) believe

that a victim of a sexual crime cannot be found guilty under any circumstances. On the other hand, only 6.5 % of respondents are convinced that the victim of a sexual crime is personally guilty of assault (in other words, the victim herself provoked the assault), and 32.4 % indicate that the victim is hardly possible to be found guilty, even because of misconduct (that is, they quite consciously assume that the victim's behavior may be the cause of the assault). At the same time, the majority of respondents agree that a significant proportion of victims behave incorrectly in one way or another, which ultimately determines, in part, the assault on them. According to updated data, the view on the full or partial "guilt" of victims of sexual crimes (men/women) is supported by approximately 63.7 % of men. It is immediately noteworthy that 36.3 % of women surveyed also agree that some of the responsibility "lies" on the victim of the crime.

Data on the "guilt" of victims could be interpreted to some extent "conditionally" and questioned, but the specification of information about the behavior of victims indicates that the information is sufficiently valid. Thus, of all respondents, 87.2 % of respondents believe that they have never been in potentially dangerous situations (at certain events, in companies, etc.), where they could, in their opinion, be sexually abused. At the same time, 9.2 % of respondents indicate that they have been in a potentially dangerous situation once or twice (i.e. they were aware that in a certain course of events, a sexual crime could be committed against them), 1.8 % believe that they were in such situations. more than twice.

In addition, 1.8 % could not clearly answer this question, noting that they did not have a clear idea of the possible course of events and consequences (apparently, this answer indicates that such situations were potentially possible).On the other hand, the vast majority of respondents (almost 75 %) are convinced that in practice it is possible that potential partners may misjudge each other's actions (as an example, a situation was simulated where a woman does not resist very much and a man does not accept rejection and considers it part of the "game"). At the same time, out of the total number of respondents – 59.3 % believe that such situations are possible in some cases, and 16.5 % indicate that they are quite real. However, 23.9 % of respondents are convinced that such situations are far-fetched and untrue.

It is important to note that when considering this question by gender, we can see approximately the following indicators - the vast majority of men (up to 70 % of all answers) believe that such misunderstandings are possible, while only a third of women point to such situations as possible. This means that in certain "borderline" situations, men are much more likely than women to misunderstand events and assess the situation from their own, subjective point of view, which is completely untrue, not fully aware that the encroachment is taking place. on objects that are under the protection of criminal law. It is obvious that such situations arise due in part to the low level of culture of the relationship between men and women, especially at a young age, which will be discussed below.

In addition to general issues related to the perception of the state of crime in the field of sexual freedom and sexual integrity, as well as assessing the effectiveness of combating these crimes and "guilt" of the victim in their commission, we also examined a number of issues indirectly related to the determination of criminal offenses. offenses. It is known that a person implements certain patterns of behavior, which he learns through personal experience and the social environment in which he is. It is obvious that the current attitude of young people to sexual relations in general, their vision of this area, the order of gaining experience, the culture of relations between men and women in society through the prism of their views and modern culture in general, are definitely associated with crime in this area. There is no doubt that the negative trends in this area will be reflected over the years in the area of crime against sexual freedom and sexual integrity. The experience, the ideas that are fixed in the minds of modern youth will directly affect how they will behave, how they will perceive appropriate actions and what assessment they will give them.

Taking into account the above, in the framework of the research, we studied the question of their own "experience" of establishing relationships and contacts with persons of the opposite sex. In the vast majority of respondents (73.8 %), there have never been situations in their lives in which their actions towards people of the opposite gender were improperly understood (for example, simulated situations in which at the suggestion of acquaintance - accused of harassment, or in the case of wearing a beautiful dress addressed to the respondent - obscene suggestions were made, etc.). However, 8.4 % of respondents found it difficult to answer this question, and 11.2 % said that they had been in such

situations several times. In turn, another 6.5 % indicated that this was the situation with them at least once.

Among all respondents, only 4.3 % believe that, on average, nowadays, sexual intercourse begins after the age of 18, 4.3 % found it difficult to answer this question. On the other hand, 45.3 % of respondents are convinced that sexual intercourse begins between the ages of 14 and 16, and 42.7 % believe that such intercourse begins between the ages of 16 and 18. A small proportion (4.3 %) of respondents also note that sexual intercourse now begins before the age of 14. The above data actually reflect the respondents' own experience and their ideas based on the words of their peers, friends, comrades, etc. Of course, there is a real, correlated link between the age at which young people's sexual life begins and the number and quality of criminal offenses against sexual freedom and sexual integrity in the future.

Interesting are the statistics on the possibility of using minor violence against a partner during sexual intercourse (a situation was simulated in which it was indicated that minor violence is used as a "game", etc.). Thus, 27.8 % of respondents (both men and women, and we did not find significant differences between points of view on this issue) believe that the use of such violence is unacceptable. At the same time, 51.9 % of respondents believe that the use of this kind of violence is quite acceptable if they do not cross a certain border. At the same time, 11.1 % of respondents consider the use of minor violence during sexual intercourse to be perfectly normal, and another 9.3% find it difficult to answer this question. Not surprisingly, a significant proportion of men are ultimately unable to clearly define how their potential partner perceives the situation.

A separate group in the research raises questions about the sources of information about sexual intercourse, the formation of a culture of relationships between men and women in adolescence. The survey shows that currently only 5.6 % of respondents indicate that they have never seen pornographic films (with scenes showing sexual intercourse), and 2.8 % of respondents say that it is "difficult" for them to answer about it. However, almost 90 % of respondents say they have seen pornographic films at least once. If we give more accurate data, we can say that 36.1 % of respondents have seen such films at least once, 43.5 % of respondents have seen such films repeatedly, and 12 % watch them periodically.

As for the sources of information received by young people in the field of sexual relations, today, based on the results of the survey, the most noticeable dissemination of such information is through social networks (Instagram, Facebook, etc.) and averages 33.2% of all sources. Next, (19.6 %) in "popularity", is the dissemination of information through acquaintances, friends and comrades. In 18 % of cases, respondents point to "adult" films as a source. In about 16.4 % of cases, such information "reaches" teenagers through television, 13.9% receive information from "adult" magazines, 3.6 % through other print media, and only (!) 1.6 % of parents or relatives. It is clear that given the "quality" of individual sources that are at the top of the ranking, we cannot talk about the normal formation of a clear idea of the culture of sexual intercourse in adolescents. The vast majority of these "sources" are not controlled by anyone, there is no filtering at all, both the information itself and the way it is presented. Undoubtedly, this creates a general unfavorable background for crime in the area of sexual freedom and sexual integrity in general.

Among all the possible factors that contribute most to the spread of sexual crimes, the majority of respondents point to the following: a) distribution of pornography, free access to relevant information on the Internet – 26.4 % (hereinafter – of the total); b) low culture of relations between men and women in society – 21.6 %; c) provocative behavior of victims of sexual crimes – 20.1 %; d) improper education of adolescents in this area – 12.6 %; e) improper response by law enforcement agencies to the facts of appeals of victims – 10.8 %; f) improper state of public order protection – 5.9 %. In addition, respondents also personally noted that among the main factors that contribute to crime in the field of sexual freedom and inviolability are the following: a) the negative (general) impact of the environment on young people; b) prohibition of legal prostitution; c) a certain "impunity" for most sexual crimes, and some others. Thus, the study of the modern perception of young people of the main issues of crime in the field of sexual freedom and sexual integrity of the person allows us to draw some conclusions. First of all, it should be noted that modern ideas of young people about the sexual sphere of relationships between people are changing to some extent. In our opinion, it is impossible, however, to state unequivocally that such changes are exclusively negative, as is

done in some sources. Of course, some of the current trends in this area, in particular with the participation of adolescents, are negative, however, we believe that it is unacceptable to try to justify a direct link between the "liberalization" of young people's views on certain aspects of sexual intercourse with crime in this area.

The results obtained from the study of adolescents' views on crime in the field of sexual freedom and sexual integrity of a person show a fairly high level of concern of young people in this regard. The vast majority believe that the situation with such crimes as rape, sexual violence, molestation of minors and others getting worse every year. The presence of negative "potential" expectations in this regard is very high. In addition, the majority of young people do not feel or see any "efforts" of the state to combat these crimes.

The negative expectations of young people, unfortunately, are supported to some extent by the known facts of improper response of law enforcement agencies to the relevant appeals. It should be noted the critical need for a quality response to all facts of crimes in the field of sexual freedom and sexual integrity of a person by law enforcement agencies, especially units of the National Police.

According to our research, the vast majority of young people experience impunity for these acts, which undoubtedly has a negative impact on the state of crime in general and crime in the field of sexual freedom and sexual integrity in particular. In addition, a large number of respondents reliably indicate that they have information about the facts of sexual violence (or attempts to commit them) against relatives, friends or acquaintances (almost 24 % of respondents!). The obtained data clearly confirm the thesis about the high level of latency of these crimes. It is obvious that the state and law enforcement agencies need to take certain steps to reduce the latency of these crimes.

The above-mentioned features of youth perception of the current state of crime in the field of sexual freedom and sexual integrity of a person lead to the fact that the vast majority (more than 70 % of respondents) do not consider it necessary to apply to law enforcement agencies, and a significant proportion of respondents (including women) are perceived as a "proper" point of view, according to which the victim of a sexual crime in many cases is personally "guilty" of the assault committed against her. The data obtained also allow us to state with a high probability that the modern information environment is aggressive towards adolescents. No control and supervision over the content and especially the quality of information is actually carried out. The vast majority of surveyed adolescents personally note that the main factor in the spread of crime in the field of sexual freedom and sexual integrity of a person is the dissemination of pornographic information, free access to it through the Internet and social networks.

**Conclusions.** In conclusion, it is necessary to note the main directions and measures that today, based on the views of young people (according to the survey) are critical in preventing crime against sexual freedom and inviolability: a) forming a holistic and modern view of youth sex education, starting with 16 years (and given the sexual activity of adolescents - from 14 years), its implementation in a decent and accessible form that meets moral standards; b) urgent action in the field of interaction between law enforcement agencies and citizens, clarification of the need and effectiveness of appeals for protection of violated rights; c) urgent measures to control the information disseminated on the Internet (in most countries there has long been a system of blocking the site – IP addresses with malicious content, especially pornographic), blocking government agencies sites, groups on social networks and other communities with malicious content; d) introduction of free short-term, free courses/trainings for the purpose of victimological prevention of sexual criminal offenses.

We believe that the solution of a number of outlined urgent problems will be able to significantly positively affect the state of crime in the field of sexual freedom and sexual integrity of a person over the next 5-10 years.

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

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**Анастасія ФІЛІППП**

**ФАКТОРИ, ПОВ'ЯЗАНІ З КРИМІНАЛЬНИМИ ПРАВОПОРУШЕННЯМИ ПРОТИ СТАТЕВОЇ СВОБОДИ ТА СТАТЕВОЇ НЕДОТОРКАНОСТІ ОСОБИ В УКРАЇНІ (ЕМПІРИЧНЕ ДОСЛІДЖЕННЯ).**

**Анотація.** Досліджено окремі фактори сприйняття молоддю, проблеми кримінальних правопорушень проти статевої свободи та статевої недоторканості особи в цілому, а також окремих моментів у суспільному житті, що тісно пов'язані зі статевою сферою взаємовідносин. Також проаналізовано вплив сучасних технологій (зокрема, Інтернету, соціальних мереж та ін.) на сприйняття молоддю статевої сфери в цілому, та взаємовідносин між людьми в даній сфері. Дослідження було проведене шляхом анонімного анкетування молоді у віці від 18 до 25 років, які ведуть активне соціальне життя (навчаються у ВНЗ, спілкуються з товаришами тощо). У дослідженні прийняли участь особи як жіночої, так і чоловічої статі (у співвідношенні 47,3 % до 52,7 % відповідно). В структурі дослідження було виділені окремі блоки інформації, які перетинаються між собою.

Визначено основні напрямки та заходи, які сьогодні, виходячи з поглядів молоді (за результатами анкетування) мають критичне значення в сфері запобігання злочинності проти статевої свободи та статевої недоторканості особи. А саме: формування цілісного та сучасного погляду на статеву освіту молоді, починаючи принаймні з 16 років (а з огляду на сексуальну активність підлітків – починаючи з 14 років), її впровадження в пристойній та доступній формі, яка відповідає нормам моралі; термінове вжиття заходів у сфері взаємодії правоохоронних органів та громадян, роз'яснення необхідності та ефективності звернення за захистом порушених прав; вжиття заходів стосовно контролю інформації, що розповсюджується у мережі Інтернет; запровадження безкоштовних короткострокових, безкоштовних курсів/тренінгів з метою віктимологічної профілактики статевих кримінальних правопорушень.

***Ключові слова:*** *сучасний стан злочинності, статева свобода, статева недоторканість, зґвалтування, сексуальне насильство, культура сексуальних відносин.*

## COMBATING OFFENCES: CRIMINAL-PROCEDURAL, FORENSIC, ORGANIZATION AND TACTIC ASPECTS

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### PROBLEMATIC ISSUES OF COMBATING CRIMINAL OFFENSES AGAINST PUBLIC ORDER AND PUBLIC SAFETY

**Abstract.** The scientific article is devoted to the study of some aspects of the investigation of criminal offenses against public order. Opposition to the investigation of these illegal acts is considered, as well as ways to overcome it and apply the most appropriate measures.

The author notes that the opposition to the investigation of criminal offenses against public order determines certain methods and means of overcoming it.

The subjects of counteraction have been identified, which include the following categories of persons: officials of institutions, enterprises, organizations that became the scene of the crime, corrupt government officials and law enforcement agencies, representatives of parties, trade unions and other public organizations, labour collectives, certain groups, relatives, friends and relatives of the offender.

Based on the opinions of scientists, the opposition to the investigation of criminal offenses is defined as intentional or unintentional illegal and other conduct (action or inaction) of the offender and his associates, aimed at obstructing the investigation and ultimately – establishing the truth in criminal proceedings. It is noted that we do not agree with the authors' definitions of intentionality. It is stated that counteraction to the investigation can be carried out without intent.

***Keywords:*** *criminal offenses, public order, forensic characteristics, counteraction to investigation, investigative (search) actions.*

**Relevance of the study.** Socio-economic and political changes that have taken place in recent years in Europe and the CIS, including Ukraine, have directly affected the international nature of organized crime. There is a steady tendency to worsen the criminogenic situation in the country, due to the emergence of qualitatively and quantitatively new activities of criminal groups. Serious miscalculations in the implementation of reforms in socio-economic, law enforcement and other areas of public activity have contributed to changes in the structure and nature of organized crime, the overall level of which tends to increase. Combating organized crime is an important area of state activity. At the present stage in the activities of law enforcement agencies to detect and investigate criminal offenses against public order and public safety there are a number of complex organizational and tactical tasks, which are due, on the one hand, requirements to intensify the fight against crime, and on the other in connection with the merging of organized crime with economic structures and the strengthening of corrupt ties; strengthening illegal opposition to the administration of justice by criminals; their use of the latest methods of preparation, commission and concealment of crimes. A significant increase in the number of criminal offenses against public order and public safety demonstrates the inability of


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law enforcement agencies to counter these negative phenomena.

The low quality of detection and investigation, the lack of qualified personnel in law enforcement agencies, the lack of a system for the prevention and prevention of criminal offenses, have created the basis for an increase in their number, which are increasingly becoming more threatening. There are negative trends in the criminalization of society and the growth of organized crime. This is evidenced by the statistics of the Prosecutor General's Office of Ukraine, according to which in 2016 592604 criminal offenses were registered, in 2017 – 523911, in 2018 – 487133, in 2019 – 444130, in 2020 – 360622. At the same time, the report on suspicion in 2016 was handed over only in 159480 criminal proceedings, in 2017 – 198477, in 2018 – 191856, in 2019 – 171691, in 2020 – 167098. At the same time, suspicion is declared only in 38 % of the total number registered criminal offenses. As a result, most criminals avoid responsibility by continuing their criminal activities. It should be noted that the number of exposed COs and COs is growing every year. If in 2014 the police stopped the activities of 155 such groups, then in 2019 – 275, in 2020 – 298. The number of documented ethnic criminal groups increased by almost 40 % and groups with interregional ties increased 2.5 times. . In 2020 alone, more than 450 CO and ZO participants were sent into custody.

Victims, not feeling the protection of their rights, freedoms and legitimate interests, as well as prompt, full and impartial investigation and trial, apply to the European judicial institutions with claims to Ukraine. At the same time, not only huge funds are spent on their consideration, but also the reputation of our state as legal at the international level is endangered. Among the reasons influencing the low efficiency of the investigation are the insufficient scientific elaboration of this problem, the lack of recommendations for the authorized persons of the pre-trial investigation bodies, which in criminal proceedings face opposition from the interested parties. In addition, there are a number of objective and subjective reasons why investigators make significant errors and miscalculations in assessing the response and choosing the means and methods to overcome it. The lack of theoretically developed and practically tested sets of measures to overcome opposition has a negative impact not only on the state of investigation and prevention of criminal offenses against public order and public safety, but also the level of their detection. In view of the above, ensuring the activities of pre-trial investigation officers in Ukraine requires constant updating, taking into account the current needs of practice, as well as the latest developments, including forensic science.

**Recent publications review.** Peculiarities of counteraction to investigation and its overcoming were devoted to the works of such scientists as R. Belkin, I. Gerasimov, M. Yefimov, V. Karagodin, E. Lukyanchikov, N. Pavlova, M.. Saltevsky, M. Selivanov, V. Tanasevich, O. Татаров, K. Chaplinsky, Yu. Chornous, V. Shepitko, M. Yablokov. However, a comprehensive generalization and analysis of the main directions of counteraction to the investigation of criminal offenses against public order and public safety and their overcoming has not been carried out. Given this, there is a need to explore some features of criminal proceedings in this category.

**The article's objective** is to study the problematic aspects of countering the investigation of criminal offenses against public order and public safety.

**Discussion.** Timely prevention of opposition in the investigation of criminal offenses against public order and public safety in criminal proceedings is important. The main participants in the confrontation include such subjects as officials of institutions, organizations that became the scene of the crime, corrupt government officials and law enforcement agencies, representatives of parties, trade unions and other public organizations, labor collectives, certain groups, relatives, friends and relatives, criminals. Scholars emphasize that external counteraction is concealment of a crime for selfish motives or in order to preserve prestige, due to misunderstanding of professional interests, concealment of crimes for personal motives, coercion of the investigator by bribery to illegal actions or actions that are not in the interests of the investigation , bribery of participants in the process who have the necessary information (witnesses, experts, specialists), wrongful violence (threat or other acts affecting the reputation) [1, p. 699].

According to R. Shekhavtsov, the most meaningful and clear is the definition of resistance to the investigation as a certain type of purposeful activity of the subjects of crime, other stakeholders, which is expressed in individual intentional actions or in the form of structurally complex intentional activities aimed at concealment, change , destruction of information that has evidentiary value, as well as its carriers in order to prevent the

establishment of the circumstances of the crime and the guilt of those involved. In addition, the author notes that the form of counteraction means a type of active behavior of the opposing subject, in which certain external signs reflect his psychophysiological reactions to the situation, during the commission of a crime or during its investigation. According to the direction of actions – concealment of information about the crime and persons involved in it and interference in the investigation of the crime in order to force employees of the inquiry, pre-trial investigation, prosecutor's office, court to make decisions and conduct investigative actions that do not meet procedural requirements. Depending on the nature of the perpetrator's interaction with evidence-bearing media, opposition to the investigation may be direct (the defendant's mental influence on the victim, witnesses to compel them to give false testimony) and indirect, when such committed for certain reasons by persons not involved in the commission of the crime (for example, bribery of the victim by the relatives of the accused in order to force him to give false testimony). Depending on the types of subjects of counteraction to the investigation, counteraction is made either by persons – participants in the crime (suspects, victims), or persons not related to the crime (eyewitnesses, relatives, acquaintances of suspects, defenders, law enforcement officials, and also public authorities and administration). According to the number of subjects, counteraction to the investigation of extortions committed by organized groups, criminal organizations can be carried out by one person or by an organized group. Depending on the objects, the opposition to the investigation takes the form of influence on both individuals and objects of the material world, which are a source of information that has probative value. According to the number of objects of influence, counteraction to the investigation is simple – by influencing one object, and complex – by two or more [2, p. 7-8].

According to R. Belkin, at the heart of every crime is the conflict of the offender with the law, with the interests of society and the state. Restoration of the violated right begins with the disclosure and investigation of the crime, during which the conflict with the law may turn into a conflict with the investigator – a person who is called to establish the truth. Thus, a conflict situation arises in which opposition to the establishment of the truth by those interested in it and the investigator's measures to eliminate this opposition and achieve the goals of the investigation are the dominant factors [3, p. 98]. That is, counteraction to the investigation is a system of actions to resolve the conflict situation in criminal proceedings of a certain category.

We must agree with the opinion of L. Arkusha on the definition of opposition to the investigation of crimes as intentional wrongful and other conduct (action or inaction) of the offender and related persons, aimed at obstructing the investigation and ultimately – establishing the truth in criminal proceedings [ 4, p. 363].

Almost the same definition was given by V. Karagodin, who formulated opposition to the investigation as intentional actions (system of actions) aimed at obstructing the tasks of the preliminary investigation and establishing the objective truth in criminal proceedings [5, p. 18]. We will note at once that with the given definitions, as it was noted above, we agree, but the only thing with which we disagree is with intent of actions. Nevertheless, we believe that opposition to the investigation can be carried out without intent.

Therefore, we consider a number of theses expedient, in particular: 1) counteraction to the investigation is always an active activity; it must be distinguished from all obstacles to the investigation. Therefore, the indication that inaction can act as a counteraction contradicts logic; 2) opposition to the investigation is not limited to preventing the involvement of traces of the crime in the field of criminal justice. This is a wider range of actions that impede the investigation of crimes. Also, the authors note that countering the investigation can act as a means of action aimed not only at preventing the involvement of traces of the crime in the investigation, but also to create traces of false crime, staging a criminal event. In such cases, the person who opposes the investigation, on the contrary, seeks to "attract" traces of a false crime, staged event in the criminal process, so that they are further evaluated as evidence [6, p. 138].

In conclusion, it should be noted that in the investigation of criminal offenses against public order and public safety there are the following ways to counter the pre-trial investigation:

1) negative impact on conscientious participants in the criminal process – victims, witnesses, members of criminal groups who cooperate with the investigator;

2) refusal to initiate criminal proceedings without sufficient grounds;

3) destruction of physical evidence;

4) delaying the preliminary inspection and artificially delaying the decision to initiate criminal proceedings;

5) repeated transfer of criminal proceedings from one investigator to another or another investigative body with the seizure of important evidence of the commission of covert crimes and the artificial creation of grounds for termination of the investigation;

6) delaying the pre-trial investigation by conducting time-consuming investigative (search) actions or appointing a large number of examinations;

7) facilitating the departure of interested persons outside the region or country, etc.

**Conclusions.** In conclusion, it should be noted that the opposition to the pre-trial investigation as a factor in the investigation of most criminal proceedings against public order and public safety has not been resolved. Thus, there are preconditions for the formation of the concept of forensic support to overcome the pre-trial investigation, in which all issues would be considered comprehensively and would have both theoretical (enrichment of forensic science theoretical concept) and practical significance ("armament" of authorized persons with effective tools in combating crime).

Opposition to the investigation of criminal offenses against public order and public safety determines certain methods and means of overcoming it. It is important to identify the subjects of counteraction, which include the following categories of persons: officials of institutions, enterprises, organizations that became the scene of the crime, corrupt government officials and law enforcement agencies, representatives of parties, trade unions and other public organizations, labor collectives, certain groups of the population, relatives, friends and relatives of the offender. Based on the generalization of scientific views of scientists, opposition to the investigation of criminal offenses against public order and public safety can be defined as intentional or unintentional illegal and other conduct (action or inaction) of the offender and related persons aimed at obstructing the investigation and ultimately – establishing the truth in criminal proceedings.

*Conflict of Interest and other Ethics Statements*

The author declares no conflict of interest.

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**Костянтин ЧАПЛИНСЬКИЙ**

**ПРОБЛЕМНІ ПИТАННЯ ПРОТИДІЇ КРИМІНАЛЬНИМ ПРАВОПОРУШЕННЯМ ПРОТИ ГРОМАДСЬКОГО ПОРЯДКУ ТА ГРОМАДСЬКОЇ БЕЗПЕКИ**

**Анотація.** Наукова стаття присвячена дослідженню актуальних проблемних питань розслідування кримінальних правопорушень проти громадського порядку та громадської безпеки. Наголошено на особливостях запобігання протидії розслідуванню зазначених протиправних діянь, а також зазначається про способи її подолання та застосування найбільш доцільних його організаційних заходів.

На підставі узагальнення правоохоронної практики, доведено, що протидія розслідуванню кримінальних правопорушень проти громадського порядку і громадської безпеки визначає певні методи та засоби її подолання.

Визначено суб'єктів протидії, до яких віднесено такі категорії осіб: посадові особи установ, підприємств, організацій, що стали місцем вчинення злочину, корумпованих представників

владних структур і правоохоронних органів, представників партій, профспілкових та інших громадських організацій, трудових колективів, окремих груп населення, родичів, друзів і близьких злочинця.

На основі думок науковців, визначено протидію розслідування кримінальних правопорушень як умисне або не умисне протиправне та інше поводження (дія або бездіяльність) злочинця та пов'язаних з ним осіб, спрямоване на перешкоджання розслідуванню і в кінцевому рахунку – встановленню істини у кримінальному провадженні. Відмічено, що ми не погоджуємося з визначеннями авторів з приводу умисності дій. Вказано, що протидію розслідуванню можна здійснювати й без умислу.

***Ключові слова:*** *кримінальні правопорушення, громадський порядок, криміналістична характеристика, протидія розслідуванню, слідчі (розшукові) дії.*

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## SCIENTIFIC APPROACHES TO EVALUATION OF SOCIAL EFFICIENCY OF FORENSIC EXAMINATION

**Abstract.** Scientific approaches to evaluating social efficiency of forensic examination through the prism of determining and analyzing its criteria and indicators (primarily, it should be choosing criteria for evaluating such efficiency, then – to determine its indicators). It is established that the social efficiency of forensic examination is multifaceted and complex, and the most appropriate form of its indicators are the social consequences of the functioning of the institute of forensic science. The content and nature of the criteria and indicators of social efficiency of forensic examination directly affect the sequence of their applying.

***Keywords:*** *forensic examination, social efficiency, criteria, indicators, evaluation.*

**Relevance of the study.** The study of assessing the quality and social efficiency of forensic examinations involves the development of theoretical issues that are important for determining the level of development of the institute of forensic science, evaluating the

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activities of forensic institutions (hereinafter – FI) for expert research, as well as law enforcement use of expert opinion. In practice, to determine the social efficiency of forensic examinations, it is necessary to establish several criteria and indicators. Criteria are used to select goals, determine the optimal combination of tools needed for the best achievement of such goals, and indicators for evaluation of results. However, to date, the question of criteria and indicators for determining the social efficiency of forensic examinations remains open. The article purpose is to outline scientific approaches to evaluating the social efficiency of forensic science through the prism of defining and analyzing its criteria and indicators. The literature considers the issue of determining social efficiency in various fields of activity, however, the criteria and indicators for evaluating this category of efficiency of the institution of forensic science has not yet been developed. Scholars understand the efficiency of forensic examination as the achievement of its useful goals without the optimization procedure, i.e. the reduction of material and other costs necessary to achieve the goals [1]. Problems of quality and efficiency of forensic examinations are studied in detail in theoretical and special works [2, 3], however, to date the issue of defining the concept of quality and criteria of social efficiency of forensic examinations has not been finally resolved. That is why the scientific papers noted the need to develop scientifically sound criteria for evaluating the efficiency of forensic science and activities of FI [4] in general and social efficiency in particular.

**Resent publications review.** Given that in terms of the problem we study, we can talk about the cost and value, as well as the efficiency of forensic examination can be not only figurative (in terms of the value of expert opinions to achieve the goals of justice), but also directly – when it comes to recovering funds for court decision on the basis of an expert opinion. We should agree with I. Kononenko, who considers belonging to the category of "quality of forensic examination" the correctness of the expert conclusions on the merits, objectivity, scientific validity, logic, persuasiveness, clarity, etc. [5], as well as S. Lapta, according to whom the quality of forensic examination can be defined as its suitability for its intended use, i.e. to achieve the objectives of criminal proceedings [1]. The results of the analysis of literature sources show that the only criterion for the efficiency (in particular, social) of forensic examinations cannot be identified. B. Matiychenko notes that there are basic and additional criteria for the efficiency of forensic examination. The main criteria, in his opinion, include the validity of expert conclusions; their motivation; completeness of solving the tasks set by the expert; completeness of expert research; examination in due time. Additional criteria are: clarity of conclusions, identification of expert initiative, accuracy of conclusions, the accessibility of the content outlined in them for an uninformed person [2]. The above emphasizes the relevance and feasibility of developing a question for determining the criteria and indicators of social efficiency of forensic examinations.

**The article's objective** is to develop the Scientific approaches to evaluation of social efficiency of forensic examination.

In the course of the research, analyses of literature, scientific publications, previous scientific developments, data of judicial practice from open resources was carried out. The main general scientific methods of the theoretical level of research were also used, namely analysis and synthesis, induction and deduction, idealization and formalization, axiomatic method, system approach, etc.

**Discussion.** Philosophical and sociological thought by efficiency suggests to understand the "measure of the target opportunity" [6]. Based on this, the issue of assessing the social efficiency of forensic science should be addressed, starting with the goal as a key concept of efficiency. A separate feature of the social efficiency of forensic examination is the completeness of the realization of human rights and the impact of this realization on the state of social relations with which it is associated. In view of the above, it can be noted that the absolute evaluative goal of law is the full realization of human rights, which is the entity of social relations, and other varieties of this goal only derive from the main and are the basis for achieving it. In addition, the absolute goal determines the social meaning of any concept related to the social efficiency of forensic examination and its evaluation. This goal setting, as well as the ability to determine the completeness of the absolute goal is the basis for assessing the nature of the social efficiency of forensic examination. In practice (when it comes to the efficiency of specific expert conclusions and expert researches), often confuse concepts such as social efficiency and direct effect, despite the fact that the goal category is a methodological prerequisite for their distinction. In the ordinary perception, social efficiency is considered to be to some extent achieved if there is a positive effect. Scientists note that the immediate

positive effect does not always indicate the ultimate social efficiency, namely the efficiency comparable to the ultimate goal of any system (in particular, the system of forensic institutions) functioning. In addition, there may be a contradiction between these concepts. This is due to the fact that "the evaluation of the effect is most often based on those criteria established by the legal system itself, and therefore always somewhat limited from a social point of view, as they try to evaluate current activity of one institution (of this system) rather than its impact on the state of social relations in all its diversity" [7].

The problem from which the scientific approach to the analysis and evaluation of the social efficiency of forensic science begins is the problem of determining the criteria of efficiency. The criteria of social efficiency of forensic examination should be understood as such features of legal actions, based on which it is possible to conclude on the state and changes in social relations, which are aimed at the impact of these actions. Among the general sources of such evaluation criteria of social efficiency, we should also single out the forms allowing the social efficiency of forensic examination to manifest itself as a social phenomenon.

It is necessary to agree with scientists who suggest to consider the following forms:

– practical consequences of a separate expert opinion or several examinations, namely their usefulness given the possibility of full realization of human rights and freedoms in the process of modern justice in Ukraine;

– influence on the legal socialization of individual members of society and even entire social strata to which such legal actions are directed (for example, when it comes to the value motives of human behavior during legal communication or the social motives of the compulsory need for legal communication);

– the level of social wholeness of legal principles or legal actions from the standpoint of realization of human rights and freedoms;

– cost-effectiveness considered as the ability to ensure social efficiency with the minimum necessary resources (human, informational, material, financial, etc.);

– social expediency which is understood as the ability of a specific expert opinion or expert research in ensuring social harmony, helping to reduce social tensions, the discovery of new areas for further development of social relations [8].

After selecting the criteria according to which the approach to assessing the social efficiency of forensic examination should be implemented, a separate step of the evaluation approach is to determine the indicators of efficiency.

Indicators of social efficiency of forensic examination are understood as such relations between social phenomena and processes, which are a tool for assessing the state of specific social relations, formed under the influence of certain legal actions.

While substantiating and characterizing the indicators of social efficiency of forensic examination, it is necessary to take into account the following circumstances:

– the indicator of social efficiency of forensic examination should be perceived as a means of disclosing its condition in relation to a specific criterion, as it is the criterion that can give meaning to the indicator. Ignoring this requirement can lead to concepts confusion.

– there are no indicators that would immediately by simply substituting them into a specific formula make it possible to assess the social efficiency of a particular legal action. This is due to the fact that social efficiency is not only a complex concept, but also superimposed on the huge variety of circumstances that accompany each legal action and are essential during the assessment.

All this means that it is necessary to have such indicators that:

– firstly, make it possible to fill them with relevant content by considering specific circumstances;

– secondly, the set of which is able to give an answer about the social, and not some other efficiency of legal action [9].

The complexity of the concept of "social efficiency of forensic examination" involves the complexity of the system of its indicators. This, in turn, makes the procedure for using social efficiency indicators complicated, however, there is simply no other way.

With a practical approach to the indicators of social efficiency of forensic examination, the problem immediately arises to determine exactly the specific phenomenon to which these indicators relate. Given the diverse and complex nature of identifying the social efficiency of forensic examination, the most appropriate form of indicators should be considered the social consequences of the functioning of the institution of forensic science.

Social consequences are understood as any changes of a social nature that occur under the influence of the existence of the institution of forensic science in society. The approach from the standpoint of social consequences for evaluating the social efficiency of forensic examination can be considered the most appropriate [10].

Scientists have proven that this is due to a number of factors, including:

– "social result" is an objective phenomenon, and therefore it can be the basis of real evaluation and real analysis of social efficiency;

– in the social result there is always the possibility of comparison with reality, with its trends and opportunities, i.e. this concept is not only analytical but also evaluative;

– social results, as a reflection of the state of social relations and their changes under the influence of the results of forensic activities, can have many specific forms of such reflection. This means that the totality of such results is able to reflect the complexity of the manifestations of social efficiency in certain specific circumstances [11].

Thus, the objective, multifaceted and universal nature of the concept of "social results" makes its use in evaluating the social efficiency of forensic examination meaningful and appropriate. At first glance, it seems that handling the concept of "social outcome" is a too general approach, however, this is not the case.

The criteria of social efficiency of forensic examination outlined above, as well as their detailed interpretation in relation to a specific situation allows for a corresponding detailed interpretation and the very concept of consequences and their content. We also emphasize that the consequences are revealed according to certain criteria, which in relation to consequences appear to be neutral, multifaceted and specific facts.

Finally, we will focus on the fact that if we consider the consequences in terms of the efficiency of forensic examination, we can see a clear interdependence between them and quantification, which follows from this interdependence.

Given the above, the real efficiency of legal actions in the process of expert activity is a set of significant social consequences that arose under the influence of these actions, and which are considered through the prism of the criteria of social efficiency of forensic examination.

It should be noted that the use of such performance indicators is not only based on the presence of these consequences but must take them into account. Legal opinion has developed a fairly comprehensive and flexible system of indicators for evaluating the legal efficiency of legislative requirements and legal actions. Such indicators should be considered to determine the differences between social efficiency of the direct and the indirect [8].

In a modified form, these indicators can be used in the analysis of scientific papers, in which the social efficiency of forensic science is studied: it is from this angle that the social consequences must be considered.

Immediate social efficiency is manifested through such social consequences that relate to direct entities or objects of legal action, as well as the fulfillment of consequences that these actions foresaw. Such changes can also be considered in terms of compliance with the law. Under such conditions, the social efficiency of the outlined changes should be viewed from a different angle, namely: what contribution did the forensic examination make in achieving a specific ultimate social goal (for example, compliance with the law in the process of privatization).

Similarly, almost all social consequences of legal action can be considered, as almost always the achievement of any social changes under the influence of compliance with the law and the use of the institution of forensic examination is a necessary component in achieving a strategic goal [10]. It should be noted that the social changes that have arisen under such influence and are part of the achievement of a more distant social goal can be presented as an indirect social efficiency of forensic examination. Determining indirect efficiency is extremely important in a period of radical social change and transformation. In some cases, it may even compete with direct social efficiency [9]. All these aspects should be borne in mind when analyzing the social efficiency of forensic examination in social conditions prevailing in modern Ukraine.

Direct and indirect social efficiency can be evaluated using both primary and secondary social outcomes. Primary or target social consequences are considered to be such social consequences, the evaluation of which can be carried out based on the immediate goals for which a legal act is adopted and implemented, or a certain legal action is implemented. Primary social consequences are divided into foreseen and unforeseen, with the content appropriate for

the title which in turn can be positive and negative [10]. Criteria of positivity or negativity are the approval and perception of social change by individuals or the whole community. In some cases, the approval or rejection of social change by the authorities should be considered, however, this is not entirely correct, as society and government are not identical.

As a result of the influence of law on specific social processes or phenomena, sometimes there are consequences that society or the state condemns. At the same time, society is forced to accept such consequences, as the conditions for achieving the leading social goals contribute to their emergence. Such consequences should be considered as secondary social consequences in the system of social efficiency of forensic examination.

Researchers note that unforeseen negative social consequences and secondary consequences are common losses of efficiency [12].

Given the above, it can be argued that the difference between the primary efficiency and its total losses will be the final direct efficiency. If negative consequences can be predicted, but society does not intend to agree with them and will try to overcome them, then such consequences (unlike secondary ones) are primary foreseen negative consequences [13].

Along with the system of direct and indirect consequences, one should also pay attention to another aspect of the social efficiency of the functioning of the institute of forensic examination. This is an additional influence on society and social relations, which begins to be carried out independently by a person who under the influence of the institution of law has acquired new social or socio-psychological features. This effect is called the effect of socialization. From this point of view, the most dangerous for the social efficiency of law are unfair court decisions. This is due not only to the fact that specific people suffer from them, and the institution of forensic science does not realize its social purpose, but also to the fact that the person in respect of whom such a decision is made, in the process of communicating with other people, spreads his negative experience which destroys not only the legal values and guidelines of others, but also contributes to the deformation of the entire system of social and legal relations [14].

To illustrate a specific approach to indicators of social efficiency of forensic examination, consider the following example. Under the pressure of circumstances and public opinion, the courts of Ukraine quite often accept lawsuits from citizens in connection with delays in the payment of wages on the basis of conducted forensic examinations. Thus, in the Kharkiv region for only half of the year more than 5 thousand decisions were made to repay such debts of which up to 20% were executed. On the basis of what indicators can we assess the social efficiency of these decisions? The primary expected positive effect is that part of the debt (approximately 20%) has been repaid. The primary predicted negative consequence is non-payment of wages, despite the availability of court decisions. An unforeseen primary negative consequence was an extremely high level of non-payment (over 4 out of 5,000) [13]. According to the judiciary, the secondary consequences here should be considered a significant overload of courts and the tendency to shift the responsibility for the payment of wages from organizations and institutions that have to deal with it (namely, trade unions) to the courts or law enforcement agencies [13].

Nor can we ignore the fact that ignoring court decisions creates a feeling of social insecurity in the employees of any institution, and in the heads of such institutions – a belief in impunity and permissiveness. Such a situation increases the social tension in the relationship between managers and subordinates in the organization. This consequence should also be considered a secondary social consequence. This situation has dealt a serious blow to the status of the entire legal system of Ukraine and forensic science in it.

However, in terms of increasing the social efficiency of forensic examination on this issue, it has a positive aspect. If the judiciary had not intervened in the regulation of social relations, this aspect would not have been so pronounced. It is thanks to such intervention that the need for radical changes in wage policy as well as the increase in the authority and social efficiency of the judiciary have become obvious [14]. This reinforces the need to involve the institution of forensic science in the justification of such decisions in court.

Unforeseen primary negative consequences (as an example, a high level of non-execution of court decisions) and secondary consequences (for example, the growth of social tension in the relationship between employees and managers of individual institutions) determine areas in which the social efficiency of the court should be improved:

– maximum use by courts of all opportunities for legal influence they have;

– support by the authorities, application by courts not only of administrative, but also of

organizational or other sanctions aimed at execution of court decisions [15].

With regard to non-compliance with court decisions on the payment of salaries by the heads of institutions, it is necessary for them to make decisions on professional unfitness and ethical incapacity, which is proved by the appointment of the appropriate type of forensic examination.

The social influence of the institution of forensic examination (namely the achievement of social efficiency) is carried out, first, through the judicial system as an independent branch of government. It should be borne in mind that each performance indicator for certain aspects of social efficiency should be deciphered using the methods of specific social researches.

The conclusion on integrated efficiency can be reached on the basis of a comprehensive assessment of the general state of realization of human rights and freedoms in the case of applying the results of expert researches. According to this algorithm, sequence of actions to determine the social efficiency of forensic examinations can be represented as follows. Determine the direct social efficiency ($DSE_i$) of a particular aspect by the formula:

$DSE_i$ = TFC+UPC-UNC+FIPC+UIPC-UINC, where:

TFC — target foreseen consequences;

UPC — unforeseen positive consequences;

UNC — unforeseen negative consequences;

FIPC — foreseen indirect positive consequences;

UIPC — unforeseen indirect positive consequences;

UINC — unforeseen indirect negative consequences.

Also define integrated social efficiency, which is a combined assessment of all aspects of efficiency.

Considering the outlined dependencies, the following should be taken into account:

– the proposed system of dependencies is not a calculation formula, but an algorithm that determines the set of evaluative actions necessary to determine whether changes in specific social relations took place under the influence of the institution of forensic examination;

– each of the links in the analysis of the social efficiency of forensic examination must belong to the system of ultimate efficiency, and therefore the absence of any of them makes it impossible to create a holistic view of the social efficiency of forensic examination;

– depending on the specific circumstances, the links of the integrated concept of social efficiency of forensic examination may be more detailed, however, it is expedient to make such detailing within the proposed general structural units of efficiency.

– The final evaluation of the social efficiency of forensic examination should be made by taking into account the way in which each of the key problems of social efficiency is solved. At the same time, it should be noted that the positive indicators of one link of social efficiency do not overshadow the negative consequences of any other. This is due to the fact that the negative in any link distorts not part but the whole system of social efficiency and leads to qualitative changes in it. Scientists emphasize that "if due to the positive influence of another link in this system there are positive changes, it is a shift of a completely different quality. In other words, only it can neutralize the negative impact of a particular part of the system. Attempting to replace this influence with another action does not solve the case, but only confuses it and “drives” encountered difficulties into a corner, which makes them even more dangerous" [16].

The systemic nature of evaluating the social efficiency of forensic examination is based on the fact that each of the parts of the system helps to reveal the social efficiency of forensic science focusing on certain criteria, such as usefulness, economy, sufficiency, optimality, wholeness, etc. Since such criteria reflect different aspects of the real state of social efficiency of forensic examination (and none of them can be neglected), the analysis of the social efficiency of forensic examination will inevitably be systemic. It is this requirement that considers the proposed algorithm for determining the direct social efficiency of forensic examination.

In addition to the direct social efficiency of forensic examination, there is, as we have noted, the indirect efficiency. Its value is often underestimated or not considered at all, because a particular performer is always interested in the end result and immediate efficiency.

Indirect social efficiency of forensic examination, when certain consequences of the practical actions of forensic institutions are part of achieving a more distant goal, is a

component in the process of legislative support for the transition to a market economy. This situation is due to the fact that most legislative acts, addressing certain issues of development (for example, small business), were at the same time a necessary part of a more distant objective goal: the transformation of state property in general [11]. And this contribution to the strategic fundamental goal, from the standpoint of the social efficiency of the institution of forensic science, was no less significant than the solution of individual problems.

To determine indirect efficiency, use the same indicators as for the direct (primary consequences are foreseen: positive and negative; primary consequences are unforeseen: positive and negative; secondary social consequences). The only difference in such a definition is that a wider and more distant goal is taken as the evaluation goal [17].

Summarizing the above, the direct social efficiency of forensic science can be determined by two features:

– firstly, social efficiency is compared and evaluated, focusing on the purpose and desired social consequences, which involved the use of only evaluative expert researches;

– secondly, direct efficiency is the social efficiency of a conducted and completed expert research.

Indirect social efficiency of forensic examination can be characterized as a state of affairs that arises and can have significant social consequences provided that the implementation of forensic activities continues. Indirect consequences should be considered as a contribution to the achievement of those goals that are not directly related to the action under study, but without this contribution the achievement of socially significant subsequent goals is impossible. There is only one conclusion to be drawn from this: a study of the social efficiency of forensic examination will be truly full only if both direct and indirect social efficiencies are examined (in other words, efficiency problems can be combined into current and strategic ones).

**Conclusions.** The originality and complexity of the concept of social efficiency of forensic examination have left their mark not only on the system of criteria and indicators of this efficiency, on the originality of its content, but also on the nature of their application. The content and nature of the criteria and indicators of social efficiency of forensic examination should inevitably affect the sequence of their use, as well as the procedure and methods of analysis and formulation of conclusions. The direct social efficiency of forensic examination can be determined by two criteria. Firstly, social efficiency is compared and evaluated, focusing on the goal and desired social consequences, which involved the use of only evaluative expert research. Secondly, direct efficiency is the social efficiency of a completed and finished expert research.

Indirect social efficiency of forensic examination can be characterized as a state of affairs that arises and can result in significant social consequences provided that the implementation of forensic activities continues.

Thus, the study of the social efficiency of forensic examination will be truly full only when examining both direct and indirect social efficiency, i.e. the problems of efficiency can be combined into current and strategic.

*Conflict of Interest and other Ethics Statements*

The authors declare no conflict of interest.

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**Ірина ПЕТРОВА, Денис ЧЕКІН, Катерина СИЛЕНОК**

**НАУКОВІ ПІДХОДИ ДО ОЦІНКИ СОЦІАЛЬНОЇ ЕФЕКТИВНОСТІ СУДОВОЇ ЕКСПЕРТИЗИ**

**Анотація.** Наукові підходи до оцінки соціальної ефективності судово-медичної експертизи через призму визначення та аналізу її критеріїв та показників (в першу чергу має бути вибір критеріїв оцінки такої ефективності, а потім – визначення її показників). Встановлено, що соціальна ефективність судової експертизи є багатогранною та комплексною, а найбільш доцільною формою її показників є соціальні наслідки функціонування інституту судової експертизи. Зміст і характер критеріїв і показників соціальної ефективності судової експертизи безпосередньо впливають на послідовність їх застосування.

***Ключові слова:*** *судова експертиза, соціальна ефективність, критерії, показники, оцінка.*

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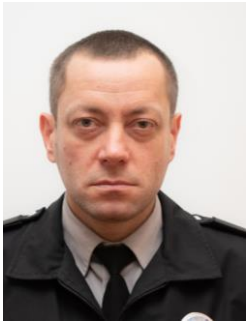

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# FORENSIC SUPPORT FOR PRE-TRIAL INVESTIGATION IN THE FORENSIC SYSTEM

**Abstract.** The article is devoted to determining the place of forensic support for pre-trial investigation in the system of forensic science. It is emphasized that the research in this scientific category dates back to the 1980s, but has not yet been solved. It is noted that the researched positions of scientists in the field of forensic science are highlighted through the prism of the modern structure of forensic science, which is given some attention in the article. There is a well-established point of view on the four-member system of science of criminology, which consists of such sections as: "History and methodology of criminology", "Forensic engineering and technology", "Forensic tactics and technology", " Forensic methodology" which the author of the article adheres to.

***Keywords:*** *forensic science system, forensic science, forensic science, scientific category, scientific and technological progress, development of forensic science, crime control, needs of practice.*

**Relevance of the study.** The emergence of forensic science can be fully assessed in terms of meeting the needs of the criminal process. G. Gross also noted that forensic science by its very nature begins only where it ceases to work: substantive criminal law is the subject of a criminal act and punishment, formal criminal law process contains rules for the application of substantive criminal law. But how can crimes be committed? How to investigate these methods and disclose them, what were the motives for committing the act itself, which were in sight of the purpose, all of which are not defined by criminal law or procedure. This shall constitute the subject of forensic science [1].

This is greatly facilitated by the development of forensic science tools and techniques, which make it possible for investigators to act effectively. At the same time, the high level and constant development of scientific and technological progress in modern society has a twofold significance. Thus, on the one hand, it can be used by law enforcement officials to improve the quality of their work, and on the other hand it can be used by offenders for more serious and brazen criminal offences.

Thus, according to the statistics of the Office of the Procurator-General of Ukraine, in 2016 there were 592,604 criminal offences. In 2017 – 523,911, in 2018 – 487,133, in 2019 – 444,130, in 2020 – 360,622 for 10 months 2021 – 299,160. At the same time, reports of suspicion in 2016 were served only in 159,480 criminal proceedings, in 2017 – 198,477, in 2018 – 191,856, in 2019 – 171,691, in 2020 – 167,098 for 10 months of 2021– 145,569 [21]. These figures show that only 40 per cent of the total number of recorded criminal offences are suspicious. The identification of the commission and implication of the persons concerned makes it necessary for law enforcement officials to perform an appropriate level of activity by taking advantage of the possibilities of forensic science, philosophy and psychology, Sociology, conflict science, intelligence and many others and their adaptation to the needs of practice. It should therefore be seen as providing law enforcement officials with the relevant knowledge to realize their potential in the investigative process.


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**Resent publications review.** To a large extent, work of fundamental importance is directed towards the development of forensic science as a scientific category and practical activity: T. Averyanova, Y. Alenin, V. Bakhin, R. Belkin, V. Bernaz, O. Vasilyeva, T. Varfolomeyeva, V. Veselsky, O. Vozgrin, A. Volynsky, A. Volobyev, V. Galagan, I. Gerasimov, A. Dolzhenkov, A. Ishchenko, N. Karpov. N. Klymenko, V. Kolesniknik, A. Kolesnichenko, V. Kolmakomakov, V. Kolomatsky, V. Konovalova, Y. Korukhov, M. Kostitsky, V. Kuzmichev, V. Lavrov, V. Lisichenko, I. Luzgin, V. Lukashevich, E. Lukyanchikov, D. Nikiforchuk, O. Odery, I. Pirog, M. Pogoretsky, A. Rosinskay, A. Sainchina, M. Saltevsky, M. Segay, D. Sergeyeva, O. Snigerev S. Stakhivsky, R. Stepanyuk, V. Tertyshnic, V. Tishchenko, L. Udalova, P. Tsimbal, K.. Chaplinsky, S. Chernyavsky, V. Shepitko, M. Shumilo, M. Shcherbakovsky, M. Yablokov and other scientists.

**The article's objective** is to provide forensic support for pre-trial investigation in the forensic system.

**Discussion.** V. Kolomatsky was one of the first scholars to define the concept of forensic support for the investigation of crimes [3, p. 21]. Although the research in this scientific category dates back to the 1980s, it has not been solved. This is evidenced by a number of studies by scientists in this category. Thus, considering the term «providing» for the activity of criminal investigation, E. Lukijanchik notes that in stats it can be defined as a set of means, instruments, serving to solve certain tasks, as well as an environment conducive to their resolution and dynamics, as a process of creating and presenting the means and modalities referred to above [4, p. 111].

Scientific and technological progress has, to a large extent, made it possible to ensure the activities of authorized persons in the organization and conduct of investigations. Therefore, the concept of «forensic support» of I. Danovskaya considers as a result of the development of the forensic science, the target activity of the Law Commissioners for its implementation by bodies and officials, A comprehensive study of the needs of practice and the development of results-based, effective and acceptable practices. The means, methods and measures to introduce them into the practice of investigating crimes. This interpretation, according to the author, reflects the content of the forensic support as a scientific category [5, p. 42]. The position of scholars on the content of forensic science requires equal attention. Thus, according to T. Averianova and R. Belkin, the forensic support system consists of three subsystems: forensic science, forensic education, and forensic technology [6, p. 64].

This type of content was proposed by a group of scientists, including R. Belkin, V. Kolomatsky and I. Luzgin, who noted that forensic science was a system for introducing officials into practice, units, services and agencies of the Ministry of Internal Affairs for the protection of public order and the fight against crime of forensic knowledge, embodied in the ability of employees to use scientific, methodological, technical and forensic means and technologies for the purpose of their prevention, Crime Detection and Investigation. Accordingly, the Forensic Support System comprises three subsystems: Forensic Science (Development of Forensic Science); Forensic Education (Training); Forensic Technology (Means and Methods) [7, pp. 62-63].

Forensic support for law enforcement in the detection and investigation of crime is, in the opinion of V. Lysenko, a defined system consisting of elements: a forensic reference unit (organizational, tactical, methodological); training unit (specialized forensic education); technical and information support unit for crime detection, investigation and prevention [8, p. 11]. According to V. Borisov, the main areas of forensic support for law enforcement are as follows: Development of new forensic technology and scientific and technical equipment and their testing in investigative and operational activities; Development and testing of modern information technologies; development and provision of tactical tools to law enforcement agencies; development of separate forensic and expert methodologies [9, pp. 22-24].

Thus, these scientific views on forensic science are presented through the prism of scientific and technological development, as well as the structure of forensic science, which, in our view, require special attention. It is necessary to pay attention to the four-member system of science of criminology, which consists of such sections as: "History and methodology of criminology", "Forensics and technology", "Forensic tactics and technology", "Forensic methodology" [10].

In the textbook under the general edit of A. Volobyev, which contains such sections as: "Theoretical-methodological bases of forensics"; "Forensics technique"; "Forensics tactics"; "Forensics methodology" [11]. In addition, in this textbook the chapter "Information and

Reference Support for Crime Investigation (Forensic Records)" is placed in the section "Theoretical and Methodological Foundations of Forensic Science", in other authors mainly include the above chapter in the section "Forensics technique", that in our mind is a discussion character. This view is also supported by the position of R. Belkin, stressing that the general theory of forensic science is a system of its philosophical principles, theoretical concepts, categories and concepts, methods and relationships, definitions and terms, This is the scientific reflection of the entire subject of criminology [12, p. 38].

As noted by I. Panteleyev, N. Selivanov, forensic science develops techniques, tactics and methods for the investigation of crimes, that is, the method of their detection, which is carried out in the form of criminal procedural activities. The discovery of crimes by means of criminal procedure, in accordance with the procedure established by law, is an investigation of crimes [13, p. 4].

At the same time, it is not uncommon for the sponsors to suggest changes to the existing system of forensic science, which we believe require attention. Thus, A. Ishin puts forward a proposal to form the fifth section of forensic science "Information Bases of Crime Investigation", which would consist of two parts: "Information Support" and "Organization of Crime Detection and Investigation" [14, p. 37-38].

In the structure of forensics V. Tolstoutsky proposes to distinguish in the fifth part "forensic informatics". As the author points out, "a substantial backlog of the theory of criminology in this field does not allow in practice to create corresponding modern development of computer technology and telecommunication channels information support for investigation" [15, p. 9].

The creation of a separate section containing the content of the activities of law enforcement officials is worthy of attention, but in our view. The reasoning of the above-mentioned scientists is in fact limited to providing information for the investigation and organization of the detection and investigation of criminal offences, which is fully reflected in the content of the 4th section "Forensic methodology" of the forensic science. The proposal of A. Dulov to form a separate section "Forensic strategy" [16, p. 27] deserves attention. We can note that the structure of the science of criminalistics, although defined by most scientists as four-member, is, however, in connection with scientific and technological progress, we tolerate transformation as a natural process in the development of forensic science and the urgent need to implement the objectives of the practice. However, the issue required in-depth research and argumentation.

Thus, we support the position of T. Averianova and R. Belkin and other scientists in the definition of forensic science, which includes: forensics, forensics education, forensics. The positions of scholars we have studied demonstrate the multifaceted nature of the scientific category under study, as evidenced by the intensive search for content, largely driven by scientific and technological progress and the needs of crime-fighting practice. At the moment we adhere to the position of a number of scientists and defend a four-member structure, which consists of such sections as: "Theoretical-methodological principles of forensic science"; "Forensic technology"; "Forensic tactics"; "Forensic methodology". Changes to the system require extensive research and discussion.

**Conclusions**. We support such structure of forensic science, which consists of such sections as: "Theoretical-methodological bases of forensic science"; "Forensic technology"; "Forensic tactics"; "Forensic methodology". Changes in the science of criminology are possible in the case of solid research driven by the state of science and technology and the practical needs of law enforcement. The forensic system consists of three subsystems: forensic science, forensic education and forensic science.

Our further research will be aimed at determining the place in the system of forensic science and the category of forensic support for overcoming the obstruction of pre-trial investigation.

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

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**МІСЦЕ КРИМІНАЛІСТИЧНОГО ЗАБЕЗПЕЧЕННЯ ДОСУДОВОГО РОЗСЛІДУВАННЯ В СИСТЕМІ КРИМІНАЛІСТИКИ**

**Антоація.** Стаття присвячена визначенню місцю криміналістичного забезпечення досудового розслідування в системі криміналістики. Наголошується, що високий рівень та постійний розвиток науково-технічного прогресу в сучасному суспільстві відіграє двоєдине значення. Так, з одного боку, він може бути використаний правоохоронцями для підвищення якості своєї діяльності, з іншого – правопорушниками у вчиненні більш тяжких та зухвалих кримінальних правопорушень. Підкреслюється, що дослідження даної наукової категорії розпочалися ще у 80 –х роках, проте й зараз не знайшли свого вирішення. Про це свідчать й здійснювані на даний час вивчення вченими розглядуваної категорії.

В роботі система криміналістичного забезпечення визначається як запропонована Т. В. Авер'яновою й Р. С. Бєлкіним та іншими вченими структура, що складається з таких підсистем: криміналістичні знання (розробки криміналістичної науки); криміналістична освіта

(підготовка); криміналістична техніка (засоби і методи). Наголошується, що досліджені позиції вчених щодо криміналістичного забезпечення висвітлюються через призму сучасної структури криміналістичної науки, якій приділяється в статті певна увага. Підкреслюється, що усталеною є точка зору, на чотиричленну систему науки криміналістики, котра складається з таких розділів, як: «Історія та методологія криміналістики», «Криміналістична техніка та технологія», «Криміналістична тактика та технологія», «Криміналістична методика», якої дотримується й автор статті.

Аналізуються позиції вчених щодо розширення криміналістичної науки такими розділами як: «Інформаційні основи розслідування злочинів» (А. Ішин); «Криміналістична інформатика» (В. Толстолуцький); «Криміналістична стратегія» (А. Дулов). Наголошується, що структура науки криміналістика, хоч і визначається більшістю вчених як чотиричленна, проте, у зв'язку з науково-технічним прогресом, допускається трансформації як закономірний процес розвитку криміналістичної науки та обумовлені нагальною потребою реалізації завдань практики у боротьбі зі злочинністю. Проте, підкреслюється, що дане питання вимагає ґрунтовних досліджень з переконливою аргументованістю та наукових дискусій.

***Ключові слова:*** *система криміналістики, розділи криміналістики, криміналістичне забезпечення, наукова категорія, науково-технічний прогрес, розвиток криміналістичної науки, боротьба зі злочинністю, потреби практики.*

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## MEDIATION IN CRIMINAL PROCEEDINGS: PROSPECTS FOR DEVELOPMENT

**Abstract.** The article deals with the study of the institution of mediation in the Kyrgyz Republic. The concept, goals, objectives of the institution of mediation, the introduction of the institution of mediation into civil proceedings, which contributes to the creation and development of an effective institution of mediation in the country, is also given. The principles of mediation and the results of the application of the conciliation procedure for further criminal proceedings are disclosed. It is proposed to consider mediation precisely as an independent type of professional activity, which consists in providing qualified assistance to participants in disputed legal relations in resolving a dispute that has arisen between them.

***Key words****: mediation, mediators, dispute, conflict resolution, citizens' rights and freedoms, out-of-court disputeresolution procedure, conciliation procedures, trial.*

**Relevance of the study.** At the present stage of development of the Kyrgyz Republic, the main goal of legal reform is the formation of a national legal system. The concept of legal policy of the Kyrgyz Republic from 2020 to 2025 determined [1] that in order to maximize the rights of participants in criminal and civil proceedings, timely protection and restoration of violated rights and freedoms of the individual, the interests of society and the state, measures to improve civil and criminal procedural legislation could also be focused on securing a variety of ways and means of reaching a compromise between the parties to conflicts (mediation, mediation, and others), both judicially and extrajudicially, including the obligation to discuss the possibility of using measures of conciliation procedures when preparing a case for trial, as


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well as the development of out-of-court forms of protecting the rights of citizens.

**Recent publications review.** Actual problems of mediation in criminal proceedings and it's prospects for development were investigated by scientists Kh. Alikperov, A. Arutyunyan, Yu. Baulin, O. Belins′ka, L. Volodina, I. Voytyuk, A. Hayduk, L. Holovko, O. Hubs′ka, V. Zemlyans′ka, L. Lobanova, V. Malyarenko, L. Salo, Z. Symonenko V. Trubnykov and others.

**The article's objective** is to study the features of mediation in criminal proceedings and to discuss the prospects for development.

**Discussion.** The need to introduce alternative forms of dispute resolution, including conciliation procedures, is due to a number of reasons.

First. A heavy burden on judges considering disputes in civil and criminal cases, which affects the quality of justice.

Second. The procedure for considering disputes in the courts of first instance requires a certain amount of time and effort, including financial costs.

Third. Court decisions, as a rule, satisfy only one side, the other side remains dissatisfied, which entails a lengthy appeal procedure (appeal, cassation). Each of these instances has its own time frames, the case can take months, and in some cases even years. These circumstances cause not only evasion from voluntary execution of court decisions, but also obstruction of their compulsory execution.

Unfortunately, the domestic legal system in the field of criminal proceedings is characterized by the fact that many of its legal institutions are not used properly, although they could, with the right approach, significantly simplify the achievement of the goals enshrined in legislation.

In the Kyrgyz Republic, from January 1, 2019, with the entry into force of the Criminal Code, the Criminal Procedure Code and the Misconduct Code, mediation is applied to disputes arising from criminal law relations provided for in part 2 of Art. 1 of the Law "On Mediation" in cases of misdemeanors entailing responsibility, and a number of less serious crimes, in particular, theft in small amounts, causing death by negligence, hooliganism [2].

What is the institution of reconciliation of the parties, mediation in criminal proceedings at present, and how mediation can complement and develop the reconciliation of the parties?

Reconciliation of the parties is the joint activity of the victim and the accused to achieve an acceptable result for both parties in the framework of a criminal case, enshrined in an agreement between them, expressed in compensation for harm to the victim by the accused in a negotiated form and in the victim's refusal to bring the accused to criminal responsibility.

Reconciliation of the parties means a refusal of the victim from his initial claims and demands against the person who committed the crime, the refusal of the request to bring him to criminal responsibility, or a request to terminate the criminal case initiated at his request, in the proper procedural form; in other words - ending the conflict between the guilty party and the victim by restoring the relations broken by the crime.

In many countries with a developed judicial system, alternative dispute resolution (mediation) is actively encouraged. Using this method in Western countries, not only civil but also criminal disputes are resolved. In this case, we mean the procedural element of the state's influence on the person in the commission of a crime and the consequence, the theory of restorative justice comes to the fore, the meaning of which is reduced to the transfer of the conflict to the parties themselves, that is, the victim and the accused. The principle of restorative justice is that the person who committed the crime would repent before the victim, voluntarily, with the knowledge of his guilt, atone for the harm caused to him, let himself go through the suffering he experienced and help to cope with the consequences of the crime. In turn, a person who has committed a crime is given the opportunity to take the path of correction, to fully realize the illegality and social danger of his act, as well as to avoid criminal prosecution by the state.

For any state, the implementation of the principle of restorative justice is a way to save financial resources, prevent crime and improve relations between the parties to the conflict in order to avoid new misunderstandings, and limit the coercive and punitive policy. The procedural element of the idea under consideration is mediation.

The wide spread of the institution of mediation in the criminal process is evidenced not only by serious European practice, but also by the presence of a considerable number of Recommendations, Declarations and Resolutions of the UN and the Council of Europe.

For example, Recommendation No. R (99) 19 of the Committee of Ministers to member states of the Council of Europe on mediation in criminal matters takes into account the

existence of a wide variety of forms and approaches to mediation and states that "legislation should facilitate mediation" and "mediation in criminal matters must be a universally available service ... at every stage of the administration of justice". Article 7 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the UN General Assembly on November 29, 1985, provides that, where necessary, informal dispute resolution mechanisms, including mediation, arbitration and customary courts, should be used. law or local practice to promote reconciliation and provide redress to victims.

It should be noted that such documents recommend that the governments of the member states review their legislation and practice regarding the position of the victim in criminal law and criminal procedure and "examine the possible merits of the systems of mediation and conciliation" (Recommendation R (85) of the Committee of Ministers of the Council of Europe of 28 June 1985), "to enable the victim to benefit from mediation, restorative justice" (Recommendation No. R (2003) 20 of the CMCE of September 24, 2003), call for "the use of mediation as a way to reduce recidivism" (UN Economic and Social Council Resolution No. 1995/9 of July 24, 1995), propose "to carefully consider the possibility of removing criminal cases from the system of formal judicial proceedings, with unconditional respect for the rights of suspects and victims" (CMCE Recommendation No. R (2000) 19), noting that "mediation helps to increase in the minds of people, the role of the individual and the community in the prevention of crime tensions and various kinds of conflicts, which may lead to new, more constructive and less repressive outcomes of this or that case" (Recommendation No. R (99) 19 of the CMCE of September 15, 1999).

These international documents are the results of the successful promotion of the institution of mediation in Western countries, where it has gone a long way from complete misunderstanding by the legislator to criminal procedural consolidation. They are intended to serve as a reference point for those member states of the UN and the Council of Europe, where the institution of mediation is just emerging, including for our state.

Mediation in the criminal process of the Kyrgyz Republic is perceived as an informal way of resolving conflicts, as well as a method of restorative justice. And the principle of voluntariness, confidentiality is strictly observed in it, and most importantly, they are looking for a mutually beneficial solution that suits both parties, while in court the decision is made by the court. The institution of mediation is new and only developing, since it has not been applied earlier in the modern history of the Kyrgyz Republic, however, the traditions of peaceful settlement of disputes through negotiations with the assistance of an authoritative person – "danaker" (conciliator) - existed in Kyrgyzstan for centuries.

In accordance with the provisions of Articles 61 and 62 of the Criminal Code of the Kyrgyz Republic, the court (judge), the prosecutor, and also the investigator, with the consent of the prosecutor, has the right (but is not obliged) to terminate the criminal case with the release of the person from criminal liability due to a change in the situation, if the committed act has lost a socially dangerous the character or person has ceased to be socially dangerous, except for criminal cases on a crime provided for by part three of Article 281 of the Criminal Code of the Kyrgyz Republic, committed by guilty persons in a state of alcoholic, drug or other intoxication; on crimes provided for by Articles 224, 225 and 303-315 of the Criminal Code of the Kyrgyz Republic.

However, it seems more expedient to terminate the criminal case not only on the basis of the victim's statement, but also on the corresponding conciliatory agreement between the parties. In the legal literature, proposals have been repeatedly expressed about the need for such a conciliatory act, concluded within the framework of the institution of reconciliation in criminal proceedings3. This document should reflect the circumstances indicating the reconciliation of the parties, such as, for example: the voluntariness of the reconciliation of both parties, information about the procedure, methods, amounts and conditions for making amends, etc. Written confirmation of these circumstances may include a description of actions that testify to the confession of guilt, remorse on the part of the accused (suspect), and his understanding of the consequences of the crime. This may be of particular importance in criminal cases involving minors. In this regard, the legal practice of Germany is of particular interest. For a long time, German specialists have been engaged in detailed studies of the problems of reconciliation with the victim (Tater – Opfer – Ausgleich (TOA) – literally "criminal victim – reconciliation") in criminal law for juvenile offenders. The prerequisites for the acceptability of the procedure for reconciliation with the victim were developed in German practice as a result of work on projects at various "pilot sites". Generalization of practice made

it possible to identify certain criteria, presumably representing the optimal prerequisites for the acceptability of the reconciliation procedure:

– the existence of a thorough investigation of the circumstances of the case and the admission of guilt by the suspect;

– the presence of a victim who can be personified. Such subjects can be individuals or legal entities;

– voluntariness and consent of the parties, since a peaceful settlement of a dispute can only be based on a willingness to dialogue, coercion in this case is unacceptable;

– compliance with the principle of the severity of the crime (that is, reconciliation with the victim would be too costly in the case of, for example, a minor offense).

Even with these innovations, the issue of criminal procedural guarantees for the fulfillment of obligations to make amends within the framework of the institution of reconciliation remains unresolved. It seems that in view of the need to make amends for the harm caused, the use of the institution of reconciliation requires a change in the regulation of the timing of the proceedings. It seems that the institution of suspension of proceedings in the case can be used here.

However, in order to make changes to the timing of the proceedings, it is necessary to analyze not only the existence of legal prerequisites, but also the state of law enforcement practice. It is necessary to monitor a number of processes, including a study of the forms and methods of management within the framework of the activities of executive authorities vested with powers in the field of criminal justice. In this connection, the issue of legal regulation of conciliation procedures and mediation requires the deployment of analytical work adequate to modern conditions and the organization of a special regime of scientific and public discussions. The development of mediation in criminal proceedings requires a special careful study, starting from the level of legislative regulation to the level of practically oriented "pilot sites" with projects of "point" implementations, a comprehensive description of which, despite all its relevance, has not yet begun.

Another important issue, which is also touched upon by mediation, is the observance of the principles of criminal proceedings. Actually, why mediation should not be regulated by the norms of the criminal procedure code is because the principles of mediation do not always fully correspond to the criminal procedure principles.

Let's start with the benefit of the doubt. The right of a suspect or an accused not to admit his guilt shall be valid throughout the entire proceedings in a criminal case. Mediation is another matter. Conciliation proceedings are impossible by definition if the offender does not admit his guilt (at least in a social aspect). In addition, it is necessary to legislate the impossibility of re-bringing a person to criminal liability for committing the same crime if the proceedings have already been terminated in connection with an agreement reached during mediation. By the way, the desire to take part in mediation, as well as participation in mediation itself, cannot be regarded as evidence of a person's admission of his guilt in committing a crime.

Significant differences in the settlement of the same issue are also found in relation to the right of the suspect (accused) to defense. Is it right, should a lawyer be present during the mediation process? After the research, M. Groenheisen emphasizes that the chances of a successful agreement are reduced by the presence and participation of lawyers. The Basic Provisions on the Role of Lawyers, adopted at the Eighth United Nations Congress on Crime Prevention in 1990, emphasizes that anyone has the right to seek the help of a lawyer at all stages of criminal proceedings. The UN document on the fundamental principles of mediation provides guidance that the parties to the process should have the right to legal advice before and after the recovery process. However, a lawyer can act during mediation, but only as an observer.

However, one of the most difficult conceptual questions is the question: who is the mediator? (i.e. who will be the third independent party to the dispute?). For example, in England and Wales, mediation can be carried out by specialized mediation services, in Finland – by a service auxiliary to the official judicial system dealing with compensation for victims of crime, in Norway - by mediation councils at the municipality, in the Czech Republic and Poland – by non-governmental organizations that have challenged the state system, justice, etc. In general, two ways of solving this problem are possible: either mediation is carried out within the framework of a criminal process (for example, by a prosecutor or a judge) or outside it by a third party.

Summarizing the above, it can be noted that at the moment in the theory of criminal

procedure there is no single criterion for distinguishing mediation cases: this is both the severity of the crime, and its excuseful nature, and a special procedure for the proceedings. It seems to us that such a criterion should be the object of criminal encroachment. In other words, mediation may well be applicable in cases of crimes against property, crimes of minor gravity and less serious crimes. The introduction of mediation is not only about taking care of the parties, but also about the process itself as a whole: its simplification and acceleration. In order not to break the existing system of grounds for terminating criminal prosecution, mediation should be introduced as a process, the positive result of which determines the end of the proceedings.

Mediation was seen as an important element of judicial reform, designed, on the one hand, to reduce the burden on the courts, and, consequently, to improve the quality of justice, on the other, to relieve tension in society by introducing a new alternative method of peaceful settlement of disputes and conflicts in the pre-trial and extrajudicial procedure with the help of mediator - a neutral, impartial figure, not representing the interests of any then the sides. After some time, we can already talk about how the law on mediation works, how successfully mediation is advancing and developing in our country, how it is perceived by judicial and law enforcement agencies, lawyers, mediators themselves, and society as a whole. On this score, there are many different assessments and opinions, but one thing remains indisputable – mediation is needed, and it should be developed and improved in every possible way, as an independent institution, introducing into it progressive principles of the existing world experience in the formation and development of mediation, without allowing a rollback, which happened already in one of the neighboring states.

The use of various methods of protecting the rights and freedoms of citizens along with judicial protection is permitted by the Constitution of the Kyrgyz Republic: paragraph 2 of paragraph 1 of Article 39 provides that "the state guarantees everyone protection from arbitrary or unlawful interference in his personal and family life, encroachment on his honor and dignity, ensuring the development of extrajudicial and pre-trial methods, forms and methods of protecting human and civil rights and freedoms "

In addition, the Law on Mediation defines mediation as a procedure for resolving a dispute with the assistance of a mediator (mediators) by harmonizing the interests of the disputing parties in order to reach a mutually acceptable agreement . One of the important issues is the scope of mediation. According to article 1 of the Law on Mediation, mediation can be applied in disputes arising from civil, family and labor legal relations. As for the use of mediation in disputes arising from criminal law relations, this is possible only in cases directly provided for by law (paragraph 2 of Article 1 of the Law on Mediation).

In the Law on Mediation, mediation is defined as a procedure for resolving a dispute with the assistance of a mediator (mediators) by harmonizing the interests of the disputing parties in order to reach a mutually acceptable agreement [6].

One of the important issues is the scope of mediation. According to article 1 of the Law on Mediation, mediation can be applied in disputes arising from civil, family and labor legal relations. As for the use of mediation in disputes arising from criminal law relations, this is possible only in cases directly provided for by law (paragraph 2 of Article 1 of the Law on Mediation).

Despite the many advantages of mediation, its use does not always give the expected results. It is noted that mediation is effective in cases where both parties want and strive to resolve the conflict, plan to continue business relations. This position implies the willingness of the parties to peacefully settle the disputed issue, to cooperate constructively and conscientiously, to make concessions and find a compromise, to voluntarily fulfill the agreements that the parties have reached as a result of the mediation.

In this regard, I would like to draw your attention to one of the fundamental principles of mediation - voluntariness (Articles 3 and 4 of the Law on Mediation). This principle is manifested in the fact that the use of mediation to resolve a conflict or a disputable issue is a voluntary desire of the parties and the parties cannot be forced by anyone to use mediation.

It should be noted that the Law on Mediation grants a judge [7], an arbitrator [8], an investigator [9] and an authorized official of an inquiry body [10], the right to direct the parties to a dispute, a misdemeanor case and a criminal case in their proceedings , for an information meeting with a mediator, and in this case the parties have no right to refuse to participate in such a meeting [11]. However, the parties, by virtue of the principle of voluntariness, of course, themselves decide on the need for mediation and have the right to refuse to conduct it.

The provisions of the Law on Mediation regarding the principle of voluntariness also provide for the following:

– any of the parties has the right to refuse to continue the mediation at any time during the mediation (Article 23);

– the execution of the agreements reached by the parties as a result of the mediation must be voluntary (paragraph 3 of Article 4).

It is very important for the parties to understand from the outset that the agreements reached as a result of mediation must be implemented voluntarily, as stipulated by the Law on Mediation. If one of the parties refuses to fulfill the agreement reached, there is no enforcement mechanism in mediation: neither the mediator nor anyone else has the right to force the parties to comply with the mediation result.

In the event that mediation was carried out in the framework of judicial or arbitration proceedings, it seems possible to use the provisions of Article 22 of the Law on Mediation, according to the mediation agreement, the court or the arbitral tribunal can approve the settlement agreement in accordance with the procedural law or the applicable rules of the arbitration court (paragraph 4 of Article 22 of the Law on mediation). Thus, this provision works in the case of mediation in the course of litigation or arbitration proceedings. In addition, in accordance with the Law on Mediation, the parties to mediation have the right to provide in the mediation agreement for the execution of a notary's executive inscription in order to fulfill the conditions of the mediation agreement (paragraph 5 of Article 22 of the Law on Mediation).

Thus, it may turn out that, having spent time, money and other resources on mediation, the parties will not be able to achieve the desired result - the resolution of the disputed issue, and the parties or one of the parties will have to further make efforts to resolve the dispute.

According to Art.499 of the Criminal Procedure Code of the Kyrgyz Republic, reconciliation of the parties (including through mediation), with the exception of cases of misconduct and a number of less serious crimes. The point is that mediation is such a settlement of a dispute that does not infringe on the interests of any of the parties. As a result, each of the parties satisfies the interest. The mediator assists the parties in resolving the conflict, while the decision is made by the parties themselves. That is why, as world practice shows, 86 % of mediation agreements are executed. In countries where mediation is mandatory, out of 100 % of all disputes referred to mediation, only 27 % return to the courts. The main consumers of this service include: construction companies, banks, airlines, pharmaceutical holdings, mining and gold mining companies, industrial organizations. Also, a large percentage of family and commercial disputes are successfully resolved through mediation.

In the Kyrgyz Republic, the Chamber of Commerce and Industry of the Kyrgyz Republic is actively involved in the provision of mediation services, and includes:

Corporate mediation: disputes between founders, shareholders on the sale of a stake, management in an organization, sale of shares; disputes between participants, shareholders and top managers related to the determination of remuneration, development strategy of the enterprise; disputes over the implementation of projects; issues of protection of honor and dignity of business reputation.

Commercial mediation: disputes between borrowers and creditors to collect amounts; conflicts associated with poor quality medical services; conflicts in the construction business between customers and construction companies.

Family mediation: conflicts between spouses; conflicts between parents and children; disputes over the determination of the place of residence of children; disputes related to the division of property, both during divorce and during cohabitation; conflicts between relatives regarding the maintenance of parents.

Thus, an open discussion of sensitive issues in a wide format allowed the participants to develop a number of constructive recommendations. In particular, it was recommended to improve the legislation on mediation in order to expand the scope of its action and the use of mediation in administrative (tax) disputes. In addition, it was recommended to develop standard training programs, quality standards for the provision of mediator services. And an important factor is informing the population about commercial mediation, while focusing on interaction with the business community. And it is very important now, in a pandemic, to think about the possibility of conducting remote mediation.

"Mediation saves time and money. In court, the case is considered for a long time, and the state duty on economic disputes is charged when the statement of claim is filed, and these are quite large amounts". The mediator's fee in resolving a dispute is not tied to the amount of the dispute, the mediation procedure is much faster. And in mediation, the parties themselves make the final decision.

**Conclusions.** For the widespread development of mediation and ensuring equal access of citizens to the assistance of a mediator, government support is urgently needed for the training of mediators in the regions. As practice has shown, today the help of mediators is especially in demand in remote areas - for economic reasons, as well as the mentality of rural residents who do not want to go to court and thereby wash dirty linen in public in a compact living in society. We hope that restorative mediation (mediation in criminal-legal conflicts), given its capabilities and advantages, will eventually become necessary everywhere, if we jointly make efforts to develop this institution.

In this regard, we consider it expedient to create a permanent platform where representatives of the legislative, judicial and executive authorities, local authorities, law enforcement agencies, public organizations, business structures and the media can regularly meet to discuss the draft concept for the development of mediation in the country for 2020- 2025, as ell as current mediation issues arising from practice.

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

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10. The authority of the authorized official of the body of inquiry to send the accused and the victim to an information meeting with the mediator is provided for in Article 39 of the Criminal Procedure Code of the Kyrgyz Republic.

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**Назгуль ШАРШЕНОВА**

## МЕДІАЦІЯ У КРИМІНАЛЬНОМУ ПРОЦЕСІ: ПЕРСПЕКТИВИ РОЗВИТКУ

**Анотація.** Стаття присвячена дослідженню інституту медіації в Киргизькій Республіці. Також наведено поняття, цілі, завдання інституту медіації, впровадження інституту медіації в цивільний судочинство, що сприяє створенню та розвитку ефективного інституту медіації в державі. Розкриваються принципи медіації та результати застосування примирної процедури для подальшого кримінального провадження. Медіацію пропонується розглядати саме як самостійний вид професійної діяльності, що полягає в наданні кваліфікованої допомоги учасникам спірних правовідносин у вирішенні спору, що виник між ними.

***Ключові слова:*** *медіація, медіатори, диспут, вирішення конфліктів, права і свободи громадян, позасудова процедура вирішення спорів, процедури примирення, судовий процес.*

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# STUDY OF MANUSCRIPTS MADE WITH THE CHANGE OF HABITUAL WRITING HAND

**Abstract.** The scientific article considers the features of expert research of manuscripts made by hand unusual for writing, namely left-handed writing. Attention is drawn to the stages of research of these manuscripts, the factors influencing the change of handwriting. Based on the scientific achievements of prominent handwriting experts and the results of generalizing the conclusions of forensic experts, where the objects of the study are left-handed manuscripts, an attempt was made to distinguish a set of qualifying features of handwriting and signatures. Emphasis is placed on the need to conduct a comparative study with left-handed manuscripts made by his right hand to establish the level of mastery of right-hand writing skills, which makes it possible to assess the differences.

**Key words:** handwriting examination, change of habitual writing hand, left-handed writing, diagnostic tasks, research of manuscripts.

**Relevance of the study.** In criminal and civil proceedings, where the main evidence is documents, there is usually a need to appoint forensic examinations, including handwriting, where diagnostic tasks are often crucial. According to the Methodology, diagnostic research in handwriting includes the establishment of external circumstances and conditions of execution of the manuscript (signature) and the establishment of the internal state of the performer [5, p.5]. During the expert research, features are established that are absent when solving identification issues. Thus, for an expert it is extremely important to establish the factors that affect the violation of the writing process, to conduct research in the presence of certain samples or in their absence, and so on. The typical questions posed to the expert relate to the influence of "confusing" factors during the execution of the manuscript, the unusual condition of the writer, the execution of the manuscript intentionally changed handwriting. One of the types of intentional change by the executor of his handwriting is the execution of a handwritten text (records, signatures) with an unusual left hand for writing.

A change in handwriting, whether intentional or not, is always associated with a change in a person's writing skills. Writing is usually associated with the de-automation of a writer's writing skills. Depending on the factors that affect the change of handwriting (conscious distortion of one's handwriting, imitation of another's handwriting, etc.), writing skills change to a greater or lesser extent. The degree of distortion of signs thus depends both on stability and variability of a handwriting of the executor, and on character of the conditions influencing change of skill. However, the records usually remain unchanged, as a complete restructuring of the stereotypical system of movements usually does not occur.

**Recent publications review.** Issues concerning the appointment and conduct of handwriting experts have been repeatedly covered in the scientific works of criminologists, namely: L. Arockera, R. Belkina, A. Winberg, W. Goncharenko, Z. Kirsanova, N. Klimenko,

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A. Kolonutova, A. Kupriyanova, V. Lipovsky, V. Lisichenko, A. Mantsvetova, A. Melnikova, Z. Milenevskaya, A. Moiseeva, V. Orlova, M. Saltevsky, N. Sakharov, M. Sega, I. Friedman, O. Shlyakhova, C. Tsipenyuk and others. Problems of forensic examination as one of the forms of using special knowledge in doctoral dissertations O. Moiseeva, I. Petrova, I. Piroga, M. Shcherbakovsky, E. Simakova-Efremyan, S. Evdokimenko. Undoubtedly, these scientists have made a significant contribution to the scientific development and methodology of handwriting examination. But in our practice about the complex process of diagnosis, which is often investigated by the results of the impossibility of its formation in a form that requires additional coverage in scientific papers

**The article's objective** is to establish and evaluate a set of features that are manifested in the process of changing the usual writing hand, in particular, in left-handed writing.

**Discussion.** As you know, the study of the manuscript, made by the left hand, is carried out in two stages:

– establishing the very fact of unusual writing with the left hand;

– identification of the person by the unusual handwriting of the left hand [3, p. 154].

Establishing the fact of execution of the manuscript with the left hand depends on the degree of mastery of the performer's writing and moving skills of writing with the left hand. Individuals who have developed, identical in general handwriting, have different ability to write with the left hand.

Depending on the ability of the manuscript to write with the left hand, the performers can be divided into the following groups:

1) persons in whose left-hand writing there is a relatively fast pace of writing, relatively high coordination of movements, but always lower than in ordinary writing, as well as the most complete reproduction of the handwriting of the right hand;

2) persons in whose left handwriting the pace of writing and coordination of movements is much lower, and the reproduction of the handwriting of the right hand is less complete;

3) persons in whose manuscripts the pace of writing and coordination of movements is much lower, and the reproduction of the handwriting of the right hand is less complete [7, p. 141].

If the writer does not have the skill to perform manuscripts with a change of the usual writing hand, the expert can easily establish the fact of execution of manuscripts with an unusual (left) hand. This is indicated by certain features that will be observed throughout the manuscript.

The process of writing with a change of the usual writing hand is usually characterized by controlled movements of the performer, devoid of automation. To perform recordings with the left hand, a person has to independently form the mobile skills of such writing, ie to establish a new version of his handwriting.

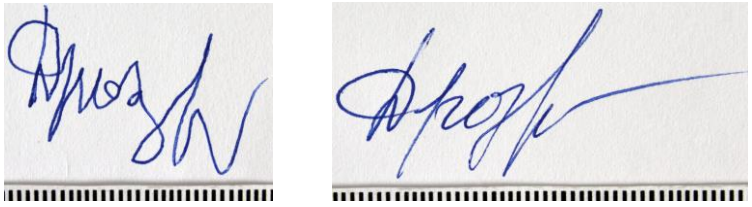

**Fig. 1.** Signatures performed with an unusual left hand (left); the usual right hand (right)

*Source: presented by author.*

When writing with an unusual (left) hand, there is a significant change in all the general features: development, coordination of movements, pace, shape, size, acceleration, placement, tilt, coherence, pressure (Fig. 1). As a rule, they become unstable. The practice of studying expert opinions shows that the change of such features as inclination, size, acceleration, coherence of written signs is performed in all performers relatively uniformly. The general features of written signs change similarly.

Scientists have previously identified specific features of left-handed writing: incoordination of movements, manifested in oval and connecting elements of letters; slow pace of writing; mirroring (direction opposite to the given), expressed in the curvature of the elements both in letters and in their elements; increasing the length of movements horizontally when performing the

final parts of the elements of the letters; letter structure (simplified, in the form of block letters); type of letter combination - absent or attached; tortuous line shape, etc. [1, p. 150]. However, in the conditions of rapid distribution of electronic documents, against the background of the general decrease in the degree of handwriting of citizens, we observe the above signs most pronounced.

Manuscripts in unusual handwriting look reminiscent of manuscripts made in the underdeveloped handwriting of the right hand or deliberately reduced in its production, as well as in ataxic handwriting, ie handwriting that has undergone age-related changes (old age and age) or painful changes. When studying manuscripts made with an unusual left hand, scholars rightly suggest that, unlike them:

– in poorly developed handwriting there are no excessive curvatures and angularity of strokes or they are absent at all. Along with letters of simple structure, letters that have a complex structure are combined in a simplified or fancy way;

– in handwriting, performed in violation of coordination of movements, there is no "mirror", a relatively stable combination of letters can be traced throughout the text;

– in handwriting changed in another way, ie when intentionally changing handwriting (cursive masking of his handwriting; imitation of printed font; imitation of another person's handwriting) the execution of the text by produced and automated movements is observed [8, p.81].

To establish the fact of execution of records or signatures with an unusual (left) hand, it is necessary to establish a set of features that characterize the handwriting of an unusual letter of the left hand. During the preliminary study of manuscripts made in unusual conditions, the task of the expert is to separate the handwriting features that characterize the handwriting of unusual writing with the left hand, from the features of underdeveloped handwriting and handwriting of the elderly, the sick, and from the signs the result of a deliberate reduction in the degree of handwriting.

The left handwriting becomes more vertical than the normal handwriting of the right hand (Fig. 2):

– uneven arrangement and acceleration of written signs and their placement relative to each other (placement at close distance to each other, reducing the length horizontally, arrangement – narrow or long distance, increasing the length horizontally, arrangement – wide), acceleration – from large to medium or small;

– reduction and unevenness of connectivity, continuous connection of elements of many elements of written signs is replaced by adjacent connection. The vast majority of letters or their elements are performed without connection with the previous and subsequent ones, but with a general low degree of connection of written characters there are words or part of words (3 or more characters, in some words 4-9 letters can be connected) performed with continuous movements;

– tortuosity of the line shape in the manuscript, most lines in the manuscript acquire a wavy, uneven shape;

– change in the structure of movements, their complete deformation occurs, and the connecting strokes change. New variants of letters appear, mainly in block letters or close to spellings, as well as due to the complication or simplification of variants, the letters "g" and "h" are made in the form of the Latin letter "z", the dot is made in the form of a comma;

– changing the width of the main and connecting strokes by increasing the pressure. When writing with the left hand, the pressure on the writing instrument increases, which increases the width of the strokes of the written characters. The width of the main and connecting strokes of almost all characters, as a rule, becomes the same;

– the pace of writing slows down, but the pace of individual elements or parts of them can remain fast [4].

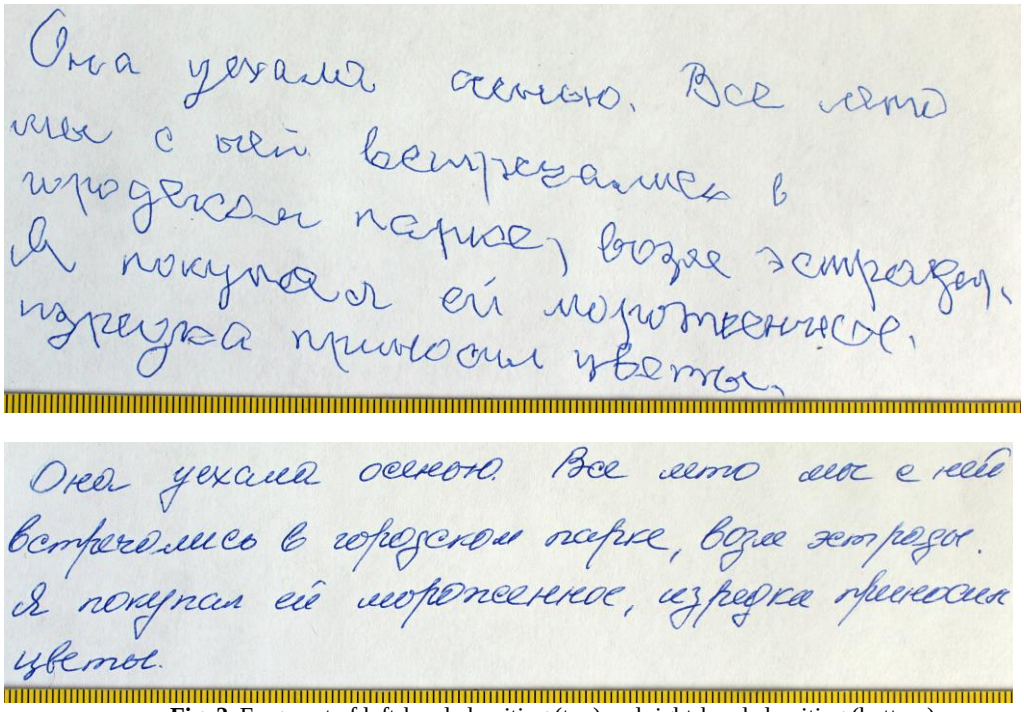


**Fig. 2.** Fragment of left-handed writing (top) and right-handed writing (bottom)
*Source: presented by author.*

Some features of handwritten notes (texts or signatures) made by the left hand indicate the presence of certain features peculiar only to such writing. Analyzing the expert opinions and scientific literature, we found that when changing the handwriting in the manuscripts, both variants of the written characters of the usual handwriting are preserved, and new variants appear, which are more close in configuration to the typical prescriptions. Graphic writing of written signs and their mutual arrangement undergo significant changes. Multi-element letters are made in a simplified version, in some cases there are variants of new letters, made in imitation of block letters ("a", "b", "t", "n", "n", "i", "x", etc.) .

The shape of movements when performing initial and final parts of letters in the form of ovals, semi-shafts, loops, triangles, ellipses due to a change in direction of movement, which is caused by lack of left-hand writing skills, becomes broken or tortuous, while maintaining the basic general shape.

The direction of movements in the execution of written signs and their elements, mainly does not change in the oval, semi-oval and loop elements of the letters. However, some parts of the elements are performed in the opposite direction from the specified (mirror), i.e. changes in the direction of movement, which can be performed completely or partially mirror. With careful execution, the performer monitors the execution of written signs, the mirror is almost absent and, conversely, with the weakening of visual control, with careless execution of the mirror increases.

The type of connection of written signs and elements of unusual left-handed writing with continuous movement during the execution of letters and their elements is manifested in separate intermittent movements.

The location of the movements and their length when performing the initial and final elements changes and, accordingly, the location of the start and end points of the movements relative to the line changes. The location of the start and end points of movements when performing letters and elements remains relatively constant, except for those elements that are partially or completely mirrored. If there are changes in this feature, it is most often manifested in the relative position of the beginning and end of the movements relative to the line. Execution of oval or arc elements of letters (in the absence of specularity), in the left-hand letter almost does not change. On the contrary, there is a significant change in the location of the junction of movements when writing characters and elements when changing the writing hand relative to the line of the line (except for oval elements), which is associated with the size of strokes [1, 4, 7].

After establishing a set of features, the expert must assess and reach a certain conclusion. In previous scientific papers, we wrote that in each case, the expert evaluates the amount and design of graphic material with which he works. The conclusion is formed on the

basis of a set of established stable individual characteristics that coincide or differ, sufficient for a particular inference, and not in view of the obviousness of the characteristics. It is impossible to predict in advance what the conclusion will be when examining signatures, depending on the method of forgery (imitating the signature of another person, on behalf of a fictitious person, memory performance, etc.). Taking into account all these factors, the conclusion can be both categorical (positive or negative) and probable, or even exclude the possibility of identification [2, p. 95].

However, it should be noted that with an average degree of mastery of the writing-moving skill of writing with the left hand in the manuscript, along with the general incoordination, there are elements of automation of movements. Mirroring will be much less common, so the question of the performer of the manuscript with the left hand is decided not at the stage of separate research, but at the stage of comparative research. Signs of ordinary handwriting are established, as well as their stability, as the manuscript has a large number of unchanged features of handwriting, starting with the general and individual features of ordinary handwriting.

For a high degree of development of left-handed writing skills are characterized by automated movements, fast writing topics. Usually the executors of such manuscripts are left-handers, people who lost their right hand and later learned to write with their left hand, as well as people who can write freely with both their right and left hand (ambidexters). In such cases, establishing the fact of execution of the manuscript with the left hand is impossible due to the lack of signs of left-handed writing. The fact of execution of the manuscript with the left hand is known from the materials of the criminal proceedings. Therefore, in this case, the question is only about the identification of the executor of the manuscript, bypassing the solution of diagnostic tasks.

In this situation, it is necessary to conduct a comparative study with the manuscripts of the left-handed man, made by his right hand, to establish how many left-handed people have the skills of writing the right hand. This makes it possible to assess the differences, because in the handwriting of a person who can write with the right and left hand, in manuscripts made by one hand, there are signs that are absent in the texts made by the other hand.

**Conclusions.** Based on the scientific research of scientists, based on the analysis of expert practice, an attempt was made to identify a set of features inherent in left-handed writing, among which we identified: mirror, distortion and angularity in the strokes of written signs, simplified and complicated version), lack of connection between letters and letter elements, etc. In today's conditions, against the background of a general decline in writing and moving skills of citizens, the established features are more pronounced, which allows to establish the fact of execution of the manuscript with a change of the usual writing hand and identify the performer.

*Conflict of Interest and other Ethics Statements*

The authors declare no conflict of interest.

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**Ганна БІДНЯК, Любов СОКОЛЕНКО**
**ДОСЛІДЖЕННЯ РУКОПИСІВ, ВИКОНАНИХ**
**З ПЕРЕМІНОЮ ЗВИЧНОЇ ПИШУЧОЇ РУКИ**

**Анотація.** В науковій статті розглянуто особливості експертного дослідження рукописів, виконаних незвичною для письма рукою, а саме ліворучне письмо. Привернуто увагу до етапів дослідження зазначених рукописів, факторів, які впливають на зміну почерку. Ґрунтуючись на наукових досягненнях видатних почеркознавців та результатах узагальнення висновків судових експертів, де об'єктами дослідження виступають ліворучні рукописи, зроблена спроба виокремити комплекс кваліфікуючих ознак почерку та підписів, за якими розрізняється письмо з переміною звичної пишучої руки.

На фоні загального зниження письмово-рухомої навички громадян, встановлені ознаки проявляються в рукописах різного ступеня виробленності. Зазначене дозволяє встановити факт виконання рукопису з переміною звичної пишучої руки та ідентифікувати особу виконавця на певних стадіях експертного дослідження (роздільній або порівняльній). При середньому ступеню володіння письмово-рухомою навичкою письма лівою рукою в рукописі, поруч із загальною некоординованістю, виокремлені елементи автоматизованості рухів, набагато рідше дзеркальність. Для високого ступеню розвитку навички письма лівою рукою зазначено також швидкий темп письма. Акцентовано на поділі ознак почерку та відмінностях тих, що характеризують почерк незвичної лівої руки, від тих, що притаманні маловиробленому почерку і почеркам осіб похилого, старечого віку, хворим особам. Для підтвердження наведених ознак були використані приклади з експертної практики.

Акцентовано на необхідності проведення порівняльного дослідження з рукописами лівши, виконаними ним правою рукою, для встановлення рівня володіння навичками письма правої руки, що дає можливість оцінити розбіжні ознаки.

***Ключові слова:*** *почеркознавча експертиза, зміна звичної пишучої руки, ліворучне письмо, діагностичні завдання, дослідження рукописів.*

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## WAYS TO IMPROVE THE INTERACTION OF INVESTIGATORS WITH CRIMINAL INVESTIGATION UNITS AT THE PRE-TRIAL INVESTIGATION

**Abstract.** It is almost impossible hold rapid and effective investigation of criminal offenses in some cases without the help of criminal investigation units. Currently, the state of interaction of the investigator with the criminal investigation units continues to remain low in terms of combating criminal offenses. That is why it is so necessary to study this problem and find ways to improve the interaction of investigators with criminal investigation units at the pre-trial investigation.

As a result of the study the authors formulated a set of proposals for making changes and additions to the CPC of Ukraine.

***Keywords:*** *criminal investigation units, interaction, pre-trial proceedings, investigator, criminal offense, investigation, criminal proceedings.*


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**Relevance of the study.** In recent years in Ukraine crime in general is steadily increasing and a significant number of crimes, including serious and especially serious, remain unsolved. At the present stage, the fight against crime requires not only the maximum use of all law enforcement forces, but also a clear organization that ensures their high efficiency, coordination all services` efforts and units of different law enforcement agencies, when everyone acts with maximum efficiency within the given powers and the capabilities of one unit are combined with the capabilities of other bodies and complemented by them. This comprehensive combination of efforts is realized through the cooperation of law enforcement agencies, primarily investigators and criminal investigation units.

**Recent publications review.** O. Bandurka, P. Bernaz, D. Grebelskyi, O. Dolzhenkov, O. Kerevych, M. Pogoretskyi, O. Snigeryov and others studied in their works problems of interaction of investigators with other law enforcement agencies, but most of their studies were carried out until 2012, ie before the adoption of the new Criminal Procedure Code of Ukraine (hereinafter - the CPC of Ukraine).

Issues of interaction of law enforcement agencies in the current CPC of Ukraine were the subject of study of such scientists as M. Bagriy, S. Bondar, V. Izotov, S. Knyzhenko, L. Mazur, V. Topchii and others, but they haven`t studied the issues of interaction between investigators and criminal investigation units at the pre-trial proceedings.

**The article's objective** is to obtain new scientific results on how to improve the interaction of investigators with criminal investigation units at pre-trial proceedings. To achieve this goal, it is necessary to solve the following tasks: to consider the objective and subjective factors that determine the need for interaction of investigators with criminal investigation units at pre-trial proceedings; to consider the problems of interaction between these entities, which are related to the adoption of the CPC of Ukraine on April 13, 2012; identify areas for improving the interaction of investigators with criminal investigation units at pre-trial proceedings.

**Discussion.** The need for cooperation between investigators and criminal investigation units is due to a number of objective factors.

The most important of them are the presence of common goals and objectives in the activities of the subjects of interaction. The interaction of investigators and criminal investigation units should facilitate the implementation of the tasks of criminal proceedings. They are protection of the individual, society and the state from criminal offenses, protection of the rights, freedoms and legitimate interests of participants in criminal proceedings, and ensuring a prompt, full and impartial investigation and trial so that everyone who has committed a criminal offense has been prosecuted to the extent of his guilt, no innocent person has been charged or convicted, no person has been subjected to unreasonable coercion and proper legal procedure was applied to each participant in the criminal proceedings [1].

Tasks of operative-search activity are formulated in Art. 1 of the Law of Ukraine "On operational and investigative activities" [2]. They are the search and recording of factual data on illegal actions of individuals and groups (the Criminal Code of Ukraine provides responsibility for it), intelligence and subversive activities of special services of foreign states and organizations to stop offenses and in favor of criminal proceedings, as well as obtaining information in favor of the security of citizens, society and the state.

Thus, the purpose of cooperation between investigators and criminal investigation units can be considered as the implementation of measures aimed at maximizing the forces, means, methods and other available resources of investigative and operational units in the fight against criminal offenses. At the same time, operative-investigative and procedural functions must be used correct during criminal proceedings to achieve the most effective results in the implementation of the tasks of operational-investigative activities and criminal proceedings. There is an organic connection between operative-investigative and criminal proceedings. Analysis of the Art. 1, 6, 7 and 10 of the Law of Ukraine "On operational-investigative activities" allows us to conclude that operational-investigative activities are not self-sufficient and basically related to the interests of criminal proceedings and only in close connection with them it will be able to successfully solve problems on counteraction to criminal offenses.

The second factor that determines the need for investigators to interact with criminal investigation units in pre-trial proceedings during the investigation of criminal offenses is the difference in the means and methods of activity of the subjects of interaction. When investigating criminal proceedings, the investigator has the right to conduct investigative (investigative), covert investigative (investigative) and other procedural actions. The

investigator has the right to conduct investigative, covert investigative and other procedural actions during investigation of criminal proceedings.

Employees of operational units (except for detective units, internal control units of the National Anti-Corruption Bureau of Ukraine) don`t have right to carry out procedural actions in criminal proceedings on their own initiative or to apply to the investigating judge or prosecutor [1]. In the process of their activity, operative-search subdivisions carry out operative-search measures in accordance with the Law of Ukraine "On operative-search activity" and departmental normative legal acts. The investigator cannot carry out these activities and even does not have the right to participate in them or be presented during them.

The third factor that determines the need for interaction of investigators with criminal investigation units in pre-trial proceedings in the investigation of criminal offenses is the different legal significance of the results of the interaction. Evidence is the result of the investigator's procedural activity. As a result of operative-search activity of the operative, only materials in which factual data on illegal actions of individuals and groups of persons collected by operative units in compliance with the requirements of the Law of Ukraine "On operative-search activity" can be used as evidence in criminal proceedings, if they meet the requirements of the Art.99 of the Criminal Procedure Code of Ukraine [1].

In addition to the objective factors that determine the interaction of the investigator and criminal investigation units, subjective factors have great importance. They are operatives` ignorance of the essence of the formation of evidence in criminal proceedings, which leads to unsystematic collection of materials in operational and investigative cases; inability of operatives to provide a correct legal assessment of operational information, which is associated with their lack of sufficient knowledge of the provisions of criminal and criminal procedure law and insufficient skills to apply them in practice; a significant number of investigators and operational staff don`t have enough of the necessary experience, etc. [3].

Only the integrated use of criminal procedural capabilities of the investigator and operational tools and methods available to criminal investigation units, allows solving the problem of detection and investigation of criminal offenses successfully.

With the adoption of the CPC of Ukraine [1] and such departmental regulations as the Order of the Ministry of Internal Affairs of Ukraine of July 7, 2017 № 575 "On approval of the Instruction on the Interaction of Pre-trial Investigation Bodies with other Bodies and Units of the National Police of Ukraine and Investigation" [4]; The order of the Ministry of Internal Affairs of Ukraine of February 8, 2019 № 100 "On Approval of the Procedure of Maintaining a Single Record of Criminal Offenses, Notifications and other Events in the Bodies of the Police Statements" [5]; the Order of the Ministry of Internal Affairs of Ukraine of April 27, 2020 № 357 "On Approval of the Instruction on the Organization of Response to Statements and Notifications of Criminal, Administrative Offenses or Events and Prompt Information in the Bodies of the National Police of Ukraine" [6], the legal basis for the interaction of investigators and criminal investigation units has changed, which has led to a change in the process of organizing the interaction of investigators and criminal investigation units in the detection, disclosure and investigation of criminal offenses.

Prior to the adoption of the CPC of Ukraine, covert investigative (search) actions regulated by Chapter 21 of the CPC of Ukraine were conducted as operational-investigative measures. The information obtained as a result of their conduct could be used as evidence in criminal proceedings in compliance with the requirements established by the criminal procedure legislation. Therefore, under the CPC of Ukraine in 1960 the interaction of investigators with officers of operational units has significant features. The subjects of interaction could perform the tasks of the pre-trial investigation using the same means (by carrying out criminal proceedings) and using different means (the investigator conducts only criminal-procedural actions, and operational units conduct operational and investigative measures [7, p. 350]. In our opinion, in the current CPC of Ukraine the expansion of the powers of investigative units in the context of their interaction with operational units is a rather negative aspect. It gives the investigator the right to conduct covert investigative actions, which is impossible without practical experience of operational and investigative activities.

The adoption of these regulations has not improved the effectiveness of cooperation between investigators and criminal investigation units in the pre-trial investigation. It has led to the fact that today we have an imperfect system of mutual exchange of information, there is inconsistency in investigative and covert investigative actions and other procedural actions. Investigators don’t trust operational and investigative information during planning and

conducting investigations, and officers of criminal investigation units do not always timely and efficiently carry out their instructions to conduct investigative actions and covert investigative actions in criminal proceedings.

One of the reasons for this problem is the lack of clear deadlines of the implementation of operational units of the investigator's instructions in accordance with the Art.40 of the Criminal Procedure Code of Ukraine. In connection with the above, it is advisable to supplement the paragraph 3 of the Part 2 of the Art.40 of the CPC of Ukraine with stipulates that the investigator's order must specify the deadline for its execution, and employees of operational units should strive to execute such an order as soon as possible. It is also necessary to provide for administrative liability of persons guilty of delaying or violating the terms of such orders.

The effectiveness of cooperation in the investigation of criminal offenses depends on the attention in planning the relevant activities and their proper organization. Planning involves the use of traditional and non-traditional ways. The first includes the development of so-called standard versions, which are put forward on the basis of scientific analysis of data from the generalized experience of investigating criminal offenses of a certain category, the second includes using standard versions and those that do not fit into the usual framework and arise in connection with detection new ways of committing criminal offenses and other data. Therefore, the most important for the investigator is the use of both of these ways, that is the implementation of active mental activity associated with the promotion of different versions [8].

According to A. Gordin, the effectiveness of the interaction of investigative and operational units is the need to improve the legislative and departmental regulations that create conditions for the development of new forms and directions in solving the problem of combating crime [9].

Other scientists in the system of improving the activities of operational units and investigators include raising the educational level of police officers; solving the problem of police staffing; significant increase in the level of information support for police activities; introduction of achievements of science and technology; gradual use of non-traditional means of search; creation a separate position in operational divisions with the authority of job description to indemnify to victims of criminal offenses; improvement of organizational and tactical forms and methods of search [10, p. 165].

In our opinion, improving the planning of joint work of investigators and criminal investigation units, it is advisable to provide for issues of cooperation in the structure of current plans of police bodies in general. In particular, they should reflect:

– the state of mutual exchange of information received by the relevant departments;

– the state of work on the execution of the investigator's instructions;

– the need to train investigators on specific examples of the use of the results of operational and investigative activities;

– improving the system of information support of the investigation on the basis of modern information technologies with the use of operational-investigative and other types of accounting.

In our opinion, all this would allow to identify negative and positive trends in cooperation, raise the level of its organization, control and evaluation, to note specific measures of improving the detection and investigation of criminal offenses.

**Conclusions**. Thus, we have identified objective and subjective factors that determine the need for investigators to interact with criminal investigation units in pre-trial proceedings.

The authors pointed out the problems of interaction between the specified subjects which are connected with acceptance of the CPC of Ukraine. For the decision of the one of this problem it is offered to supplement the paragraph 3 of the Part 2 of the Art.40 of the CPC of Ukraine with stipulates that the investigator's order must specify the deadline for its execution, and employees of operational units should strive to execute such an order as soon as possible. It is necessary to provide for administrative liability of persons who are guilty of delaying or violating the terms of execution of such instructions.

We also think that to increase the effectiveness of interaction, we can name the following areas of improving the interaction of investigators with criminal investigation units in the pre-trial investigation: planning interaction; professional orientation of each of the interacting parties regarding each other's capabilities and the completeness of their use in solving the tasks of disclosure of criminal offenses; establishing proper official relations between investigators and criminal investigation officers who interact directly; maintaining an atmosphere of trust, cohesion and mutual assistance; regular internships for criminal

investigation officers in investigative units and vice versa; specialization of investigators in the investigation of a certain category of criminal proceedings; timeliness of entry into interaction and its termination; raising the educational level of police officers; solving the problem of police staffing; introduction of achievements of science and technology.

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

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**НАПРЯМИ ВДОСКОНАЛЕННЯ ВЗАЄМОДІЇ СЛІДЧИХ З ПІДРОЗДІЛАМИ КАРНОГО РОЗШУКУ НА ДОСУДОВОМУ РОЗСЛІДУВАННІ**

**Анотація.** Швидке та ефективне розслідування кримінальних правопорушень у ряді випадків практично неможливо без допомоги підрозділів карного розшуку, які здійснюють оперативно-розшукову функцію. В даний час стан взаємодії слідчого з підрозділами карного розшуку продовжує залишатися на низькому рівні щодо протидії кримінальним правопорушенням, що викликає необхідність дослідження означеної проблеми та обґрунтування положень про вдосконалення взаємодії слідчих з підрозділами карного розшуку на досудовому розслідуванні, у тому числі у світлі планованої цифровізації вітчизняного кримінального процесу.

В статті розглянуті проблемні питання присвячені щодо напрямів вдосконаленню взаємодії слідчих з підрозділами карного розшуку на досудовому розслідуванні при розслідуванні кримінальних правопорушень. Розглянуто об'єктивні і суб'єктивні чинники, якими обумовлюється необхідність взаємодії слідчих з підрозділами карного розшуку на досудовому розслідуванні. Здійснено порівняння з КПК України 1960 року та КПК України 2012 року щодо проблем взаємодії між означеними суб'єктами. Досліджено взаємозв'язок щодо ефективності взаємодії при розслідуванні кримінальних проваджень та напрямки вдосконалення взаємодії слідчих з підрозділами карного розшуку на досудовому провадженні.

На основі аналізу наукової літератури, правових актів, практики взаємодії слідчих з підрозділами карного розшуку, з метою подолання відомчих бар'єрів, забезпечення виконавчої дисципліни в цілому підвищення узгодженості та результативності здійснюваної з використанням процесуальних та непроцесуальних засобів діяльності з розкриття та розслідування кримінальних правопорушень сформульовано комплекс пропозицій про внесення змін та доповнень до п. 3 ч. 2 ст. 40 КПК України щодо граничного терміну виконання доручень оперативними підрозділами.

***Ключові слова:*** *підрозділи карного розшуку, взаємодія, досудове провадження, слідчий, кримінальне правопорушення, розслідування, кримінальне провадження.*

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**PROCEDURAL RESPONSIBILITIES OF THE ACCUSED PERSON: LEGISLATIVE REGULATIONS AND CONDITION OF IMPLEMENTATION**

**Abstract.** This article contains analysis of liabilities of a person under accusation process. It was defined that liabilities are imposed on such a person in the result of executing of a corresponding disclosed procedural decision exclusively. Procedural liabilities are classified depending on the type of rights, which limitation arises out of executing such liability.

The article includes a comparative analysis of procedure for summons in criminal, civil, economic and administrative procedure. Non-efficiency of summons and excessive formalism of summons receipt confirmation has been identified. Handing over summons as a ground for liability to come on-call arising and forwarding summons as a due procedure performance to provide a person's arrival at the place of a procedural action or a court hearing have been separated.

Introduction of an obligatory e-mail submission system for all citizens to receive official notifications from state and self-government bodies to provide real receipt, including summons to pre-trial investigation bodies or a court, as well as for due confirmation of summons sending have been suggested.

***Keywords:*** *summons, person's procedural status, notification, procedural actions, liabilities imposed on a suspect or a person under accusation process by the decision on applying criminal proceedings provision means.*


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**Relevance of the study.** Since under the term "a person under accusation process" we mean not only suspects and accused, the liabilities list is wider than the one stipulated for a suspect and accused by the Criminal Procedure Code of Ukraine in force.

These liabilities tend to be equal either for persons under accusation process, or for persons under procedural actions performed to check versions of committing a violation by another person.

It is determined that in our state a person under accusation process evades the performance of its duties having no intention to participate in proceedings. However, the Criminal Procedure Code of Ukraine contains contradictory norms establishing the summons procedure. For instance, according to Art. 135 part 2 of the Criminal Procedure Code of Ukraine, in case of temporary absence of a person under the place of registration summons shall be handed to an adult family member or another person, living together with it, house maintenance organization at the place of residence or administration at a work place against signature, however**,** notification of a called person is not the responsibility of family members or work administration. Simultaneously, the Criminal Procedure Code of Ukraine contains Art. 136, where due ways of receiving summons except for the postal means are stipulated.

**Recent publications review.** Procedural responsibilities of the accused person: was considered in their writings by such scientists as: O. Batyuk, O. Vinokurov, O. Kaplina, O. Mazur, M. Nikonenko, O. Tatarov, O. Pharaoh and others.

**The article's objective** is studying liabilities of a person under accusation process and reflecting perspectives of their regulatory enhancing at the legislation level.

**Discussion**. According to Art. 19 part 1 of the Constitution of Ukraine legal order in Ukraine is based on the following grounds: nobody can be made do the things not stipulated by the legislation [1]. This means that a list of persons under accusation process stated in the criminal procedural law is not limited.

In general, liabilities mean the obligation to follow a particular type and extent of behavior stipulated by legal norms being the requirements fixed by the state law and society norms towards a person's behaviour [6, p. 214].

Liabilities of a person under accusation process shall include liabilities of a suspect and an accused person. 7 According to Art. 42 part 7 of the Criminal Procedure Code of Ukraine, such liabilities include the following:

1) to arrive on-call to an interrogator, prosecutor, investigating judge or court. In case of unfeasibility to arrive at an appointed date such person shall notify the mentioned persons in advance;

2) to perform responsibilities imposed by the decision on applying means to provide criminal proceedings;

3) to obey legal requirements and demands of an interrogator, prosecutor, investigating judge or court;

4) to submit true information to a representative of a probation body necessary to prepare pre-trial report [2].

We shall study these liabilities more deeply.

Liability to arrive on-call to an interrogator, prosecutor, investigating judge or court. The following criminal proceedings participants are authorized to perform summons: an interrogator, prosecutor and investigating judge in course of pre-trial investigation; court in course of litigation.

At the same time, it is worth to pay attention at the fact that the law does not stipulate an opportunity to for a summoned person to check authorities of an interrogator, prosecutor, investigating judge or court. Though it is possible to obtain data even on the results of an automated distribution of court cases via "Court Power" web-resources, the one cannot check participation of an interrogator or prosecutor. Due to this, we suggest to empower a person summoned to partake in procedural actions to make acquainted with the abstract from the Unified Pre-Trial Investigations Register with brief information on circumstances investigated and on an interrogator(s) or prosecutor(s) performing investigation and procedural management. This will allow a summoned person making sure that an authorized person leads proceedings, while evidence obtained and checked in course of proceedings are relevant for this criminal procedure.

Another aspect of summons is a number of persons, who may be summoned. According to Art. 133 part 1 of the Criminal Procedure Code of Ukraine an interrogator and a prosecutor can summon a suspect, witness, victim or another participant of criminal proceedings in course of a pre-

trial investigation. A court can summon a person to give evidence and a person, whose participation in the procedural action is obligatory (Art. 134 part 1 of the Criminal Procedure Code of Ukraine) [2].

In this case, it should be noted that summons must contain a procedural status of a person (Art. 137 part 1 para. 5 of the Criminal Procedure Code of Ukraine). We consider this formulation to become a challenge in situations, when a person has neither procedural status at the moment of summons receipt. For instance, a person, who shall be reported suspicion, does not have a procedural status of a suspect at the moment of summons receipt. Or a person summoned to clarify whether it wants to be a victim may be another example.

Thus, we consider that Art. 137 part 1 para. 5 of the Criminal Procedure Code of Ukraine shall be amended in the way that a procedural status of a summoned person shall be stated in summons when a procedural status is available.

Interrogation of a person or its obligatory participation in a procedural action is the ground for summons. This is the difference between summons and notification sent to a person, whose participation in a procedural action is not obligatory.

Criminal procedural law determines such forms of summons performance: handing over, sending by post, e-mail or facsimile, call or telephoned message.

Analyzing these forms of summons, we want to pay attention at such forms as handing over, call or telephoned message. They are connected with a receipt of a document or information on obligation to arrive on-call in another form.

Regarding other forms of sending summons, at first sight, they do not require receipt of a document by a person, but their very sending is important.

At the same time, according to Art. 136 part 1 of the Criminal-Procedure Code of Ukraine, signature of a person on summons receipt, including on a postal notification, video recording of summons handing over and any other confirmation of summons receipt or reading, is a due confirmation of summons receipt or making notified on its content by a person.

It means that information shall not only be sent to a person, but also received by it. On the one hand, it is logical, since it is possible to speak about imposing an obligation to arrive on-call only after making a person acquainted with an interrogator's, prosecutor's, investigating judge's or court's call requirement.

However, the Criminal-Procedure Code of Ukraine contains contradictive norms establishing the call procedure. According to Art. 135 part 2 of the Criminal-Procedure Code of Ukraine, in case of temporary absence of a person at the place of residence, summons is handed to an adult family member or another person, living together with it, house maintenance organization at the place of residence or administration at a work place against signature [2].

Thus, handing summons to an adult family member or administration at a work place is a due means of performing a call. Though it is obvious that such means is not connected with a direct bringing a summoned person to notice on its obligation to arrive on-call. Certainly, a summoned person will be notified on summons receipt by a family member or administration at a work place. Such actions are fully adequate. But family members or administration at a work place are not obliged to notify a summoned person.

The peculiarity of interaction between prosecution and a person under accusation process is that such person may evade from arrival having no intention to participate in procedural actions. Though, if a person, who had received summons, did not arrive unjustified, this will mean clear not performance of legal requirement of an interrogator, prosecutor or investigating judge, which may further become the ground to apply precautionary measure or change it to a stricter one. If a summoned person evades from summons receiving, obligation to arrive does not arise, and it is deemed to be more tactically adventurous.

It is also important to take into account that most summoned persons have registration addresses, but can reside at another address, including another city, town or settlement.

In addition, a person may be absent at the place of registration or residence, known to prosecution, due to a business trip, rest, treatment, etc., i.e. objective reasons that make it unfeasible to hand summons over may exist. However, the boarder between a person's absence at a place of residence due to particular business and with the aim of evading from investigation and prosecution is quite nominal, since a summoned person is not interested in admitting that is evades from investigation and prosecution, while absence at the place of residence is equal either at evading from arrival, or being absent due to personal matters without evasion aim.

Criminal procedural law establishes a list of admission forms to confirm summons

receipt or making acquainted with it in any other way.

However, the law does not contain a clear definition of the term "summons" admitting it as a legal fact that imposes obligation to arrive to partake in a procedural action and (in case of failure to arrive) can be the ground for taking other procedural decisions (precaution measures, pre-trial investigation suspension, wanting a person, special pre-trial investigation). In particular, there is no clear identification of how to understand summons: receipt of information about summons by a person or the very sending of such information (regardless of such information actual receipt).

This issue becomes more acute when summons is used to assure person's arrival in the first turn. If a summoned person fails to arrive, it can be a confirmation of arrival evasion. It is also necessary to establish this fact.

We consider it is wise to compare calling methods in other procedural areas.

For one, according to Art. 130 part 3 of the Commercial Procedure Code of Ukraine, in case of handing summons over to an adult family member of a summoned person, it is deemed duly notified on the time, date and place of court hearings or performing another procedural action [3]. And according to Art. 130 part 9 of the Civil Procedure Code of Ukraine, in case an addressee refuses of receiving a court summons, the courier makes a corresponding remark on the summons and returns it back to the court. A person, who refused to receive court summons, is deemed to be notified [3].

Art. 120 part 7 of the Civil Commercial Code of Ukraine states that summons is forwarded to the trial participants having no official e-mail and when it is impossible to notify them by other communication means fixing a notice or call at the latest address known to the court and is deemed to be handed over even in case a corresponding participant of court proceedings does not live at that address [4].

According to Art. 126 part 4 of the Administrative Procedure Code of Ukraine, summons is deemed also handed over in case of its receipt by an adult family member of an addressee against signature. The person received summons is obliged to notify an addressee on it immediately. At this, handing over summons to a case participant's representative is considered its handing over to this person as well (Art. 126 part 10 of the Administrative Procedure Code of Ukraine). In case of summons sent by post return, which failed to reach an addressee due to the reasons beyond a court's control, it is considered to be duly handed over (Art. 126 part 11 of the Administrative Procedure Code of Ukraine) [5]. Thus, in the Civil Commercial and Administrative Procedure litigation summons is seemed to be duly performed in case a relative or representative of a person has received summons as well as in case of refusal from summons or persons' absence at the place of summons delivery. In fact, the rules stated clearly mean that summons is duly performed not only in case of handing it over, but also in case of handing it over to another person, refusal to receive it or absence of persons to receive it. The most efficient way of calling a person is its direct notification on the obligation to arrive. Such notification may be performed during the meeting or by phone. However, a person may evade either from meeting, or from phone conversations. The challenge is that an interrogator, prosecutor, investigating judge or court may not know a place of stay or contact number of a person, or a person may be absent at the place of residence or work or not answer phone calls due to some reasons. Formally such behaviour is not a violation (if relevant obligations are not imposed through precautionary measures), since neither person is obliged to stay at a particular address or answer phone calls. This allows a person efficiently evade from receiving summons.

We consider obligatory possession of an e-mail for receiving information from state bodies an efficient way to reform notification order. Sending summons to a stated e-mail address shall be the due form of calling a person. Thus, it can receive information regarding summons regardless its location. The mentioned changes will allow efficiently communicate with persons under accusation process as well as duly fix the fact of sending summons.

Next group of obligations is performing duties imposed on a suspect or accused by the decision on criminal proceedings measures application. The list of criminal proceedings measures contains summons as well, but (i) we have already considered obligations to arrive on-call and (ii) summons is performed in forms different from the ones stipulated for procedural decisions (order, resolution, etc.). Temporary access to personal items and documents as well as personal commitment (as a separate precautionary measure or imposition of such obligations alone with other precautionary measures) is a decision on applying criminal proceedings measures imposing obligations on a person under accusation process.

Art. 194 part 5 of the Criminal Procedure Code of Ukraine contains the list of obligations as follows:

1) to arrive at a defined official with a stated periodicity;

2) not to leave a settlement of registration, residence or stay without interrogator's, prosecutor's or court's consent;

3) to notify an interrogator, prosecutor or court on the change of place of residence and/or working place;

4) to avoid communication with any person determined by an investigating judge (court) or communicate with it respecting the conditions stipulated by an investigating judge (court);

5) not to attend places determined by an investigating judge (court);

6) to undergo treatment from drug or alcohol addiction;

7) to find a job or to start studying;

8) to deposit a foreign passport(s) and other documents, which allow to leave or enter Ukraine, at relevant state power bodies;

9) to enter control e-means [2].

The above-mentioned obligations are the subject of separate research. At the same time, we shall pay attention at some problem aspects of these obligations application. According to Art. 179 part 2 of the Criminal Procedure Code of Ukraine, a suspect or accused is notified on imposed obligations in a written way against signature and explained in case of failure to perform them a harsher precautionary measure may be applied alone with a fine at the amount of 0.25-2 subsistence levels for able-bodied persons.

This norm is progressive on the one hand, since notification against signature attracts a person's attention at the aspects it might have missed otherwise. On the other hand, the issue on applying a precautionary measure, not connected with detention, is performed at the presence of a person in question (including obligations stipulated by Art. 194 part 5 of the Criminal Procedure Code of Ukraine). However, the requirement to notify a suspect or accused against signature as regards the imposed obligations has no accurate procedure. Firstly, it is not determined, who shall explain these obligations. According to the general rule, an investigating judge or court shall hand over a copy of a decision on the precautionary measures application to a suspect or accused. May it be deemed full clarification of obligations and warning about responsibility for failure to perform them? We consider not. Secondly, there is no determination how to act in case a person refuses of signing a relevant document, while attempts to apply analogues of singing procedural actions protocols are under discussion.

Therefore, we believe that requirement to notify against signature shall be substituted with a requirement to define these obligations in the decision on the precautionary measures application alone with responsibility for failure to perform them. Handing over of such decision (in the absence of statements to clarify judgment) shall be deemed a notification of a person on responsibility for failure to perform these obligations. Regarding the obligation to perform legal requirements of an interrogator, prosecutor, investigating judge or court, it is unspecified that may lead to procedural discussion and conflicts as for the required behavior of a suspect or accused. Such requirements and orders concern the participation of a suspect or accused in an investigation (search) during pre-trial investigation and court hearings in terms of litigation. The obligations considered are enforced with norms and sanctions for failure to perform them differently. In some cases (failure to arrive on-call or violation of precautionary measures) sanction norms are quite accurate, in other cases vice versa. We think that accurate sanctions enforce the obligations accurately described in law. As regards such obligations as performing legal requirements and orders of persons carrying out criminal proceedings, there are no grounds to determine accurate sanctions due to unfeasibility to provide an exhaustive list of such requirements and orders.

**Conclusions.** A person under accusation process has the obligations imposed on persons under procedural actions. It might be a search, in course of which an interrogator or prosecutor may require to open locked premises or not to interfere in the search process. During presentation for identification a person may be required to follow a particular procedure (come in together with decoys by invitation, present him / herself, etc.). Requirement may follow sampling for expert research. However, coercion not always may enforce such requirement. These obligations are equal for persons either under accusation process, or under procedural actions aimed at checking a version on committing criminal violation by another person. We consider this method to be the most efficient one in determining a procedural status of persons under accusation process in terms of their notification of suspicion. Thus, determination of a relevant procedural status for a separate

procedural action for a person under such action to have rights and obligations necessary for a suspect or accused when being under such procedural action is a perspective way.

*Conflict of Interest and other Ethics Statements*
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**Надія БУБЛИК**

**ПРОЦЕСУАЛЬНІ ОБОВ'ЯЗКИ ОСОБИ, ЩОДО ЯКОЇ ЗДІЙСНЮЄТЬСЯ ОБВИНУВАЛЬНА ДІЯЛЬНІСТЬ: ЗАКОНОДАВЧЕ РЕГУЛЮВАННЯ ТА УМОВИ РЕАЛІЗАЦІЇ**

У статті здійснено аналіз обов'язків особи, щодо якої здійснюється обвинувальна діяльність. Встановлено, що обов'язки покладаються на вказану особу виключно в результаті виконання відповідного процесуального рішення, доведеного до її відома. Процесуальні обов'язки класифікуються залежно від типу прав, обмеження яких відбувається в результаті виконання обов'язку. У статті проведено порівняльний аналіз порядку виклику у кримінальному, цивільному, господарському та адміністративному судочинстві. Констатовано неефективність викликів та надмірна формалізованість форм підтвердження отримання виклику. Розмежовано вручення виклику як підставу виникнення обов'язку з'явитися за викликом та направлення виклику як належне виконання процедури із забезпечення прибуття особи до місця проведення процесуальної дії чи судового засідання.

Запропоновано запровадження системи надання всім громадянам обов'язкової адреси електронної пошти для отримання офіційних повідомлень від державних органів та органів місцевого самоврядування для забезпечення реального отримання, у тому числі викликів до органів досудового розслідування або суду, а також для належного підтвердження направлення виклику.

***Ключові слова:*** *повістка про виклик, процесуальний статус особи, інформування, процесуальні дії, обов'язки, покладені на підозрюваного, обвинуваченого рішенням про застосування заходів забезпечення кримінального провадження.*

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# INTERNATIONAL EXPERIENCE OF USING SPECIAL KNOWLEDGE IN POLICE ACTIVITY

**Abstract.** The scientific article focuses on the international experience of using special knowledge in policing. The functioning and interaction of some international organizations, such as: Europol, Eurojust, CEPOL, Frontex, Interpol, UN UN, ISO, IFSA. Special attention is paid to the European professional expert network. The scientific statements on the functioning of expert institutions, their structure and controlling bodies are analyzed, own remarks on this subject are made. In particular, in order to improve the quality of expert services in the international arena, it is proposed to comply with European standards, use common research methods, and have no monopoly on expert activities.

***Keywords:*** *expert activity, international cooperation, international organizations, expert institutions.*

**Relevance of the study.** Effective fight against crime has always been an important task of civilized society and an indicator of state development. In today's world, such as the World Pandemic, new offenses are emerging that are increasingly transnational in nature. This uses the latest advances in science and technology, usually due to the Internet, which allows offenders to invent more virtuoso ways to commit them and cover the territory not only of neighboring states, but also to act intercontinently.

**Resent publications review.** Well-known criminologists have made a significant contribution to the study of the problems of using special knowledge: I. Aliyev, L. Arocker, W. Arsenyev, Yu. Alenin, V. Bakhin, V. Bernaz, R. Belkin, T. Varfolomeeva, A. Winberg, F. Javadov, A. Ishchenko, N. Karpov, N. Klimenko, O. Kolesnichenko, B. Lisichenko, B. Lukashevich, E. Lukyanchikov, M. Porubov, M. Saltevsky, M. Segai, E. Simakovf-Efremyan, I. Friedman, P. Cymbal, V. Shepitko, M. Scherbakovsky and others. Recently, the issue of international cooperation has been studied in the works of O. Vinogradova, I. eshukova, M. Pashkovsky, M. Smirnova, Yu. Chornous, L. Udalova, O. Uzunova.

**The article's objective** is to highlight the international experience of using special knowledge in policing.

**Discussion.** In order to effectively fight crime, many countries around the world and the European Union understand the need to take effective international action in various areas. For example, in the United Kingdom, Australia, Germany, Switzerland, the Netherlands, and Canada, there is a need to create a "harm reduction program" that includes both substitution therapy and prevention work with people who no longer use drugs. Ukraine has also supported this program both for the treatment of patients and for the prevention of crime.

In recent years, Ukraine has ratified special international agreements on combating corruption, namely: the 1999 Criminal Convention against Corruption with the Additional

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Protocol of 2003, the 2003 UN Convention against Corruption. We have demonstrated only a few cases where there is a need for international cooperation with numerous organizations.

There are several types of internal organisation:

– EU law enforcement agencies, including: Europol, Eurojust, CEPOL and Frontex;

– European professional expert networks, such as: the European Network of Forensic Science Institutes (ENFSI), the European Judicial Training Network (EJTN) and the Law Enforcement Working Party (LEWP).

– Worldwide law enforcement agencies, including: INTERPOL, the United Nations Office on Drugs and Crime (UNODC) and the International Organization for Standardization (ISO).

– Networks in the forensic domain: the International Forensic Strategic Alliance (IFSA), a partnership of continental networks.

All of these organisations play an important role in setting up specific field standards or minimum requirements for police first responders, crime scene investigation units and forensic examiners [2].

The police need training in forensic procedures and minimum standards and best practices, but to date CEPOL notes no progress.

In this regard, rightly note N. Klimenko and O. Kuprievych, national forensic examination cannot exist in isolation, ie only within a single state. An opinion drawn up by experts of one State must have the force of evidence for the courts of another State. Such integration processes testify to the interest of states in cooperation and strengthening of international cooperation in the field of forensic examination in order to achieve and ensure the advanced level of forensic examinations, compliance with international quality standards [4].

Ways to improve the organizational support of forensic science in Ukraine O. Kravchuk believes the need to create a single state forensic service in Ukraine, which will improve working conditions, scientific and technical equipment and increase the efficiency of expert activities; eliminate interdepartmental barriers and different approaches to the organization of forensic examinations; to create larger expert institutions on the ground with greater opportunities and to increase the efficiency of management of forensic institutions. The proposed structure should contain the State Department of Forensic Science of Ukraine with its central office and regional departments of forensic science with their structural units [5].

However, this point of view is quite debatable. In order to achieve the level of international standards in expert activity, it is necessary to adhere to the basic principles such as legality, comprehensiveness, impartiality, coherence, etc. As you know, the absence of a monopoly is one of the main conditions for approaching European standards. In addition, the presence of the same criteria, methods by which to conduct examinations and research, will contribute to the objectivity of the results.

In 2010, Europol developed a pan-European strategy to harmonize common on-site procedures and laboratory tests.

The EU decided to establish a European Forensic Science Area (EFSA) which covers all Member States. This means it gives for the first time an opportunity for different forensic service providers, including scene of crime units, to get assistance from abroad. This assistance can be sending pieces of evidence for further examination in a different country or inviting foreign forensic examiners to come and help in a case. In addition, all the existing non-personalised databases will be made available via a single gateway to all Member State law enforcement organisations.

As in developed countries, in Ukraine there are state expert institutions in various ministries, among which the main workload falls on the Expert Service of the Ministry of Internal Affairs of Ukraine and Scientific Institutes of Forensic Science of the Ministry of Justice of Ukraine.

Significant achievements in international activities include the membership of the State Research Forensic Center of the Ministry of Internal Affairs of Ukraine, the Kyiv Research Institute of Forensic Science of the Ministry of Justice of Ukraine and the Kharkiv Institute of Forensic Science named after Professor MS Bocarius in the International Laboratory of the European Network of Forensic Medical Institutions (ENFSI).

These expert institutions of Ukraine meet all the requirements for the provision of expert services of international level and accreditation according to international quality standards ISO 17025 or ISO 17020 and confirm their status annually through QCC surveys, which is also supported by Ukrainian legislation.

Thus, state specialized institutions of Ukraine that perform forensic examinations have the right to establish international scientific relations with institutions of forensic science, criminology, etc. of other states, hold joint scientific conferences, symposia, seminars, exchange trainees, scientific information and publications and carry out joint publications in

the field of forensic science and criminology.

Within the framework of international cooperation in the field of forensic examination, in case of forensic examination on behalf of the relevant body or person of another state with which Ukraine has an agreement on mutual legal assistance and cooperation, the legislation of Ukraine shall apply, unless otherwise provided. Heads of state specialized institutions conducting forensic examinations, if necessary, have the right, with the consent of the body or person who appointed the forensic examination, to include in the expert commissions of leading specialists of other states. Such joint expert commissions carry out forensic examinations according to the norms of the procedural legislation of Ukraine [8].

In addition to Ukraine, ENFSI has sixteen international working groups working in the main disciplines of forensics, offering training programs for colleagues and organizing large-scale statistical surveys. During regular meetings, these working groups exchange scientific information and jointly manage databases [2].

It is the world's largest joint organization of forensic institutions, which has received international recognition. Among the countries whose institutions are part of the European network - Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Great Britain, Hungary, Greece, Georgia, Denmark, Spain, Ireland, Italy, Lithuania, Latvia, the Netherlands, Norway, Poland, Romania, Russia, Serbia, Slovakia, Slovenia, Turkey, Sweden, Switzerland, etc. The most well-known ENFSI institutes conducting expert research are the Dutch, Polish, Hungarian and Prague forensic institutes [10].

However, ENFSI members not only provide knowledge sharing and training services in accordance with national and international standards, but also provide training in forensics and new developments for their partners in the criminal justice system, such as the prosecution, courts and police. By raising awareness, this ensures that forensic evidence is better understood in court, as provided for in the EFSA 2020 Action Plan. By raising awareness, this will ensure that forensic evidence is better understood when used in court.

This training is available for all types of first responders (police, fire brigade, medical teams, public health and environmental officials, military staff, forensic investigators) and for decision makers, prosecutors and judges. It takes place through ENFSI and CEPOL joint training schemes or via their domestic forensic service providers.

In cross-border investigations good cooperation is obviously beneficial, especially in situations where several law enforcement officers from different countries need to coordinate their actions in order to work as a one joint team. To achieve this, a framework for ITs was set up in 2009.

An IT is an investigative team that is set up for a fixed period and for a specific purpose, based on an agreement between or among two or more law enforcement authorities from different EU countries. In these cases Europol and Eurojust are always involved as well. Europol and Eurojust have jointly produced a Guide to EU Member States Legislation on Joint Investigation Teams. A specific resolution about a Model Agreement for setting up a Joint Investigation Team (IT) was released by the Council of the European Union in 2010.

The NFI has even created the conditions for cooperation even in the face of significant constraints in the context of the World Pandemic.

Cooperation between the Expert Service of the Ministry of Internal Affairs of Ukraine and Interpol is mostly carried out in the form of information exchange, in particular on:

– illicit trafficking in drugs, weapons, explosives, radioactive and toxic substances;
– forgery of documents, money, payment cards; identification of corpses;
– checks of DNA profiles;
– search for missing persons;
– spread of malicious programs (viruses);
– child pornography.

An important tool in the fight against crime are Interpol databases, and exactly:

– data bank on the appearance of the offender (file "S");
– data bank of documents and names;
– data bank of crimes; dactyloscopic file;
– photo library of appearance features; database of missing persons and unidentified persons corpses;
– database of stolen cars, works of art, cultural values, antiques, jewelry, etc .;
– database of small arms;
– database of DNA profiles.

The information to the databases is provided by the member states of this organization, and is used by the competent authorities in order to solve the set tasks. Currently, one of the priority

areas of international cooperation is exchange dactyloscopic information and DNA profiles on Interpol data banks [9, p. 10]. Other projects on international cooperation, harmonization, best practices and standard processes, national contact points and joint investigation teams (JITs), judicial training and on-site assistance, etc. are also attracting attention.

**Conclusions.** In summary, it should be noted that in the context of a successful fight against transnational crime, there is a need for the functioning and coordinated interaction of judicial and law enforcement agencies along with expert institutions. Despite the existence of different opinions and numerous discussions of scientists, we believe that such cooperation of expert institutions of Ukraine in the international space is possible only in the absence of a monopoly, but compliance with European standards, the use of common research methods and more.

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## МІЖНАРОДНИЙ ДОСВІД ВИКОРИСТАННЯ СПЕЦІАЛЬНИХ ЗНАНЬ В ПОЛІЦЕЙСЬКІЙ ДІЯЛЬНОСТІ

**Анотація.** В науковій статті зосереджено увагу на міжнародному досвіді використання спеціальних знань в поліцейській діяльності. Розглянуто функціонування та взаємодія окремих міжнародних організацій, таких як: Europol, Eurojust, CEPOL, Frontex, Інтерпол, УНЗ ООН, ISO, IFSA. Окрему увагу приділено Європейській професійній експертній мережі, яка представлена Європейською мережею інститутів судової експертизи (ENFSI), Європейською мережею підготовки суддів (EJTN) та Робочою групою правоохоронних органів (LEWP).

Розкрито структуру ENFSI, членами якої є Державний науково-дослідний криміналістичний центр МВС України, Київський науково-дослідний інститут судових експертиз Міністерства юстиції України та Харківський Інститут судових експертиз імені професора М. Бокаріуса. Зазначено основні напрями діяльності ENFSI щодо надання послуг з обміну знаннями та навчання відповідно до національних та міжнародних стандартів, а також акцентовано на забезпеченні навчання в галузі судової експертизи та нових розробок для правоохоронних органів. Висвітлено співробітництво Експертної служби МВС України та Інтерполу в частині обміну інформацією щодо певних баз даних.

Проаналізовано наукові висловлювання щодо функціонування експертних установ, їх структури та контролюючих органів, висловлено власні зауваження з цього приводу. Зокрема, для підвищення якості надання експертних послуг на міжнародній арені запропоновано дотримання європейських стандартів, використання єдиних методик проведення досліджень, відсутності монополії в експертній діяльності. Наголошено на взаємодії правоохоронних органів з різними службами, органами, організаціями, де значну роль відіграють експертні установи.

***Ключові слова:*** *експертна діяльність, міжнародне співробітництво, міжнародні організації, експертні установи.*

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# SPECIALLY AUTHORIZED ENTITIES IN THE FIELD OF ANTI-CORRUPTION

**Abstract.** The article describes and analyzes the current anti-corruption policy of Ukraine. The main methods and means of combating corruption at the present stage of formation of Ukrainian statehood are identified.

The main markers that show the existence of corrupt connections in one or another power structure have been identified. Considers the issue of establishing close and effective cooperation between the anti-corruption bodies of Ukraine during the investigation of criminal offenses (crimes) of corruption. The impact and role of each entity involved in the pre-trial investigation and trial is assessed.

***Keywords**: corruption, state policy in the field of corruption prevention, anti-corruption bodies, officials, system of measures to prevent and combat corruption.*

**Relevance of the study.** Unfortunately, corruption is an urgent problem in Ukraine. Corrupt relations are increasingly displacing legal relations, which, of course, threaten its future. Recently, the extremely difficult socio-economic and political situations, the annexation of part of the country and the actions of separatists in some regions, both internal and external, have destroyed the already ineffective anti-corruption policy of the state, which is not fully operational. All this does not give grounds for an optimistic forecast of a decline in corruption in Ukraine.

It is worth noting that no country in the world has full immunity from corruption – they differ only in size, nature of manifestations and scale of impact on the socio-economic and political situation. In countries where corruption is widespread, it transforms from a social problem into regularity and becomes a common way of solving problems, becoming the norm of power and way of life for a large part of society. In countries where this phenomenon is relatively rare, corruption in the public consciousness is associated with great harm to the state and its citizens and has no significant impact on public life.

Despite the establishment and operation of the National Agency for the Prevention of Corruption, the Specialized Anti-Corruption Prosecutor's Office and the National Anti-Corruption Bureau, the issue of combating corruption still remains open, as there is no single mechanism to bring corrupt officials to justice. stage of court proceedings.

**Recent publications review.** Coverage of various aspects of corruption problems and improvement of the domestic one anti-corruption legislation is devoted to the work of the following scientists: Yu. Baulin,V. Bodnar, O. Busol, V. Vasilevich, V. Glushkov, V. Golina, O. Dzhuzha, O. Zhytny, A. Zakalyuk, O. Kalman, V. Kozlenko, O. Kostenko, O. Kulik, O. Litvinov, M. Melnyk, A. Savchenko, V. Shakun and others.

At the same time, today there is a real one the need for a systematic study of the problem of formation of modern anti-corruption bodies. Only a fragmentary issue of the

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formation of individual anti-corruption bodies, in particular the National Anti-Corruption Bureau of Ukraine, is analyzed in dissertation research V. Kozlenko

**The article's objective** is systematic analysis of the formation and development of anti-corruption bodies of Ukraine and modern anti-corruption policy of our state.

**Discussion.** Ukraine's signing of the UN Convention against Corruption on December 11, 2003 can be considered a positive step in anti-corruption activities. In addition, a number of anti-corruption measures have been introduced at the state level, including criminal justice reform, judicial reform, taxation and administration, and improved access to public information, including data on those who have committed corruption offenses [1, p.76].

At the same time, according to international experts, a breakthrough in overcoming corruption, unfortunately, did not happen. There are systemic shortcomings in the activities of the newly created bodies, the main of which are the lack of clear delineation of jurisdiction between them, as well as subordination to different branches of government (the Prime Minister of Ukraine and the President of Ukraine, respectively).

As a result, practical steps in the fight against corruption are still too few, and the anti-corruption tools used so far have proved ineffective. The number of corruption offenses is growing, and the number of registered criminal offenses and convictions related to corruption does not correspond to the actual spread of this negative phenomenon [2].

It is considered that the reporting on the state of anti-corruption is imperfect due to the lack of generally accepted criteria for assessing corruption, the effectiveness of law enforcement agencies with other public authorities in covering this information. Corruption is often the best way to fight bureaucracy.

Due to the complexity and confusion of the provision of services by the Ukrainian authorities, in many cases the illicit gain helps to resolve a particular case. The Ukrainian state system of government has remained essentially Soviet, and it is unable to function effectively in a market economy. Corruption, which has become a kind of market mechanism, makes it more flexible [3, p. 16].

It should be noted that most legislative initiatives in the field of anti-corruption policy are aimed at strengthening the responsibility of individuals for corruption, which directly affects the growth of corruption: increasing the level of responsibility – increasing the risk of prosecution - increasing corruption. But such measures affect the consequences of corruption, not their causes. The situation can be radically changed only by eliminating corruption opportunities in the current Ukrainian legislation, which contains many gaps, opportunities to "bypass" a particular rule, a number of conflicting rules.

The experience of countries around the world in preventing and combating corruption, taking into account the specifics of their public administration systems, is of great interest to Ukraine. Such developments can be used both in the practice of individual state anti-corruption institutions and in the development of regulations aimed at reducing the effects of corruption in public administration.

World experience in preventing and combating corruption allows us to summarize the most characteristic trends and mechanisms, the adaptation of which can be useful for Ukraine. Priorities here for our country can be:

– dissemination of information measures on anti-corruption measures and their consequences, aimed at raising public awareness and promoting public rejection of corruption as a very negative phenomenon through the implementation of various educational programs and projects aimed at combating corruption;

– strengthening the role of public organizations in anti-corruption activities, their effective participation in supervisory and advisory boards of all authorities and specialized anti-corruption institutions, creating opportunities for public organizations;

– pay more attention to preventive and anti-corruption incentives than to repressive ones (while increasing the professionalism and efficiency of anti-corruption officers in order to create conditions for the inevitability of punishment of all corrupt officials, regardless of their affiliation with certain political parties, etc.);

– wider integration of Internet platforms and improvement of interactive pages for quick response to citizens' complaints about corruption (simultaneously with the introduction of legal liability for failure to take measures to immediately record such reports by law enforcement officials) [4, p. 12].

Most European countries are pursuing effective public administration reforms to create an enabling environment to prevent corruption. Let's look at a few examples. In Sweden in the

XIX century, a set of measures was taken to combat corruption, which made it a pioneer in this field. Important attention was paid to setting moral and ethical standards for civil servants, who at that time minimized cases of bribery.

This was facilitated by the creation of an independent judiciary, and the exclusive rights of the state and the transparency of public administration were adopted and introduced. Public opinion played an important role in this, strongly condemning all those guilty of corruption and even forcing them to resign.

US anti-corruption laws are systemic. They also include rules governing lobbying, banking, stock exchanges and other activities. And while this is not a guarantee of the complete elimination of corruption, its level in the United States is much lower than in other states [5, p. 593]. The fight against corruption is facilitated by the fact that there is no immunity for civil servants in the United States. Any civil servant, including the president, congressman and senators, can be prosecuted, albeit in a special manner (after impeachment).

Given the long process of European integration of Ukrainian legislation, it is important to refer to the Association Agreement between Ukraine and the European Union, in which the parties agreed to cooperate in combating and preventing criminal and illegal activities, organized or other corrupt activities. This cooperation is aimed at solving such problems as corruption in the private and public sectors [6, p. 13].

One of the most important measures to effectively fight corruption is a proper set of rules prohibiting illegal behavior that harms both the state and citizens. It is important to understand that such a set should include not only legal prohibitions, but also certain measures to prevent corruption and aimed at limiting and reducing the causes of this phenomenon. In this case, the problem of combating corruption concerns not only the proper punishment for corruption, but also aimed at combating the root causes and reducing the favorable conditions for corruption. Indeed, today in Ukraine there is an extremely high level of corruption, which is recognized not only by domestic and foreign analysts, experts, public and international organizations, but also by domestic representatives of the highest legislative and executive branches [7, p. 96].

It is important that in Ukraine, as in the rest of the world, corruption is associated with serious political, economic and social problems. This is considered one of the most dangerous phenomena of our time, which can motivate the unregulated activities of state bodies, slow down economic development, threaten many elements of the constitutional and social system, as well as national security.

Corruption undermines the foundations of a democratic system, trusts in government, and violates the principles of law, justice and equality before the law, responsibility for actions, fair competition, leads to the growth of the shadow economy and the decline of state authority in the international community. It should be noted that corruption in Ukraine did not arise out of nowhere, it arose not suddenly with the independence of our state, but is the result of the historical development of society and the state. However, the current state of this phenomenon in the country has reached unprecedented proportions and influenced political, economic and other social processes. However, without a systematic fight against corruption by the state and society, this phenomenon can spread regardless of its nature. Therefore, the effectiveness of preventing and combating corruption in the process of social stabilization and institutional development of the Ukrainian state is of particular importance. Concentration of power in the hands of a limited group of people and their accountability can lead to the transfer of exaggerated powers to the administrative apparatus, which will worsen not only the economic but also the political situation in the country [8].

Thus, the general analysis of the anti-corruption system in Ukraine shows that the authorities cannot demonstrate their determination to build a stable and effective anti-corruption system. Those with political will are disinterested and unprepared for anti-corruption reforms.

The government's lack of attention to this situation only confirms that the fight against corruption is not a priority on their agenda. Against this background, measures to improve state anti-corruption policy in Ukraine should be aimed at improving national anti-corruption legislation and the institutional system, as well as the need to promote anti-corruption practices in the private sector. Specific anti-corruption measures should be developed individually for different departments, areas of activity that are considered the most risky. This means that special anti-corruption measures should not be taken in isolation, but in combination with general measures or in addition to them.

Thus, some recommendations are suitable for several target areas, while others

(especially specialized) can be applied only in limited areas. It should be borne in mind that in Ukraine, when creating a new national anti-corruption model, universal approaches were sometimes used to combine preventive and repressive functions within one institution, and specialized institutions were created that combine several preventive functions [9, p. 69].

Thus, Ukraine has created sufficient legal requirements for the development of an effective state mechanism for preventing and combating corruption, all that remains is to do everything in practice and prove the real effectiveness of the anti-corruption mechanism.

In analyzing possible mechanisms for streamlining and optimizing the functional and organizational structure of modern anti-corruption bodies, namely: the National Agency for Prevention of Corruption, the Specialized Anti-Corruption Prosecutor's Office and the National Anti-Corruption Bureau, two main areas of reform can be identified:

1) rationalization of tasks and functions of anti-corruption entities;

2) rationalization of the institutional structure of anti-corruption entities and their interaction.

The first group should include ways to rationalize the relevant structure, which is associated with the redistribution of existing areas and tasks of combating corruption, their standardization and reduction. The second group is the mechanisms of rationalization, which provide for a change in the anti-corruption vertical, standardization of responsible bodies and their possible decentralization [10, p. 261].

In the context of this study, the powers of the main anti-corruption bodies should be singled out. The Specialized Anti-Corruption Prosecutor's Office is an independent structural subdivision of the General Prosecutor's Office of Ukraine, established by the Order of the Prosecutor General Viktor Shokin dated September 22, 2015. The powers of the SAP are:

– supervising compliance with the law during the operational and investigative activities of the pre-trial investigation by the National Anti-Corruption Bureau of Ukraine;

– support for public prosecution in relevant proceedings;

– representation of the interests of a citizen or the state in court in cases provided by law and related to corruption or corruption-related offenses.

The Prosecutor General forms the Specialized Anti-Corruption Prosecutor's Office, determines its structure and staff (number of staff) in agreement with the Director of NABU. In this case, the head of the SAP reports directly to the Prosecutor General and is his deputy.

The general structure includes the central office and territorial branches, which are located in the same cities as the NABU territorial offices. Interestingly, the SAP is located in the same NABU offices or in the prosecutor's offices, which are located separately from other prosecutor's offices [11, p.49]. The task of the National Bureau is to combat corruption and other criminal offenses committed by senior officials authorized to perform state or local government functions and pose a threat to national security, as well as to take other measures provided by law to combat corruption.

The National Agency for the Prevention of Corruption is a central executive body with a special status. NAPC is responsible for the formation anti-corruption policy and prevention of corruption. The National Agency was established in accordance with Of the Law of Ukraine "On Prevention of Corruption". NAPC works in the following areas:

– analyzes the situation with corruption in Ukraine and develops an appropriate one Anti-corruption strategy and the state program for its implementation, as well as coordinates the implementation of these documents;

– detects corruption norms in the legislation and draft acts;

– monitors compliance with the rules of ethical conduct, legislation on prevention conflict of interest in the activities of public servants;

– coordinates and provides methodological assistance to state and local self-government bodies in identifying and eliminating corruption risks in their activities, coordinates and monitors implementation anti-corruption programs in these bodies;

– monitors and checks declarations of public servants, to spend monitoring their lifestyle;

– monitors compliance with restrictions on financing of political parties, legal and targeted use of funds allocated from the state budget by parties, timeliness of submission of relevant reports by parties and accuracy of information included in them, distributes funds allocated from the state budget to finance the statutory activities of political parties;

– cooperates with whistleblowers, provides them with legal and other protection.

Given the possible schemes of rationalization of the functional structure of the subjects of anti-corruption, scientists identify three possible ways to distribute the relevant anti-

corruption functions:

1) transfer of all anti-corruption functions to a single system of multi-purpose institutions with the powers of law enforcement agencies, as well as the implementation of preventive functions;

2) distribution of anti-corruption functions between profile units of law enforcement agencies;

3) transfer of functions related to the prevention of corruption, policy development and coordination of relevant activities to a specialized body, which leaves the investigation of corruption offenses in the general system of law enforcement agencies [12, p. 7].

The first scheme provides a systematic approach to solving the existing problems of the functional structure of anti-corruption actors, as it eliminates the conflict of competences and concentrates all relevant powers in one body. The first scheme allows you to combine all three functions - preventive, punitive and educational – in one subject.

It also speeds up the investigation process and eliminates the need for coordination between different agencies. At the same time, this approach is the most costly.

The second program includes the distribution and optimization of anti-corruption functions among the already established state anti-corruption bodies. The last scheme of distribution of powers and functions in the field of anti-corruption provides for the creation of a specialized body that has only functions to investigate the most important and serious cases of corruption, as well as powers to coordinate and control anti-corruption [13, p. 194].

Regarding the modernization of the organizational structure of anti-corruption actors, two directions should be distinguished:

1) increasing the formal and financial independence of authorized bodies;

2) change of the institutional structure of bodies on the basis of coordination and reorganization relations.

An analysis of the domestic experience in the fight against corruption shows that the implementation of the principle of independence must inevitably be limited to strict and transparent control measures. Ensuring the independence of anti-corruption actors is possible by weakening subordinate relations in favor of re-coordination and giving all subordinate entities the opportunity to make independent decisions at their own discretion [14, p. 176].

**Conclusions.** Finally, it should be remembered that there are no universal means of combating bribery and corruption. It is necessary to choose the way which the state should develop independently, proceeding from the local legislation, mentality, traditions, etc. It is necessary to look for a national way to fight corruption, taking into account foreign experience. The experience of Eastern countries is unlikely to be effective for Ukraine due to the rigidity of the hierarchy of subordination of state and local authorities.

A necessary aspect that still needs to be taken into account in all countries is the development of civic consciousness, which helps to change perceptions and strengthen communication in the fight against corruption.

*Conflict of Interest and other Ethics Statements*

The authors declare no conflict of interest.

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**СПЕЦІАЛЬНО УПОВНОВАЖЕНІ СУБ'ЄКТИ У СФЕРІ ПРОТИДІЇ КОРУПЦІЇ**

**Анотація.** Аналізується система антикорупційних органів України. Розглядаються основні функції Спеціалізованої антикорупційної прокуратури, Національного антикорупційного бюро України, Національного агентства з питань запобігання корупції, Державного бюро розслідувань, Національного агентства України з питань виявлення, розшуку та управління активами, одержаними від корупційних та інших злочинів, Вищого антикорупційного суду.

Визначаються основні проблеми в системі роботи органів державної влади та місцевого самоврядування, пропонуються шляхи взаємодії зазначених органів державної влади. Обґрунтовується необхідність прийняття системного нормативно-правового акта України щодо реалізації антикорупційної політики із зазначенням ролі кожного антикорупційного органу, критеріїв його ефективності та результативності, показників виконання антикорупційних заходів.

У статті охарактеризовано та проаналізовано сучасну антикорупційну політику Україну. Визначено основні методи та засоби протидії корупції на сучасному етапі становлення української державності. Визначено основні маркери, які демонструють наявність корупційних зв'язків в тій чи іншій владній структурі.

У статті розглянуто питання налагодження тісної та ефективної співпраці між антикорупційними органами України під час розслідування кримінальних правопорушень (злочинів) корупційного спрямування. Оцінено вплив та роль кожного суб'єкта, який бере участь у досудовому розслідуванні та судовому розгляді. З'ясовано проблеми доказування на кожній стадії розслідування і судового розгляду та охарактеризовано особливості збирання, фіксації, використання та оцінки доказів. Встановлено, що за умови співпраці можливе відновлення прав та свобод людини, держави у кримінальних провадженнях та притягнення винних осіб до кримінальної відповідальності.

***Ключові слова:*** *корупція, державна політика у сфері запобігання корупції, антикорупційні органи, службовці, система заходів запобігання та протидії корупції.*

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# METHODOLOGY OF RESEARCH THE PROBLEMS OF USE THE PUBLIC BY CRIMINAL POLICE DIVISIONS DURING THE COUNTERACTION THE CRIME

**Abstract.** The article deals with the definition of the methodological basis for the study of the problems of public use by criminal police units in combating crime. Based on the analysis and generalization of works of domestic and foreign scholars who developed the methodology of legal research, including in the theory of operational and investigative activities, the author stated their debatability and importance for learning about various aspects of public use by criminal police units in combating crime.

The author has noted that in the modern scientific literature, along with research methods, modern methodological approaches are involved in cognitive tools as a structural element of the methodology of general theory of law, as well as the principles of scientific knowledge as its basic system-forming element.

***Keywords**: public, methodology, method, scientific knowledge, operative-search counteraction to crime.*

**Relevance of the study**. The result of the study of the problems of public use by criminal police units in combating crimes, first of all, depends on the adequacy of the chosen methodological tools (methodology), which will be used to carry out the cognitive process.

In legal doctrine, methodology is a complex and multifaceted problem, the solution of which is of decisive practical importance.

Therefore, the definition of tools that will be used to provide scientific knowledge of the problems of public use by criminal police units in combating crime is an extremely important issue that requires proper theoretical justification. Its successful solution will allow to form new system convincing knowledge, substantiate conclusions and offer recommendations for improving the implementation of activities in this area, as well as forms and means of their implementation.

**Recent publications review**. Issues of legal research methodology have been developed by both domestic and foreign scholars, in particular, S. Husaryev, I. Danshyn, A. Zelinskyy, O. Kostenko, M. Kelman, D. Kerimov, R. Lukich, P. Rabinovych, O. Skakun, O. Tykhomyrov, Yu. Todyka, V. Fedorenko, O. Yarmysh and others. Significant scientific value in the context of the subject of our study are the works of E. Didorenko, I. Kozachenko, Ya. Kondratyev, O. Kyrychenko, O. Shevchenko, V. Shendryk, V. Khmelenkj and O. Yukhno, which highlighted the methodological foundations of scientific research on crime prevention by criminal police units.

The scientific literature on this issue notes the importance of preventive and preventive, including to a large extent - public activities, within the civilizational direction of transformational changes that occur in the fight against crime [1, p. 112]. However, the question of the methodological basis of the study of operational and investigative principles of public use in combating crime has remained out of the attention of scientists, which necessitates the intensification of scientific research in this area.

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**The article objective** is to determine the methodological basis for studying the problems of public use by criminal police units in combating crime.

**Basic content**. Given the available research on the methodology of legal research methodology, it should be noted that the concept of "methodology" is interpreted differently by scientists. In particular, R. Lukic defines it as a set of methods used in science or other fields of knowledge [2]. M. Kelman interprets this concept as the doctrine of the structure, logical organization, methods, means and forms of activity of the researcher in the process of cognition of the phenomena he studies [3, p. 44]. According to D. Kerimov, the methodology of law is a general scientific phenomenon that combines the whole set of principles, means and methods of cognition (worldview, philosophical methods of cognition and doctrine, general and private scientific concepts and methods), which are developed by all social sciences, including legal sciences, and are used in the process of cognition of the specifics of legal reality, its practical transformation [4, p. 15].

In the context of the theory of operational and investigative activities for the first time comprehensively considered the methodology of A. Alekseyev and G. Sinilov. Scientists have stated that the task of the theory of operational and investigative activities is to investigate the peculiarities of the application of general scientific methods and techniques for the study of operational and investigative problems [5]. Later D. Grebelsky stressed the justification and fruitfulness of the integrated use of the theory of operational and investigative activities of scientific methods of cognition, which are developed and applied in other fields of scientific knowledge (criminology, psychology, sociology, management theory, etc.) [6, p. 101].

Without going into the discussion about the interpretation of the concept of "methodology", we note that in the modern scientific literature, along with research methods to the cognitive tools involved modern methodological approaches as a structural element of legal methodology [7, p. 116]. Scientists see the source of their origin in the so-called interdisciplinary "methodological" translation, ie the development of new elements of methods of other sciences to update, improve the actual methods of jurisprudence [8, pp. 23-24].

No less important methodological function in the theory of operational and investigative activities are the principles of scientific knowledge. After all, using the principles of general scientific knowledge, the theory of operational and investigative activities can adapt those of them that "work" to obtain new scientific knowledge [9, pp. 13-14]. Indeed, the principles laid down in the methods and methodological approaches are designed to ensure the conceptuality of scientific research by its irrefutability [8, p. 25].

Thus, along with such components of the methodology of knowledge of the problems of public use by criminal police units in combating crime, as methods and methodology approaches, principles should be recognized as its basic system-forming element.

Undoubtedly, the central place in scientific methodology, including the theory of operational and investigative activities, is occupied by methods of scientific knowledge.

It should be noted that the analysis of the views of scientists on the structure of the methodology of legal science, including research on the problems of operational and investigative activities, showed that some scientists build it on three levels: 1) philosophical; 2) general science; 3) special-scientific (special-branch), others – on four: 1) methods that directly follow from the philosophical dialectical method as a general method of cognition; 2) general scientific methods; 3) methods of other sciences used by one science in the cognition of objects that belong to the subject of other sciences, but in part, in a certain perspective, is the subject of cognition of this science; 4) methods of a certain science, which are the result and part of the development of its own theory (theories) [1, p. 99], the third states that the methodology of operational and investigative activities consists of other levels: 1) general scientific methods used in all sciences in the study of social phenomena, similar in structure to operational and investigative legal relations; 2) branch (special) methods developed by branch scientific disciplines for the decision of the private specific problems, or methods of other branches of knowledge, modified and adapted to the decision of problems of the theory of ORD; 3) methods of scientific research of specific problems of operational and investigative activities [10, p. 61]; the fourth believe that it consists of only two levels: 1) dialectical; 2) general science [6, p. 102].

Without going into the discussion on this issue, let's just note that more balanced, in our opinion, is the position of Academician M. Kostytsky: when determining the methodology of a specific scientific research, it is not necessary to cover oneself with only one methodology, it can look like a "mosaic of methods" [11, p. 18].

The choice of methodology for studying the problems of public use by criminal police units in combating crime is primarily determined by the dominant paradigm of sociology at the present stage of legal science development, which focuses on clarifying the dependence of state and social phenomena and processes on the current state of development the civil society as a whole. It is also important to emphasize the important role of the researcher's worldview – human-centeredness in society and the state, in choosing the principles, approaches and methods of understanding the problems of public use by criminal police units in combating crime. It consists of three interdependent components:

1) general (civil) attitude of the researcher to the objects of knowledge;

2) special (professional) attitude of the researcher to the objects of knowledge (depending on the researcher's affiliation to one or another scientific school);

3) from the methods, techniques and tools used by the researcher in order to know a particular object [4, p. 25].

The conceptuality of scientific research on the problems of public use by criminal police units in combating crime will inevitably provide the following principles of knowledge of social phenomena, legal and other relations that arise in operational and investigative activities to combat crime, as objectivity, comprehensiveness, historicism, complexity , determinism, development, unity of theoretical and empirical, as well as theory and practice of operational and investigative activities.

Thus, the principle of objectivity requires a study of the use of the public by criminal police units in combating crime in their diversity, complexity and inconsistency, taking into account all true facts that correspond to objective reality, both positive and negative, regardless of their sub ' effective perception and evaluation.

According to the principle of comprehensiveness and completeness, social phenomena, legal and other relations that arise in operational and investigative activities in the field of combating crime in public use should be studied not separately, but in their relationship and interaction with other phenomena (institutions). In particular, with state and legal phenomena, development of economy, politics, ideology, culture, science, technology, education, etc.

The principle of historicism will provide an opportunity to explore the problems of public use by criminal police units not only from the point of view of the present, but also taking into account the peculiarities of this activity in the past and predict possible directions of its development.

Guided by the principle of complexity, scientific research on this problem will be conducted not only from the standpoint of legal phenomena, but also from the standpoint of other social sciences, such as philosophy, sociology, psychology, public administration and others. The principle of determinism requires the establishment of causal links between the studied phenomena and the process of public use by criminal police units in combating crime, on the one hand, and the objective laws of crime and the formation of factual data about it, on the other hand. Adherence to this principle is the key to gaining new scientific knowledge to improve the practice of operational and investigative activities with public participation in combating crime, primarily to develop innovative organizational, legal and tactical principles for using its capabilities. In accordance with the principle of development, the process of developing theoretical and methodological, organizational, legal and tactical principles of public use by criminal police units in combating crime is considered in the dynamics of its changes under the influence of a set of internal and external determinants. The principle of unity of theoretical and empirical will ensure the integrity of the structure of this study, as well as the practical verification of cognitive problems.

Extremely important methodological role belongs to the principle of unity of theory and practice of operational and investigative activities, because the process of scientific knowledge is determined by the tasks and needs of practice. Practice is a source of new knowledge about the problems of public use by criminal police units in combating crime, the criterion of their truth, as well as the end result of knowledge.

It should be emphasized that an important role in the process of cognition belongs to such an element of methodology as the methodological approach (one of the main components of the paradigm, a set of interdependent scientific methods) [12, pp. 73-75]. The purpose of methodological approaches, scientists see in determining the frontal strategy of legal research, updating it with their goals and objectives in the case when there is a lack of their own methods and the need to use other methods – philosophical, scientific [8, p. 24].

Based on the complexity and versatility of the subject of research (theoretical and

applied principles of public use by criminal police units in combating crime), we believe that its methodological basis should be based on such methodological approaches as comprehensive (to ensure holistic, comprehensive and systematic study) and axiological which is based on the theory of natural human rights and its recognition of the highest social value).

The next structural element of the research methodology are methods of cognition, which, in the context of the subject of our study, can be defined as a set of techniques, methods and tools that are effective for understanding public use of criminal police units in combating crime, namely:

1) the dialectical method, which is based on the epistemological possibilities of the laws and categories of dialectics, reveals the objective laws of operational and investigative practice of using the public in combating crime. In particular, the law of transition from quantitative to qualitative changes characterizes the way of evolution of organizational, legal and tactical principles of this activity; the law of negation of objections provides an opportunity to predict changes in its legal regulation that occur as a result of the development of civil society and the development of the rule of law in Ukraine. Such categories of dialectics as "essence" and "phenomenon", etc., are crucial for clarifying the place of the public in the system of combating crime;

2) logical methods of analysis and synthesis, deduction and induction, abstraction allow to reveal the content of the conceptual and categorical apparatus in the field of public use by criminal police units, to formulate and substantiate intermediate and general conclusions, as well as logical-semantic analysis of its legal regulation. and development of proposals for their elimination, etc.;

3) system-structural method, the use of which is due to the complexity of the object of study - the public, which is also considered in the system of combating crime, reveals systemic links, dependencies, provides more complete and in-depth knowledge of their properties and qualities deep foundations of determination, functioning, social activity, etc.;

4) a special legal method ensures the disclosure of the content of legal provisions that establish the legal basis for the use of the public by criminal police units in combating crime;

5) the comparative method allows to identify similarities and differences in the legal regulation and organization of public use in combating crime in Ukraine and abroad;

6) the method of legal modeling, the use of which is due to the need to develop proposals for improving national legislation in the field of legal regulation of public use in combating crime;

7) sociological methods (surveys, study of documents, expert assessments) provide the necessary empirical data on this issue on the practical experience of public use by criminal police units in combating crime;

8) statistical methods (observation, grouping, generalization of indicators) are used to summarize the results and representation of data obtained during the study of empirical material.

**Conclusions**. The methodology of researching the problems of public use by criminal police units in combating crime should be understood as the above system of principles, approaches and methods of cognition, which, in our opinion, is the best for solving certain research problems.

*Conflict of Interest and other Ethics Statements*

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## МЕТОДОЛОГІЯ ДОСЛІДЖЕННЯ ПРОБЛЕМ ВИКОРИСТАННЯ ГРОМАДСЬКОСТІ ПІДРОЗДІЛАМИ КРИМІНАЛЬНОЇ ПОЛІЦІЇ ПІД ЧАС ПРОТИДІЇ ЗЛОЧИННОСТІ

**Анотація.** Стаття присвячена визначенню методологічних основ дослідження проблем використання громадськості підрозділами кримінальної поліції під час протидії злочинам. Автор за результатами проведеного аналізу та узагальнення праць вітчизняних і зарубіжних вчених, які розробляли питання методології правових досліджень, у тому числі в теорії оперативно-розшукової діяльності, констатував їх дискусійність і значимість для пізнання різних аспектів використання громадськості підрозділами кримінальної поліції під час протидії злочинності.

Зазначається, що у сучасній науковій літературі поряд із методами дослідження до пізнавального інструментарію залучені сучасні методологічні підходи як структурний елемент методології загальної теорії права, а також принципи наукового пізнання як її базовий системоутворюючий елемент.

Вибір автором методології дослідження проблем використання громадськості підрозділами кримінальної поліції під час протидії злочинам, насамперед, обумовлений парадигмою соціологізму, що орієнтує на з'ясування залежності державно-правових, а також соціально-правових явищ і процесів від сучасного стану розвитку громадянського суспільства в цілому, криміналізації населення, а також обумовлені світоглядною позицією людиноцентризму в суспільстві та державі.

Обґрунтовано висновок про те, що концептуальність наукового дослідження проблем використання громадськості підрозділами кримінальної поліції під час протидії злочинам своєю неспростовністю забезпечать такі принципи пізнання соціальних явищ, правових та інших відносин, які виникають у оперативно-розшуковій діяльності щодо протидії злочинності, як об'єктивність, всебічність й повнота, історизм, детермінізм, принцип діалектичного розвитку, єдності теорії та практики оперативно-розшукової діяльності тощо. З огляду на складність предмета дослідження обґрунтовано необхідність використання загальнонаукових формально-логічних методів аналізу та синтезу, індукції та дедукції, системно-структурного та моделювання; спеціально-юридичного, компаративістського, соціологічних, статистичних методів на основі комплексного та аксіологічного підходів тощо.

***Ключові слова:*** *громадськість, методологія, метод, наукове пізнання, оперативно-розшукова протидія злочинності.*

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# THE ROLE OF JUDICIAL EXAMINATION IN THE INVESTIGATION OF THE FACTS OF TORTURE

**Abstract.** The Istanbul Protocol has only been partially implemented in Ukraine. In its reports on the results of its visits to Ukraine, the European Committee for the Prevention of Torture called on the government to declare a policy of "zero tolerance" of torture and ill-treatment [6]. In April 2017, the National Preventive Mechanism against Torture announced its intention to promote the implementation of the document. This decision was made during a preparatory meeting before strategic planning. In the summer of 2017, the Ministry of Health announced the establishment of a working group to develop a medical standard.

***Keywords:*** *Istanbul Protocol, torture, torture investigation, crime prevention.*

**Relevance of the study.** The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Criminal Code of Ukraine describe the concept of "torture" as the deliberate intentional infliction of severe pain or physical or moral suffering on a person. Severe physical pain or physical or moral suffering is known to be a subjective manifestation/reaction of a person's trauma [4].

Objective signs of this condition are injuries or traces of injuries. Investigation of the nature and extent of bodily harm inflicted on a person is part of the procedure for investigating the alleged use of torture, as regulated by the Istanbul Protocol, and plays a very important role as a source of objective information about the circumstances of a possible crime. The Istanbul Protocol is the abbreviated title of the document "Guidelines for the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment", submitted to the United Nations on 9 August 1999.

About 40 organizations took part in its development. The document defines the procedures and standards for recording injuries, the procedure for conducting psychiatric examinations, the algorithm of interrogation of victims and witnesses, the sequence of evidence collection, ethical principles and principles of effective investigation of cases of torture.

**Resent publications review.** The theoretical basis of the study were the works of Ukrainian and foreign scientists: O. Bandurka, V. Bakhin, R. Belkin, P. Bilenchuk, O. Vasiliev, V. Veselsky, A. Volobueva, T. Volchetskaya, I. Gerasimova, M. Danshina, V. Drozd, V. Zhuravlya, S. Zdorovko, V. Karagodina, O. Kolesnichenko, V. Kolmakova, R. Shevchuk, and others.

**The article;s objective** is to study the mechanism of effective investigation, which leads to adequate punishment and, accordingly, compensation to victims.

**Discussion.** Investigation and expert assessment of bodily injuries inflicted on a person within the pre-trial investigation of the facts of their infliction is carried out during a forensic examination in accordance with the Law of Ukraine "On Forensic Examination". According to Article 242 of the Criminal Procedure Code of Ukraine, the examination is conducted by an expert institution, expert or experts on behalf of the investigating judge or court, provided at

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the request of a party to criminal proceedings or if special knowledge is required to clarify the circumstances relevant to criminal proceedings [2, 3].

Article of the Law of Ukraine "On Forensic Examination" entrusts the performance of forensic medical examinations exclusively to state forensic specialized institutions of the Ministry of Health [1, 3].

When conducting a forensic medical examination of bodily injuries, the fact of infliction of bodily injuries, their nature, mechanism and prescription of infliction, the possibility of their occurrence in specific circumstances, as well as the degree of their severity shall be established. In this case, the rules of forensic determination of the severity of injuries, one of the criteria for their assessment is the infliction of mental illness. The document in which the forensic expert formulates his conclusions in the form of reasonable answers to the questions is the expert's opinion.

The expert gives an opinion on his behalf in writing and is personally responsible for it. The expert's opinion is not binding on the person or body conducting the proceedings, but disagreement with the expert's opinion must be motivated in the relevant resolution, decision, and sentence. The current legal framework does not provide for any peculiarities in the appointment and execution of forensic medical examination on the facts of torture and ill-treatment, which would be different from other cases of infliction of bodily harm.

Special Report of the Commissioner for Human Rights of the Verkhovna Rada of Ukraine Article 126 of the Criminal Code of Ukraine and may be manifestations of torture and ill-treatment), stipulate that the forensic expert does not qualify the injury as torture and slaughter, as it is not within his competence.

In such cases, the forensic expert must establish the presence, nature, location, number of injuries, simultaneity or timeliness of their formation, features of damaging objects, the mechanism of their action, as well as the severity of injuries. The decision of the Plenum of the Supreme Court of Ukraine also emphasizes that determining the presence of signs of special cruelty, torture, slaughter and torture is the competence of the court. Therefore, the decision on the presence of these signs in bodily injuries does not belong to the competence of a forensic expert. In his opinion, the expert can only indicate the possibility of causing the identified injuries in specific circumstances [4].

It should be noted that the Istanbul Protocol is not a mandatory document. But international law obliges governments to use it to investigate and document cases of torture and other ill-treatment in order to effectively investigate such cases and punish those responsible.

The European Union refers to the Istanbul Protocol in its 2001 resolution, which states that States must conduct prompt, impartial and effective investigations into all allegations of torture in accordance with the Principles set out in UN Commission on Human Rights resolution/2000/43 and must establish and use effective domestic procedures for responding to complaints and investigations and reports of torture and ill-treatment in accordance with the Istanbul Protocol. [5]

We will not go into a historical digression and consider the evolution of the system of international norms to combat torture and other forms of inhuman treatment, but only in fairness will note that there has been a transition from general to individual, from protection of human rights in general to the right to protection from torture, and other forms of inhumane treatment. This trend can be seen not only in the protection of torture, but also in the protection of property rights, the right to respect for private and family life, freedom of expression.

Concerning the prohibition of torture and other cruel punishment in the case law of the European Court of Human Rights (hereinafter - the ECtHR). Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") provides that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. This is a negative obligation of the High Contracting Party to the Convention, which obliges the state to refrain from any act - torture or treatment, which is prohibited by the above article [5-6].

The case law of the ECtHR, guided by the principle of effective and dynamic interpretation, has expanded the safeguards of the Convention, finding that the effectiveness of investigations into ill-treatment is one of the "positive responsibilities of the State" under Article 3 of the Convention. For example, in "Kobzar v. Romania", application № 48254/99, the ECtHR concluded that there had been a violation of Article 3 of the Convention, both procedurally and substantively.

In particular, the ECtHR concluded that there had been a violation of Article 3 of the Convention because the bruises received by the applicant and the injuries he had received

while in police custody were serious enough to constitute a violation of Article 3 of the Convention. However, the ECtHR acknowledged that the Government had failed to provide evidence to the contrary, in particular by pointing out that any bodily injury caused during a person's stay in a police station or within the jurisdiction of the police must be explained by law enforcement officials.

The ECtHR also determined that the responsibilities of the law enforcement authorities in this case should have included taking the applicant to a doctor or his medical examination. That is, the applicant's treatment was "inhuman or degrading". Moreover, the ECtHR acknowledged that the investigation of the case by the national investigative bodies was not effective and had a number of shortcomings [6, 7].

That is why Article 3 of the Convention contains both procedural and substantive aspects of this provision, which are reflected in the positive and negative obligations of the State, respectively. If the negative obligations of the state do not raise questions about their implementation, as they consist in the obligation of the state only to refrain from torture or ill-treatment prohibited by Article 3 of the Convention, then the positive obligations, with the possible introduction of medical documentation of torture or inhuman or degrading treatment. degrading treatment or punishment under the Istanbul Protocol raises a number of questions about the additional obligations of the state that will be imposed on it.

To date, the number of ECtHR judgments against Ukraine that violate Article 3 of the Convention in terms of effective investigation and positive obligations of the state is 166. While against Poland there are only 29 similar decisions, against France – 4, and against Germany in general only 3. Although all these countries are commensurate in the number of citizens. These statistics show that Ukraine lacks effective tools in the fight against torture that could in practice guarantee the quality of investigations and the accuracy of documenting torture and other ill-treatment.

Thus, in the ECtHR judgment in Korobov v. Ukraine, application no. 39598/03, § 69, the court found that the evidence obtained during the forensic examinations played a key role in the investigation of the detainees, and in cases where the latter file complaints of ill-treatment. From this point of view, one of the tasks of the ECtHR is to determine whether the national authorities have ensured the effective functioning of the system of medical examinations of persons detained by the police.

It should be noted that in the national criminal procedure legislation there are still certain provisions and requirements for recording any bodily injuries or deterioration of the detainee's health, but their implementation and effectiveness cause great skepticism among both lawyers and victims. Therefore, official public investigations into torture and ill-treatment aimed at identifying and punishing those responsible can hardly be called effective within the meaning of Article 3 of the Convention.

But the Istanbul Protocol is useful for judges, prosecutors, lawyers and health professionals primarily because it contains unified legal aspects of the investigation of torture, including:

a) a description of the common purpose of the investigation into the use of torture;

b) basic principles concerning the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment;

c) Procedures for investigating allegations of torture. At the beginning, it is a question of deciding on the appropriate investigative body, and then guidelines are proposed concerning the taking of oral testimony from alleged victims and other witnesses, as well as the collection of physical evidence;

d) the general principles to be followed in setting up a special independent commission of inquiry. These principles have been based on the experience of a number of countries, where independent commissions have been set up to investigate alleged gross human rights violations, including extrajudicial killings, torture and disappearances.

Among other things, the protocol reveals new practical aspects that can be taken as a basis in Ukraine, which include - general considerations concerning the conduct of interviews, physical and psychological evidence of torture.

**Conclusions.** Establishing an effective system for investigating crimes related to torture, cruel, inhuman or degrading treatment or punishment, including enforced disappearance, is already part of the action plan to implement the National Strategy for Human Rights until 2020 year, approved by the order of the Cabinet of Ministers of Ukraine of November 23, 2015 № 1393-r.

Therefore, the development and implementation in Ukraine of a medical standard for

documenting torture or inhuman or degrading treatment or punishment, based on the principles and procedures of the Istanbul Protocol, which will become part of criminal procedure law, will facilitate the investigation of inhumane treatment and punishment of investigators as guilty of such offenses. The introduction of such a medical standard at the national level will also demonstrate the need for full restoration of rights and compensation to the victim by the state, including full and adequate compensation and provision of funds for medical treatment and rehabilitation.

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**РОЛЬ СУДОВОЇ ЕКСПЕРТИЗИ**
**У ДОСЛІДЖЕННІ ФАКТІВ КАТУВАНЬ**

**Анотація.** Конституція України закріплює, що людина, її життя і здоров'я, честь і гідність, недоторканність і безпека визнаються в Україні найвищою соціальною цінністю. Для забезпечення реалізації вказаних положень у нашій країні встановлено кримінальну відповідальність за катування. Проте заборона катувань обумовлює необхідність боротьби з ними не лише формальним прийняттям відповідних нормативних актів, але і реальним притягненням правопорушників до відповідальності. Покарання винних залежить від ефективної діяльності правоохоронних органів щодо виявлення та розслідування зазначених кримінальних правопорушень.

Боротьба з указаним видом злочинів є досить складним напрямком діяльності правоохоронних органів, що обумовлюється кількома чинниками. По-перше, виявлення злочинів ускладнюється їх латентністю, оскільки катування нерідко вчиняють працівники правоохоронних органів і досить кваліфіковано приховують такі факти. По-друге, розслідування катувань може супроводжуватись значною протидією з боку корумпованих службових осіб [2]. По-третє, жертви катувань, вчинених близькими особами, часто замовчують чи перекручують обставини злочину через родинні стосунки та з інших причин. Вищевказане викликає неабияке занепокоєння, зважаючи на збільшення кількості заяв та повідомлень про жорстоке поводження та нелюдське насилля над особою. Половина кримінальних проваджень або закривається, або рішення залишається неприйнятим. Це викликає необхідність посилення боротьби з вказаним видом злочинів на практичному рівні, а також розроблення теоретичних положень щодо їх розслідування.

***Ключові слова:*** *Стамбульський протокол, катування, розслідування катувань, профілактика злочинів.*

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# PROBLEMS OF INTERROGATION OF A JUVENILE AND MINOR WHO SUFFERED FROM CRIMINAL OFFENSES

**Abstract.** The article is a study investigative (investigative) action - interrogation. The study is based on statistical data, publications of modern scholars who have considered the issue of interrogation of minors and juveniles in criminal proceedings. In the process of analysis of modern information, scientific articles and various research works of scientists reveals the current issues of interrogation of minors and juveniles, namely the establishment of psychological contact and obtaining false or false information from the interrogated person.

Also, in the course of the research the purpose of this article was established, which is to study certain issues of interrogation and a proposal to solve or improve the problem situation. In the course of the research, the issues and importance of establishing psychological contact during the interrogation were singled out, especially if the interrogated person is a minor.

In the process of researching scientific articles and various research papers, the importance of using additional forces during the interrogation, which have a psychological and pedagogical aspect, was highlighted.

***Key words:*** *juvenile, interrogation, juvenile, investigator, investigative search action.*

**Relevance of the study.** Today, for the existence of the state and society, an important task for the executive branch is to protect the individual, society and the state from criminal offenses. To carry out this task, there are appropriate bodies, such as the investigative bodies of the national police, which carry out criminal proceedings to investigate criminal offenses. One of such actions is an investigative action – interrogation. It is the interrogation of a juvenile as a victim of a criminal offense that is a very complex process, both during the interrogation and before the corresponding preparation for it.

Therefore, there is now some problem for investigators to conduct such interrogation of the above persons, as in practice there are different types of situations that are not specified by the legislator or other sources of information, and does not provide a certain algorithm of actions to act to conduct this investigative action and achieve the appropriate goal.

A child who has been abused often refuses to testify or tells a lie, especially when the abuser is a close person. To avoid unnecessary psychological trauma, the interviewer should be interviewed in a child-friendly environment and in an environment in which he or she feels safe. However, due to certain age and psychological characteristics of the child, the interrogation has its own specifics, which is associated with the delicacy of communication, psychological reflection of all questions and answers, the use of various demonstration tools (anatomical dolls, toys, cards, drawings, etc.). The effectiveness of the entire investigation in criminal proceedings as a whole often depends on how well the investigator prepares for the interrogation of a juvenile.

**The article's objective** is to coverage, research and establishment of issues of interrogation of minors and minors, research of tactical and procedural features of interrogation

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of minors and minors, as well as proposals for solving the identified problems.

**Resent publications review.** Problems of juvenile and minors who suffered from criminal offenses were investigated by such scientists, as: N. Pavlova, S. Avramenko, R. Belkin, Yu. Antonyana, O. Bichkova, O. Galimova, R. Zainullina, B. Romanyuk, O. Skichko, S. Tetyueva, V. Whisper and others. However, some issues still need further attention and refinement.

**Presentation of the main research material.** The issue of interrogation of minors and juveniles who have suffered from criminal offenses is the psychological characteristics of such a person and his status at the time of the crime. The main problem in practice is that it is very difficult to communicate, to establish psychological contact with children who have suffered from criminal offenses. According to the single report on criminal offenses submitted by the Prosecutor General's Office, 247,401 criminal offenses were recorded in August-January 2021, from these recorded data it is known that 3,950 criminal offenses were committed against minors and juveniles [1].

More often these criminal offenses are expressed in the form of violence. Therefore, a minor could suffer from violence, which manifested itself in its various forms and manifestations, which usually entails trauma, distrust of others, isolation. Also, an important point of this is the person who was the offender. Offenders can be strangers or relatives, father, mother, brother, sister and people whom the child knows and trusts. Also, negative attitudes at school, bullying, bullying or humiliation are possible, which in one way or another can lead to trauma to the child.

Therefore, the abuser can affect her intellectual and mental development, the ability to find language with others, to adequately understand the situation, because the child may feel insecure and distrust the environment or unknown people who want to communicate and help.

Regarding the child's development and ability to perceive the world, there are different situations when the child does not have enough life experience, does not understand some concepts, "what is bad", "what is violence, its types", or because of trust in loved ones the child may not to realize and not to understand the essence of violence itself, a criminal offense, because the offender could assure that violence, for example, is a cure. Or, conversely, the child understands the situation, understands that this cannot be done, perhaps understands the concept of violence and that it is prohibited, but through threats, violence against the victim or other relatives, suffers from violence, or performs certain acts that degrade honor, dignity or sexuality, human inviolability. In addition, there are many cases when a child is unaware that there are appropriate organs to go to, or is worried that if he or she reports, he or she may suffer even more.

Therefore, if a child has been abused, has become a victim, there are unforeseen consequences, disorders of the child's communication skills, and during the interrogation it certainly complicates the moment of its conduct, because the investigator must avoid appropriate injuries, and assess and understand that during the interrogation, the child felt safe and did not think that the investigator was probably another offender.

Therefore, it is necessary to carefully investigate the situation and add to the necessary tools that can help during the interrogation of a person. For example, given that a child is a victim of some form of violence and that the perpetrator is a male, it would be appropriate to interrogate a male. In addition, the involvement of a psychologist will be a necessary and important means of establishing contact with the interviewee.

It will be advisable that the participation of the psychologist is not formal. To do this, it should be possible to discuss in advance with a specialist the strategy of the interrogation and the amount of information to be obtained during it. This will make it possible to determine the duration of the interrogation and make a list of questions taking into account the age, level of development and individual characteristics of the child [2, p. 2]. In addition, with the help of a psychologist, it is possible to pre-establish the "sharp corners", namely, what objects should not be during the interrogation.

For example: these are objects that can remind the child of the person of the abuser, or the atmosphere of the environment where the child was abused. According to the well-known researcher of the problems of obtaining testimony from juveniles and juveniles of the criminal proceedings Yu. Antonyan, juveniles have limited life experience, and their testimonies require psychologically sound interpretation. Therefore, the participation of a teacher, educator or specialist in age psychology is extremely necessary during the interrogation. According to 152 interviewed authorized representatives of investigative agencies, a psychologist should be involved during the interrogation with the participation of juvenile victims of violent crimes –

92.1 %; teacher – 50.0 %; psychiatrist – 2.6 %.

At the same time, during the survey respondents almost unanimously (97.4 %) stated the expediency of involving a psychologist in the investigation process, 36.8 % of respondents consider it necessary to appoint and conduct a forensic psychological examination, 26.3 % feel the need for interaction with a counselor-psychologist and only 2.6 % do not feel the need to involve professional psychologists [3].

As we have already mentioned, sometimes the victim, a minor or a minor who has suffered from violence, does not report it, or another criminal offense. As N. Pavlova noted: "The main reasons for children not to turn to law enforcement agencies are fear of revenge, shame in front of others, disbelief in the possibilities of protection, unwillingness to remember and talk about traumatic events, and sometimes children simply do not know other attitudes, and therefore consider it the norm" [2, p. 3].

Therefore, if a request or message is received, the investigator should take into account some points before the interrogation, namely such moments that can characterize the child's personality from all possible angles. It is desirable to understand the situation in which the child found himself, to know his character, age, his tastes, how he studies, whether there are friends. In addition, it should be borne in mind that children of the same age in terms of mental development can be very different from each other. However, the general patterns of mental development of children allow us to highlight in general the important features of the psyche, characteristic of children belonging to one age group.

When assessing a child's level of development, it is essential to find out the level of language proficiency and to understand all the questions and words used. Young children are poorly oriented in time and space, so it is also important to check what they call the days of the week, seasons, whether they correctly distinguish between the concepts of "yesterday", "tomorrow" and so on. You should check how the child knows the colors, shapes, sizes and so on. If the interrogation is planned to be recorded by video link to a broadcast in another room, it is obligatory to inform the minor, but it is necessary to inform about it as delicately as possible. Some of the points we have listed can be established with the help of a psychologist [4].

Also, a certain problem is that the persons interviewed are very diverse individuals, especially for persons who are minors or minors. This should also be taken into account during the interrogation, because one person is not a template for another. Children are often embarrassed or afraid to talk about what is happening to them. Also, do not forget that children are more vulnerable and unable to fully protect themselves, and sometimes, when they are abused, do not even understand what is happening to them, or because of fear can not correctly interpret the course of events.

If the abuser is a close person, in 90 % of cases the child refuses to testify or tells a lie. Therefore, the question arises as to the possibility of obtaining testimony from a minor during interrogation, which will help to expose the perpetrators and establish the objective truth in the proceedings. In addition, there is a possibility of psychological trauma, so the interrogation should be conducted by a person who inspires confidence, in a child-friendly environment and in an environment in which he will feel safe. At the same time, the interrogation of a child has its own specifics related to the need for the participation of knowledgeable persons (specialists) who will provide qualified assistance and facilitate the more effective collection of evidence [5, p. 3; 7].

Having clarified certain features of the child, his personality characteristics, the next issue is to establish psychological contact. It is very important for the investigator to establish psychological contact during the interrogation, because without this contact it is difficult to obtain the necessary information for the investigation of a criminal offense from the interrogated [8]. In addition, the establishment of this contact is a general tactical measure and without proper training, namely the forecasting and planning of the interrogation will be difficult to establish. In the article above, we highlighted what needs to be done before questioning a child who has suffered from violence.

Therefore, already during the interrogation, having the necessary information, at the beginning of establishing psychological contact with the child is a direct acquaintance with her (if it did not happen before), explaining the purpose of the meeting and the role of persons involved in the interrogation. The conversation with the child, regardless of his age, should begin with neutral, safe for him topics (for example, ask about a favorite game, TV show, business, etc.). If there are problems with the functioning of the family, or the child has difficulties in relationships with peers, etc., then at this stage of the interrogation should avoid

relevant topics. Conversation on neutral topics not only helps to establish contact with the child, but also allows to find out his opportunities in the field of verbalization of the perceived, this category of people is specific [6, p. 8]. In addition to the above problems that affect the establishment of psychological contact during interrogation, there is some ignorance and inexperience of the investigator to establish psychological contact and certain tactics of interrogation, depending on the identity of the person we mentioned above. Therefore, in practice there is a need to use, along with forensic tools, methods of psychological and pedagogical intervention in the investigation process, in particular during the preparation and conduct of such an investigative (investigative) action as interrogation.

Thus, the recent investigation of crimes is usually accompanied by the formation of unfavorable situations that significantly impede the rapid and complete detection and investigation of crimes, as well as the detection of all perpetrators and bringing them to justice. Such situations include the presence of a small amount of information about the crime, the absence of traces of the crime, the small number of witnesses, the victims' refusal to testify, the negative impact and pressure on honest participants in criminal proceedings by criminals, active opposition to pre-trial investigation and others. This requires investigators and operational staff to take the necessary organizational and tactical measures, adequate to the current level of crime, as well as to choose the most effective tactics of pre-trial investigation in general. Interrogation is a procedurally stable action of an investigator, which is clearly regulated by law. Currently, there are certain issues of the institution of interrogation of a minor or juvenile victim in criminal proceedings. In addition, the investigator conducts interrogations almost every day and communicates with different categories of people.

**Conclusions.** Minors are a very special and specific category, especially if they have suffered violence. Therefore, the experience of law enforcement in the field of investigation of criminal offenses committed in relation to these categories shows that the success of combating such offenses is ensured only by the use of forensic methods of psychological contact during the preparation and conduct of such investigative action as interrogation.

In addition, it is important to use demonstration tools, including anatomical dolls, which can help avoid stress, injury. Special knowledge of psychology or pedagogy is required to establish psychological contact with a minor.

*Conflict of Interest and other Ethics Statements*

The authors declare no conflict of interest.

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**Наталя ПАВЛОВА, Богдан АНТРОПОВ**
**ПРОБЛЕМАТИКА ДОПИТУ МАЛОЛІТНЬОЇ ТА НЕПОВНОЛІТНЬОЇ ОСОБИ, ЯКА ПОСТРАЖДАЛА ВІД КРИМІНАЛЬНИХ ПРАВОПОРУШЕНЬ**

**Анотація.** У статті здійснюється дослідження слідчої (розшукової) дії – допиту. Дослідження ґрунтується на статистичних даних, виданнях сучасних вчених, які розглядали питання проблематики допиту малолітньої та неповнолітньої особи у кримінальному провадженні.

На підставі наукових думок розкривається сучасна проблематика проведення допиту малолітньої та неповнолітньої особи. Надаються рекомендації щодо встановлення психологічного контакту в умовах, коли допитувана особа надає не вірну або не правдиву інформацію, або відмовляється надавати показання через страх помсти з боку кривдника. Виокремлено важливість застосування додаткових сил під час допиту (запрошення спеціалістів різних напрямів), які мають психологічний і тактичний аспект.

***Ключові слова:*** *малолітня особа, допит, неповнолітня особа, слідчий, слідча (розшукова) дія.*

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**CRIMINOLOGICAL ANALYSIS OF THE SITUATION AND TRACE PICTURE IN THE INVESTIGATION OF INVOLVEMENT OF MINORS IN ILLEGAL ACTIVITIES**

**Abstract.** Forensic analysis of the situation and trace picture in the investigation of involvement of minors in illegal activities. The scientific article is devoted to the study of some aspects of the forensic characteristics of involving minors in illegal activities. The situation of commission and the trace picture of a criminal offense are considered as an element of the forensic characteristics of the specified illegal act, as well as their connection with other elements.

It is noted that the trace picture of the commission of a criminal offense is a scientific category, the study of which is necessary in the study of any forensic characteristics. In turn, the involvement of minors in illegal activities is also characterized by separate specific features that are reflected in the trace array left after the commission of a criminal offense.

***Keywords:*** *minor, illegal activity, forensic characteristics, investigation, involvement, situation, trace picture, criminal offense.*

**Relevance of the study.** The European integration processes taking place in Ukraine make it necessary to reform not only certain structures and organizations, but also legislation in general. At the same time, an important element of the functioning of society is its moral values and ensuring their proper implementation by citizens. In turn, one of the most dangerous criminal offenses against morality is the involvement of minors in illegal activities. Among such of them as the involvement of persons in begging, gambling, drunkenness in the number of manifestations, the direct commission of illegal activities stands out quite sharply.

It should also be emphasized that among the most common illegal acts in which minors are involved, theft, robbery, drug trafficking, hooliganism should be mentioned. Given that the studied category of criminal offenses is committed before persons reach the age of majority,


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this causes negative changes in the minds of the latter, this becomes the so-called "Primary School" of criminals, which later leads to their relapses.

We should immediately emphasize the importance of conducting a systematic analysis of the objective conditions in which a criminal act is committed, as well as the traces of its commission. In addition, when investigating the situation of a criminal offense committed, it is of great importance to establish spatial and temporal factors. Therefore, consideration of a certain element of forensic characteristics is necessary and timely.

**Recent publications review.** V. Agafonov, V. Antsiferov, V. Bakhin, R. Belkin, N. Belyaev, I. Bukaeva, A. Volobuev, V. Galagan, A. Ishchenko, A. Ilyev, A. Kolesnichenko, V. Konovalova, M. Kuratchenko should be distinguished among the scientists who considered the situation of the crime and the trace picture in their works V. Lazarev, V. Lisichenko, M. Panov, M. Porubov, M. Saltevsky, O. Sirenko, V. Shepitko, O. Filippov, M. Yablokov and others.

But in their works, the situation of involving minors in illegal activities as an element of forensic characteristics was only mentioned, and was studied in detail only from a criminal-legal or criminological point of view. It should be noted that our research is a comprehensive approach to studying the situation and the trace picture of involving minors in illegal activities through the prism of studying various opinions of scientists and empirical material.

**The article's objective** is to conduct a forensic analysis of the situation and the trace picture in the investigation of the involvement of minors in illegal activities.

**Discussion.** For a definition of the concept of the situation of committing a criminal offense, let's turn to the opinions of various scientists. I. Bukaeva defined it as a form of interrelation of physical and social environments in the implementation of the mechanism of crimes, which forms objective patterns of their functioning, the development of criminal intentions or refusal of crimes and is a reflective system of illegal behavior, according to the patterns of which, based on a complex of traces, a retrospective model of crimes is created in the process of its investigation, internal connections, conditions and causes of crimes are identified, methods of using forensic techniques, tactics and methods of Investigation are determined [1, p. 47].

The opinion of V. Lazarev is relevant here, who noted that the situation of committing any criminal offense is an invariable component of its forensic characteristics. After all, each socially dangerous act is characterized by a certain set of conditions in which it was committed. The study of these conditions allows employees to model the investigation process depending on the specific investigative situation, plan investigative actions and other activities.

At the same time, their systematization, depending on the specific composition of the crime, provides an appropriate model of this behavior. Therefore, the issues of the situation of involving a minor in prostitution and pimping are undoubtedly relevant [2, p. 226]. We support this position and also consider it mandatory to study the situation of involving minors in illegal activities as a condition for more effective investigation of these criminal manifestations.

V. Prokhorov focuses on the fact that the withdrawal of these circumstances beyond the objective side of the crime means, of course, their withdrawal beyond the crime in general. It is clear that the place, time and situation are not signs of an act, but they are signs of a crime – a concept broader than the concept of an act and the consequences caused by it. If the place, time and situation of the commission of a crime were not independent elements of the objective side of the crime, then they could not appear as signs of the objective side of the crime, since the ratio of the objective side of the crime and the objective side of the crime implies that not every objective sign of the crime belongs to the signs of its composition, but any objective sign of the crime is a sign of a crime [3, p. 316-317].

Another group of scientists (L. Dubovitskaya, I. Luzgin) notes appropriately that the criminalistic essence of the situation of committing a crime, its functional purpose, taking into account the specifics of forensic methods of cognition, is to naturally reflect the events of the crime in various types of traces, predetermined by the mechanism of their formation and the possibility of using such traces and in general the "trace picture" of the crime [4, p. 34]. You can also find in this statement a stable relationship with the trace picture, which we also define.

In turn, some scientists point out the possibility of using an integral concept of the situation of an illegal act. That is, to apply it to determine a set of conditions and circumstances limited to a certain place and time, the material situation of the scene of the incident, the object and subject of a criminal offense, and other components in which the preparation, Commission and concealment of an illegal act is carried out [5, p. 179].

At the same time, S. Vinokurov focuses on the fact that a certain scientific category

should be considered as a system of factors of objective reality interacting in a certain way in specific conditions of place and time, determining the direction and course of human behavior in the events of crime, as well as the determining nature, mechanism and conditions of material reflection, processes and phenomena occurring in the form of a characteristic, relatively stable (for the same type of crimes) set of traces, the study of which allows us to judge the essence of what happened [6, p. 46].

In the same perspective, O. Sirenko, after exploring a number of studies done by scientists, concluded that the situation of committing a crime is a set of various kinds of objects interacting with each other, objects, phenomena and processes that characterize the conditions of place and time, material, natural-climatic, industrial-household and other environmental conditions, features of the behavior of indirect participants in illegal behavior, psychological connections between them and other circumstances of objective reality that have developed (independently or by the will of the participants) at the time of the crime, which affect the method and mechanism of its commission, which manifest themselves in various traces that allow us to build conclusions about the features of this system and the content of the crime [7].

At the same time, in our opinion, M. Valeev most clearly and accurately defined the studied element of forensic characteristics, noting its components: place, time, object, subject of encroachment, the composition of accomplices and the nature of their relationships with the victim and other persons, as well as material elements of the environment [8, p. 21]. Given the above, we believe that the essence of the situation can be revealed only if the characteristics of its components are established, namely: the time, place and conditions of committing an illegal act. Regarding the place of commission of a criminal offense, we note that, according to I. Gerasimov, it includes a number of interrelated attributes that express the features of a particular event that occurred.

The study of information obtained at the scene of the incident, their correct understanding make it possible to determine the nature of the criminal offense, possible locations of traces and formulate ways of Investigation [9, p. 9]. V. Shepitko notes that this is a part of the material environment that contains, in addition to a section of the territory, a set of different objects, the behavior of participants in the event, psychological relationships between them [10, p. 184].

Other authors point out that if the place concretizes and individualizes the crime, then time characterizes the beginning, duration and end of the crime process, specifying these most important circumstances. Establishing the place of commission of a crime allows, first of all, to localize the search for traces in space (territory, specific room, vehicle), as well as to put forward versions about the mechanism of criminal encroachment and persons who could have committed it, to check the alibi of suspects [11, p. 23].

With this in mind, we support M. Kuratchenko, who emphasized that the crime scene should be investigated from different angles. In particular, on the one hand, as the geographical distribution of the criminal offense under study, on the other – the specific place of its commission. The location of pimping and involving a person in prostitution is part of the event. It contains a large amount of information about the method of committing a criminal offense, certain data about the identity of the criminal [12, p. 82].

Quite unique is the opinion of L. Brich that first you need to determine the content of the concept of "the place of commission of a crime as a sign of the composition of a crime", and only then study its individual characteristics. To clarify this statement, the scientist outlined the following list of circumstances that needed to be established: whether the concept of "crime scene" covers only the place of committing a socially dangerous act (action or omission), or whether it includes the place of occurrence of socially dangerous consequences; whether the concept of crime scene extends to the location of other signs of a crime; how to distinguish cases when certain spatial characteristics are the place of commission of a socially dangerous act and, accordingly, an independent sign of the composition of a crime – the place of commission of a crime, from cases when certain spatial characteristics relate to other signs of the composition of a crime [13, p. 269].

In general, regarding the places where crimes against morality are committed, A. Landina points out that among them there are various kinds of premises: an apartment, a house or part of a house; a room in a hostel or hotel room; an office or other office space; premises in buildings of industrial and industrial, municipal, educational, medical purposes; in places of entertainment, rest homes, utility rooms (sauna, shed, garage, basement, bath) and other premises in which these actions take place [14, pp. 146-147]. On the basis of a detailed

and systematic analysis, one should reveal the significance of informative content of the forensic characteristics of involving minors in illegal activities with such elements as the situation and the trace picture.

When analyzing the materials of criminal proceedings, we found that most of the involvement of minors in illegal activities occurs in such places:

1) entertainment venues (night clubs, cafes, bars, restaurants);
2) recreation areas (recreation centers, hotels);
3) places of residence of the criminal or minor (apartments, houses);
4) places of study of a minor (schools, technical schools, institutions of higher education).

So, on February 16, 2017 at about 11:00 by prior agreement with Sh., being in the apartment, acting repeatedly, having intent to openly take possession of someone else's property, namely the victim B., who is the grandmother of Sh., using violence that is not dangerous to the life or health of the victim, D. fisted the victim three or four times on the face and two times on the abdomen, causing injuries to the victim. After that, continuing their criminal activities, locking the victim in the bathroom, D. together with the minor Sh. took possession of the victim's funds totaling UAH 5,500, causing the latter material damage for the above amount [15]. As you can see, the criminal offense, as well as the involvement of a minor in illegal activities, occurred at the place of residence of the latter – in the apartment of her grandmother.

The next component of the situation that we will investigate will be the time when the illegal act was committed. So, time is always expressed in certain indicators (year, month, day, hour) and with a certain degree of accuracy. It can be expressed in calendar terms or in other categories [16]. Another group of scientists (V. Shepitko, V. Konovalova, V. Zhuravel) notes that taking into account the influence of the time factor in the investigation process allows:

a) to determine the time of the crime event;
b) to establish temporary connections between facts;
c) to find out the order of events, actions or facts; d) to calculate the duration of various events, etc. at the same time, the actions of criminals are characterized by a certain selectivity in time [17, p. 277].

In turn, some scientists, in particular, M. Bloom, determine the time of commission of a crime by establishing the operation of the criminal law in time. In addition, the author points out the need to apply this element of forensic characteristics to establish the illegality of a criminal offense and the time of occurrence of criminal legal relations. Moreover, M. Bloom focuses on the fact that the study of the time of committing a criminal offense is necessary to determine the prerequisites for criminal liability, namely, person's sanity and reaching the age provided by law for recognizing them as a subject of a criminal offense [18, p. 3].

V. Malinin says that the place and time of the commission of a crime is important for determining the situation, based on the understanding of space as their organic unity, when neither time nor territory can exist without each other (in some cases, they allow us to distinguish a significant part of the situation in the Criminal Law sense, in others cases they form spatial and temporal boundaries, within which there is a fundamental dependence for criminal law of the public danger of an act on the situation of its commission) [19, p. 477]. We support this view and will continue to explore the relationship between these elements.

The study of judicial and investigative practice allowed us to establish that the greatest number of involving minors in illegal activities according to the time of day criterion is committed in the evening (from 18 to 24 hours.) – 51 %, 14 % – at night (from 24 to 6 hours.), 12 % – in the morning (from 6 to 12 o'clock.), 23 % – during the day (from 12 to 18 hours.). Depending on the day of the week, it is determined that minors commit illegal actions mainly on Saturday and Sunday (69 %).

As for the trace picture, we should immediately note that some scientists believe that it reflects in a materially fixed form the entire sum of the circumstances of the event under study related to the subject of proof, and represents the total trace of this event. That is, in their opinion, the material situation is a potential trace carrier, and the trace picture is an integral system of sources of relevant forensic information identified in the material situation [20, p. 102].

At the same time, S. Zavyalov points out that "a crime event is one of the material processes of reality, which is connected and mutually conditioned with other processes, events and phenomena, is reflected in them and is itself a reflection of some processes. Any event is related to changes in the environment, and in order to find out about the event of a crime, it is necessary to identify the changes associated with it. Only by the traces that are investigated in

the course of the event under investigation, it is possible to judge its content" [21, p. 9].

M. Starushkevich enriches a specific scientific category by outlining traces of criminal activity as any changes in the environment that have arisen as a result of committing a crime in this environment, meaning that any changes in objective reality can carry criminally significant information about a criminal event [22, p. 22-23].

In turn, R. Belkin emphasized that material traces of a crime should not be included in the structure of forensic characteristics of crimes, since its concept includes methods of committing and concealing a crime, which consist not only in describing criminal actions or omissions, but also leave certain traces. But the author suggests an alternative solution to this question: a naked description of the method of committing a crime does not achieve the goal, it must be performed either from traces of application, or to traces of application of a certain method, in order to be able to identify evidence of the crime committed and establish the identity of the criminal [23, p. 191].

We find the definition of F. Sova as the most accurate, who defines the trace picture as a set of material changes that are the consequences of a criminal event; a change in the situation associated with the appearance or disappearance of an object; a change in the state of the object (this includes both the appearance on objects of traces-reflections, and the destruction of objects; parts of any objects (solid, liquid, bulk); smells of people, animals, substances, etc. [24, p. 77]. For his part, V. Galagan also divides traces into material (arising as a result of the interaction of various objects) and ideal (subjective images of objective reality reflected in human memory) [25, p. 2].

Based on the processed scientific works of forensic scientists, we have formulated a trace picture of a criminal offense as a set of personal and material traces that are the consequences of an illegal act, in other words, any changes in objective reality that have criminally significant information.

In turn, A. Ilev notes that an important source of criminally significant information in criminal proceedings regarding the involvement of minors in criminal activities is the trace picture. Based on the analysis of criminal proceedings in which pre-trial investigation was carried out under Article 304 of the Criminal Code of Ukraine, the author identified six groups of traces:

1) traces of a person: ideal traces (testimony of the victim, suspect, witnesses); material traces (traces-reflection, traces-substances);

2) tools for committing a crime and their traces;

3) other people's things, documents appropriated by the criminal;

4) things that contributed to the commission of a crime (Narcotic Drugs, Psychotropic Substances, precursors, transport, firearms or cold weapons);

5) Electronic reflections;

6) other material traces (vehicles, the use of firearms or cold weapons, textile fibers) [26, P. 8].

Analysis of the materials of criminal proceedings shows that traces of involvement of minors in illegal activities in 79 % of cases were found at the place where the act was committed. Outside the place of their commission, traces were formed as a result of the actions of criminals related to the preparation and concealment of illegal activities.

It should be noted that, for example, M. Saltevsky advises classifying information sources on the following grounds: the philosophical basis is the theory of reflection. Based on this, all objects are divided into two classes: a) sources of ideal (mental) and reflection (people); b) sources of material reflections (things); the basis of Criminal Procedure classification is the division of evidence into personal and material. Personal sources are people who are subjects of a crime or have information related to the event of a crime (victim, witnesses, etc.); the forensic basis for classifying information sources is the theory of Forensic Identification and the concept of forensic identity. Any object located within the framework of criminal proceedings is considered in the aspect of its equality, identity to itself, that is, whether it is the same one that was "present" at the scene of the incident or "participated" in the commission of a crime [27, p. 257].

The study of forensic investigative practice allowed us to establish that in places where illegal acts were committed, authorized persons found: hand marks – 39 %, traces of blood and other organic substances – 32 %, traces of tools for committing a criminal offense – 28 %. It was also found out that handprints were found mainly in the investigation of criminal offenses against property (theft, robbery, fraud), and traces of blood and other organic substances are characteristic of illegal acts against public order (hooliganism, mass riots).

In turn, some scientists suggest that in order to effectively search for and use sources of

criminally significant information about the identity of a criminal in criminal proceedings concerning the involvement of minors in criminal activities, such sources should be classified on certain grounds. In particular, A. Ilev suggests dividing such sources into groups depending on the form of reflection of the properties of this person and the method of storing information about them into:

1) sources of ideal information;

2) sources of material information;

3) complex sources as a system of combining two elements "person – thing".

In the first group, the author refers to living persons who have information (of interest for investigation) about the identity of the criminal, which is stored in their memory in the form of a mental (imaginary) image. In this case, a living person is not only a source, but also a carrier of criminally significant information. The second group includes sources of material information – objects of the material world in the form of any traces that reflect the event of a crime, since they were "present" at the time of its commission.

These include documents, things, objects, the body of a living person, traces of human secretions, and so on. Sources of material reflections are objects of the material world, mainly of inanimate nature. As for the third group of "person – thing", A. Ilev points out that during the collection and research of sources of forensic information, situations often arise when it is necessary to establish factual data from two simple sources – personal and material, which formed the "people – things" system as a complex source. Such a source contains two types of information:

1) obtained through an ideal reflection;

2) material reflection [28, p. 169].

Given the above, we consider it appropriate to focus on the fact that violent methods of involvement often leave ideal traces (traces of the memory of a person – eyewitnesses, friends, relatives), as well as material ones (on the body and clothing of both a minor and a criminal).

**Conclusions.** Summing up, we note that the situation of involving minors in illegal activities includes a number of interrelated elements: time, place and conditions.

Based on the study of forensic investigative practice, we have identified nodal areas where traces of a criminal offense can be concentrated, in particular these places:

a) direct commission of illegal acts by minors;

b) residence of the criminal;

c) residence of a minor;

d) committing actions to involve a minor in illegal activities.

We also note that the trace picture of the commission of a criminal offense is a scientific category, the study of which is necessary in the study of any forensic characteristics. In turn, the involvement of minors in illegal activities is also characterized by separate specific features that are reflected in the trace array left after the commission of a criminal offense.

*Conflict of Interest and other Ethics Statements*

The author declares no conflict of interest.

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**Володимир ПРИЛОВСЬКИЙ**

# КРИМІНАЛІСТИЧНИЙ АНАЛІЗ ОБСТАНОВКИ ТА СЛІДОВОЇ КАРТИНИ ПРИ РОЗСЛІДУВАННІ ВТЯГНЕННЯ НЕПОВНОЛІТНІХ У ПРОТИПРАВНУ ДІЯЛЬНІСТЬ

**Анотація.** Наукова стаття присвячена дослідженню деяких аспектів криміналістичної характеристики втягнення неповнолітніх у протиправну діяльність. Розглядається обстановка вчинення та слідова картина кримінального правопорушення як елемент криміналістичної характеристики вказаного протиправного діяння, а також їх зв'язок з іншими елементами.

Автор зазначає, що будь-яка структура потребує певної послідовності у визначенні її елементів та окреслення послідовності їх дослідження. І методика розслідування кримінальних правопорушень не є виключенням. Адже розуміння сутності та наповнення зазначеної наукової категорії визначає подальше дослідження окремих її складових. Тобто визначення сутності методики розслідування втягнення неповнолітніх у протиправну діяльність має важливе значення для структуризації зазначеного процесу.

В той же час, вагомим елементом визначеної наукової категорії є криміналістична характеристика, невід'ємними елементами якої є обстановка кримінального правопорушення і слідова картина. Вказану складову ввели в структуру методики розслідування відносно недавно, але вона вже посіла відповідне місце в її структурі. Тому її дослідження в розрізі загальної наукової категорії має значення для побудови дієвої методики розслідування втягнення неповнолітніх у протиправну діяльність.

На основі дослідження судово-слідчої практики визначено вузлові ділянки, де можуть бути зосереджені сліди кримінального правопорушення, зокрема це місця: а) безпосереднього вчинення неповнолітніми протиправних діянь; б) проживання злочинця; в) проживання неповнолітнього; г) вчинення дій щодо втягнення неповнолітнього у протиправну діяльність.

Зазначено, що слідова картина вчинення кримінального правопорушення є науковою категорію, дослідження якої є необхідним при дослідженні будь-якої криміналістичної характеристики. В свою чергу, втягнення неповнолітніх в протиправну діяльність також характеризується окремими специфічними особливостями, які мають своє відображення і у слідовому масиві, залишеному після вчинення кримінального правопорушення.

***Ключові слова:*** *неповнолітній, протиправна діяльність, криміналістична характеристика, розслідування, втягнення,обстановка, слідова картина, кримінальне правопорушення.*

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# FEATURES OF REAL ESTATE FRAUD INVESTIGATION

**Abstract.** The scientific article examines the theoretical and practical features of organizational and tactical support for the investigation of fraud in the real estate market, committed by the law, as well as outlines and characterizes the components of the forensic characteristics of such a crime. A forensic analysis of the functioning of the real estate market was carried out, as a result of which the characteristic factors influencing the choice of the real estate market as a sphere of interests of criminal groups were determined.

***Keywords:*** *investigation, tactical operation, tactical combination, fraud, real estate, real estate market, organized criminal groups.*

**Relevance of the study.** Recently, Ukraine has seen an active increase in the pace of construction of luxury new buildings, especially in large cities, which leads to massive investment in the construction of real estate. However, such activities are not always legal, and a significant turnover of money often attracts the attention of fraudsters. Fraudulent schemes of seizure of funds of investors intended for construction, cause a special resonance, which causes the reaction of law enforcement agencies to prevent such manifestations.

The growing number of such criminally active groups and the rapid increase in the facts of fraud in the real estate market demonstrates the inability of law enforcement agencies to resist these negative phenomena. The sharp increase in the facts of their commission over the last 5 years testifies to the insufficient efficiency of detecting persons who are preparing to commit fraud. This indicates the lack of a system to combat fraud in the real estate market, which significantly affects the lack of appropriate methods for their detection and investigation. Given the significant growth of this type of fraud, their latency, high level of organization, difficulties in detection and investigation, significant opposition to the investigation is the immediate development and implementation of law enforcement of the latest and proven scientific methods and tools for their most effective prevention and investigation.

**Resent publications review** shows that at different times the question of the peculiarities of the investigation of real estate fraud committed by criminal groups, studied by a number of scientists, including: R. Belkin, V. Karagodin, V. Konovalova, O. Kurman, O. Musienko, K. Chaplinsky, V. Shepitko and others. These authors have made a significant contribution to the issues of tactical operations and their complexes in the investigation of crimes of various categories. Meanwhile, there are a number of debatable issues that need to be addressed.

**The article's objective** is to analyze the existing scientific views on the problems of tactical operations, on the basis of which to determine the set of tactical operations, the most appropriate for the investigation of fraud in the real estate market.

**Discussion.** The main content. It should be borne in mind that not every set of investigative and other actions can be considered a tactical operation. In functional terms, the integration of investigative actions, operational and investigative and other measures into a tactical operation is based on the possibility of solving as a result of such a combination of a specific task of investigation, which due to the volume or content can not be solved by


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applying certain tactics, investigative actions etc. [1, p. 251].

Meanwhile, as noted by V. Shevchuk, along with the elemental structure of the tactical operation, forensic scientists have made proposals to create a structure of this category based on functional approaches. In particular, according to some scientists, the generally accepted idea of the structure of a tactical operation reflects the elemental aspect of the model, while the functional approach provides an opportunity to move from the structure of the object to the concept of its organization. If the elemental scheme provides only an understanding of the content and not always, then the functional scheme allows you to analyze this content [2, p. 320].

One of the supporters of this model is I. Komarov, who, highlighting the components in the structure of the tactical operation, gives a rather complex design:

a) the subject of proof as a condition for planning, organizing and conducting the method taking into account the subject-object the nature of the latter;

b) a complex special system of goal, the content of which, as a special case, may include technical-forensic separate and tactical-forensic simple special systems of goals;

c) means – procedural and non-procedural (organizational and technical) actions and measures, methods of cognition, special forensic methods (technical-forensic and structural-forensic), forensic recommendations, technical-forensic and tactical-forensic techniques, technical and other techniques and methods ; restoration; reconstruction; tactical and forensic combinations; forensic operations, etc.;

d) connections between the given components [3, p. 82].

Without underestimating the importance of such an approach, we are forced to state that it is quite cumbersome and overloads the content of tactical operations, hiding the main important components. Analysis of the opinions of scientists and practitioners also showed that some identify the concept of "tactical operation" with "tactical combination". Meanwhile, we support the views of those scientists who do not confuse and do not identify these two concepts, but invest in these concepts different meanings.

In this regard, the remark of V. Shepitka, who believes that the definition of "tactical combination", which includes a combination of investigative actions, is objectionable. Moreover, he is convinced that it is inexpedient to combine in one concept two separate categories – "combination of tactics" (system of techniques) and "combination of investigative (or other) actions" (tactical operation). The combination of tactics and investigative actions have different purposes and are not equivalent. In the etymological sense, the term "combination" is identical to the term "system of techniques to achieve something." A tactical combination is possible only within one investigative action and does not involve a combination with tactical techniques of another procedural action, so it should be considered as a synonym for tactical techniques [4, pp. 95-97]. Impressive opinion of S. Lavrukhina, who notes that the set of investigators and other actors in criminology is usually called a tactical operation, using the formation of terminological confusion, it seems appropriate tactical combination to call a set of tactics of investigative action [5, p. 152].

Summarizing the above points of view, we can say that most scientists and practitioners, speaking of a tactical operation, put in its content certain structural elements, which are mostly similar. These include:

– carrying out a complex of the same or different procedural or non-procedural actions (investigative actions, NSDS, measures to ensure criminal proceedings, audit actions, operational and investigative and organizational measures, etc.);

– unity in a single plan;

– a single guide for the investigator to conduct;

– performance of certain intermediate tasks subordinate to the general objectives of the investigation;

– solving problems in a certain investigative situation.

There is a different view on the classification of tactical operations. Thus, S. Zdorovko offers the following grounds for classifying tactical operations:

1) depending on the type of crime;

2) depending on intermediate investigations of crimes;

3) depending on the nature of the elements of the structure of tactical operations: homogeneous or heterogeneous; two or more similar investigative actions, a set of diverse investigative actions, a set of investigative actions and operational and investigative measures, a set of investigative actions and organizational measures; operational and investigative and

organizational measures);

4) depending on the level of complexity of tactical operations (simple and complex);

5) depending on the time period of the tactical operation (one-moment and those that have a certain length in time);

6) depending on the stage of the investigation of the crime (tactical operations carried out at the initial, subsequent or final stage of the investigation);

7) depending on the nature of the direction of the operation (cognitive tactical operations, search, those that perform organizational functions);

8) depending on the persons who carry out interaction during the tactical operation (tactical operations conducted by the investigator; tactical operations conducted by the investigative task force (or investigative team); operational and tactical operations conducted under the direction of the investigator, etc.) [6 , with. 7].

In this case, V. Karagodin emphasizes that to develop typical tactical operations on the level of generality can be divided into two groups. Typical tactical operations of the first, higher level of generalization are designed for use in situations that are typical of crimes of various kinds. The development of such operations is possible, despite the differences not only in criminal law, but also in the forensic characteristics of certain types of crimes. Typical tactical operations of the second group are developed taking into account the forensic characteristics of certain types and groups of crimes and situations typical for their investigation. These tactical operations are more specific, because their tasks are specified, they should be planned on the basis of more general operations of the first level [7, p. 56].

This approach is impressive, and if we first approach tactical operations in general, we can successfully distinguish among them those that will solve more specific problems in cases of fraud related to raising funds for the construction of real estate. Analyzing the views of supporters of the problems of forensic methodology in terms of tactical operations, it should be noted their diversity. V. Shevchuk, trying to defend the approach to the mandatory use of tactical operations in criminal proceedings, defined a fairly broad generalized list of them. The list includes the following operations: "Establishing the nature of the crime"; "Establishment of the place and time of the crime"; "Establishing the method of committing a crime"; "Establishment of the subject of criminal encroachment"; "Establishing the motives for the crime"; "Establishing the identity of the offender"; "Identification of the victim"; "Establishing the provocative behavior of the victim"; "Checking the victim's connections"; "Identification of accomplices in the crime"; "Detention of a criminal at the scene of a crime"; "Search for a person who disappeared from the scene and is hiding from the investigation"; "Checking the suspect's alibi"; "Identification of witnesses"; "Checking the reservation"; "Self-checking"; "Neutralization of opposition to the investigation by interested parties"; "Study of the suspect's identity"; "Elimination of negative influence from the suspect; "Protection of evidence"; "Protection of victims"; "Witness protection", etc. [8, p. 138].

Meanwhile, despite a successful attempt to maximize the most common tactical operations that occur in the practice of crime investigation, we must pay attention to their high level of generalization. In addition, the scientist emphasizes that typical tactical operations should be developed in accordance with the specifics of the investigation of certain types (subtypes) of crimes, stages of criminal proceedings, investigative situations, tactical tasks, considered as integral components of species or subspecies forensic methods of crime investigation [8, p. 138]. Consider the proposed tactical operations in the investigation of groups of crimes that are related to fraud in the real estate market. These are crimes of a useful nature, including economic ones. In general, when investigating crimes related to theft of property, the most common tactical operations, most scientists consider: "Identification of persons involved in the theft", "Ensuring compensation for material damage", "Group search", "Search and apprehension of criminals", "Identification way of committing a crime","Document ", etc.

V. Knyazev in the investigation of embezzlement proposes to conduct only three tactical operations: "Document", "Accomplices" and "Ensuring compensation for material damage" [9, p. 79]. Tactical operations and developers of methods of fraud investigation are considered. Yes, O. Musienko notes that the following operations can be used in the investigation of fraud: "Detention of a swindler at the crime scene", "Establishing the circle of victims of fraud", "Establishing ways to commit fraud", "Identifying the fraudster", "Document", "Determining the amount of material damage" [10, p. 139]. In order to solve the tasks in cases of fraud with financial resources O. Kurman considers it expedient to conduct

tactical operations, among which the most important are such tactical operations as: "Document", "Accomplices", "Borrower", "Lender", "Identification and search for a hidden criminal", "Ensuring compensation for material damage" [11, p. 148].

Some scientists also suggest tactical operations to investigate real estate fraud. The most common of these are: "Identification and verification of the events leading up to the fraud", "Identification, search and detention of a fraud suspect", "Detention of a fraudster at the crime scene", "Verification of the suspect's alibi", "Detection of evidence of the suspect's behavior" "Exposing the accused of committing fraud", "Verification of the testimony of a person who pleaded guilty to fraud", "Prevention of the accused's attempt to hide from the investigation and court", "Prevention and neutralization of opposition to the investigation".

The process of pre-trial investigation becomes the most optimal if not one, but several tactical operations are carried out, which allow not only to successfully solve intermediate tasks, but also to get as close as possible to achieving the ultimate goal of investigating criminal offenses in real estate. In view of this, the content and direction of the tactical operation are determined, firstly, by the investigative situation, and secondly, by the specific features of the investigated crime. Therefore, tactical operations are general in nature, but at the same time should be finalized in forensic methodology, in accordance with the specifics of the investigation of a particular group of crimes. Thus, it can be concluded that the formation of tactical operations recommended in the investigation of a particular type of crime should take into account the following criteria: the specifics and stage of the investigation at which it is planned to conduct a tactical operation; circumstances of the crime; investigative situations and tactical tasks.

In conclusion, it should be noted that today no one has any objections and the thesis that the current state of the real estate market in Ukraine is characterized by active development and rapid growth, especially in large cities, with a variety of ways to acquire, alienate and obtain objects. real estate for temporary use (on the basis of lease, sale, exchange, gift, lifetime maintenance, investment) without legislative restrictions on the quantitative component of the implementation of this right by citizens. At the same time, the real estate market has not escaped the attention of the criminal environment, especially criminal groups that commit criminal offenses using fraud or abuse of trust with the use of various fraudulent schemes in the real estate market.

Acting in proportion to the development of modern technologies, adapting to innovations in all areas and changes in legislation, criminal groups lobby their criminal interests in the legislature and judiciary. By using corrupt connections with law enforcement and government officials, notaries, taking advantage of the legal ignorance of citizens, criminals illegally seize a number of real estate and money intended for their acquisition or invested in the construction process. However, it is extremely difficult to assess the real scale of organized crime in the real estate market, as most of these facts remain dormant. This indicates a number of problems in the detection, detection and investigation of fraud in the real estate market, which leads to the avoidance of criminals from fair punishment. Therefore, the activities of law enforcement agencies in this direction need to be improved and adapted, adapted to modern changes and innovations.

This puts before science, legislative and law enforcement practice the task of immediate development and implementation of new approaches to combating crime, finding new methods of counteraction that meet the realities of today.

**Conclusions.** Thus, despite the relevance of scientific developments of scientists, it should be noted that they explore only certain segments of the real estate market. However, the sphere of interests of organized groups is covered by a fairly wide range of actions in both primary and secondary real estate markets, each of which has its own specifics and requires a comprehensive study. In addition, due to constant changes in legislation, a number of provisions have to some extent lost their relevance, and some aspects of this issue need to be improved and further developed. Issues of international cooperation and counteraction to the investigation remain unexplored, the tactical features of the investigation need to be improved, using tactics and complexes of investigative (search) actions and NSDS, taking into account the organized nature of the crimes of the investigated category.

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**ОСОБЛИВОСТІ РОЗСЛІДУВАННЯ ШАХРАЙСТВА НА РИНКУ НЕРУХОМОСТІ**

**Анотація.** У науковій статті досліджено теоретичні й практичні особливості організаційно-тактичного забезпечення розслідування шахрайства на ринку нерухомості, вчиненого ЗУ, а також окреслено і охарактеризовано складові елементи криміналістичної характеристики такого злочину. Здійснено криміналістичний аналіз функціонування ринку нерухомості, внаслідок чого визначено характерні фактори, що впливають на обрання ринку нерухомості сферою інтересів злочинних угруповань.

Сформовано типові тактичні операції, характерні для розслідування шахрайства на ринку нерухомості, а також розроблено оптимальний комплекс дій для тактичних операцій, спрямованих на: встановлення ознак організованості й викриття усіх учасників угруповання; вилучення, дослідження і використання документальних джерел інформації про ознаки шахрайства на ринку нерухомості; подолання протидії та забезпечення безпеки учасникам кримінального процесу тощо. Надано низку пропозицій, спрямованих на удосконалення практики розслідування шахрайств на ринку нерухомості, вчиненого злочинними угрупованнями, уточнено окремі наукові категорії.

***Ключові слова:*** *розслідування, тактична операція, тактична комбінація, шахрайство, нерухомість, ринок нерухомості, організовані злочинні угруповання.*

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# CRIMINOLOGICAL CHARACTERISTICS OF THE PERSON OF THE CRIMINAL AND THE PERSON OF THE VICTIM OF DOMESTIC VIOLENCE

**Abstract.** The scientific article is devoted to the study of the forensic characteristics of the person of the offender and the person of the victim of domestic violence. The criminological features of the structure of the offender's personality, as well as the features of the victim, as an element of the forensic characteristics of domestic violence are considered. The issues related to the characteristics of perpetrators of domestic violence and victims of domestic violence were analyzed.

***Keywords:*** *domestic violence, forensic characteristics, identity of the offender, identity of the victim.*

**Relevance of the study.** Domestic violence is a pressing problem today and a negative manifestation of public life, threatening the security of both the family and society as a whole. All this is connected with such phenomena as the increase in the number of divorces, neglect and homelessness of children, the formation of a violent mentality of the nation, begging, loss of universal values and mutual understanding.

**Resent publicatiobs review.** Issues related to the characteristics of perpetrators of domestic violence were considered in the works of the following scientists: Y. Antonyan, O. Radzevilova, I. Kotyuk, M. Bazhanov, O. Bandurka, N. Malikhina, A. Blaga, I. Bogatyrev, A. Vardanyan, V. Galagan, O. Boyko, V. Vasilevich, V. Vitvitskaya, O. Dzhuzha, O. Kolb, V. Bakhin, V. Bernaz, V. Veselsky, K. Chaplinsky, A. Volobuev, V. Goncharenko, V. Zhuravel, N. Klimenko, I. Kohutych, O. Kolesnichenko, V. Kolmakov, V. Konovalova, E. Lukyanchikov, V. Malyarenko, M. Saltevsky, M. Segai, V. Tishchenko, P. Tsymbal. However, a number of problematic issues were left out of their attention, including the problems of the practice of investigating domestic violence, which arose in the context of the application of the new criminal procedure legislation. It is necessary to single out the structural elements of the forensic characteristics of domestic violence in order to effectively pre-trial investigation of such criminal offenses.

**The artlcle's objective** is to study the forensic characteristics of the offender and the victim of domestic violence.

**Discussion.** M. Yenikeev notes that the identity of the offender - is a set of typological qualities of the individual, which led to his criminal act [1, p. 47]. A person who commits domestic violence is defined as a person who commits intentional acts of violence of a physical, sexual, psychological or economic nature against a member(s) of his family. Accordingly, the criminological characteristics of such a person is a criminological description of a set of socially significant features of a person endowed with such qualities in view of his interaction with external conditions and circumstances, which ultimately leads to acts of violence against a family member(s) [2, p. 84].

Most researchers distinguish three groups of characteristics of the offender: biological, social and psychological.

Issues related to the characteristics of perpetrators of domestic violence were considered

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in the works of the following scientists: Y. Antonyan, O. Radzevilova, M. Bazhanov, O. Bandurka, N. Malykhina, A. Blaga, I. Bogatyrev, A. Vardanyan, O. Boyko, V. Vasilevich, V. Vitvitska, O. Dzhuzha, O. Kolb.

Researchers have tried to identify the criminological features of the identity of a perpetrator of domestic violence, so that it is possible to identify his typical criminological portrait and, consequently, to develop recommendations for improving activities to combat domestic violence. Scientific studies have shown that participants in criminal conflicts who resolve them through violence are characterized by a low cultural and educational level. According to the level of education, the majority of persons (49.3 %) had completed general secondary education, 23.4% – secondary special education, 3.9% – higher and basic secondary education, incomplete higher education – 1.3%. The majority of persons (90.9 %) had a permanent place of residence, where they committed domestic violence against their spouses, ex-spouses, and persons with whom they had a family or close relationship [3, p. 67].

To date, most scientists distinguish the following groups of criminals: social, psychological and biological. They are also significant for the structure of the offender's personality, and provide an opportunity to identify its typical features: biological (sex, age), social (place of residence, education, marital status, type of activity, general level of culture, upbringing), psychological (emotional state, temperament), intelligence, presence or absence of mental disorders).

Scientists have concluded that the subjects of this type of crime have common features. These are mostly males, adults, with secondary education, who do not work, are officially unmarried (but are in a family relationship with the victim).

The results of the generalization of criminal cases show that in 77 % of cases the perpetrators were in a family or marital relationship with the victims, in 23 % the motives for committing domestic violence were jealousy, in 9 % hooliganism.

Based on the research of scientists, the knowledge gained in the process will help not only to make a portrait of the criminal, but also to highlight the links between his personality traits and external factors that contribute to the commission of this type of crime.

According to the Law of Ukraine "On Prevention and Counteraction to Domestic Violence", adopted in 2017, the Criminal Code of Ukraine introduced the article of Art. 126-1 of the Criminal Code of Ukraine on Domestic Violence. This article establishes criminal liability for intentional systematic commission of physical, psychological or economic violence [4; p. 58]. A victim of domestic violence is a family member who has suffered physical, sexual, psychological or economic violence from another family member. A victim of violence is any member of the family who has suffered material or non-material damage through the actions of another member of that family, ie his or her constitutional rights and freedoms have been violated. According to police statistics, about 90 % of victims of domestic violence are women. There are many examples of why women who suffer from marital violence do not divorce their abuser:

– lack (or confidence in the absence) of alternatives in the field of employment and sources of income (often all cash is controlled by the husband). This problem is especially significant for women with children – lack of housing or other accommodation where a woman could move and pick up her children;

– social, cultural and family traditions that declare marriage the highest value and call for the preservation of the family at all costs;

– the presence of people who convince the woman (or maintain her confidence) that she herself is guilty of violence and that can stop it, fully complying with the requirements of the partner;

– immobilization as a result of psychological and/or physical trauma (traumatized persons are often unable to mobilize their own resources needed to end a destructive marital relationship and start a new life for themselves and their children, especially immediately after the trauma) [5; p. 36].

I. Petin highlighted that the victim's behavior is determined by the system of self-punishment, which is controlled by the subconscious. The main element of self-punishment in this case is guilt. The perception of victims of criminal violence as the embodiment of the inevitability of punishment for behavior in general is extremely important criminological and criminal law significance for the prevention of violent crime [6, p. 267].

A very important and criminological significant factor is the nature of the relationship between victims and criminals, their social and domestic ties at the time of the crime. In addition, it was found that the closer the relationship (degree of kinship, intensity of

development, duration, etc.) between the victim and the offender, the higher the likelihood of becoming a victim of violence [7, p. 137].

Among the essential data for the forensic characteristics of the victim in general, scientists distinguish two groups of information:

1. Information about their own qualities inherent in the victim as a person who is endowed with a certain set of physical and socio-psychological traits;

2. Information on the peculiarities of behavior, connections and relationships of the victim with the offender and other persons, his place in the system of the immediate social environment, which may determine the specifics of the crime (method, time, place, tools and means, other circumstances of its commission ) [8, p. 52].

V. Shepitko notes that the study of the victim's identity should include:

1. Information of a questionnaire nature (sex, age, place of birth, work or study, experience, profession (specialty), marital status, presence of relatives);

2. Socio-psychological data (type of temperament, character traits, emotional manifestations, features of interaction (communication) in the team);

3. Peculiarities of behavior - before a criminal event, at the time of the crime, after its commission;

4. Independent characteristics (by place of work or study, place of residence, according to the testimony of relatives, friends or immediate surroundings);

5. Social connections (circle of friends, close acquaintances, peculiarities of leisure time, presence or absence of joint business, commercial activity, specifics of group behavior, desire to join certain microgroups);

6. Data on socially useful activities, its features;

7. Financial situation (availability of property, including real estate, cash deposits, source of enrichment, presence or absence of debt obligations, obtaining loans and the ability to repay them);

8. Criminal experience (presence or absence of convictions, connections with criminal groups, friendly relations with persons who have been prosecuted);

9. Causes of victim behavior (performance of certain professional functions; social deformation of personality), etc. [9, pp. 164-165].

Domestic violence occurs in all sectors of society, regardless of religion, race, sexual preference, professional or educational level. Those who commit violence try to gain power and control over close partners. To know the genesis of any criminal encroachment, especially domestic violence, it is not enough to study the identity of the offender, because in some cases depends largely on the behavior of the victim. In this regard, only taking into account the identity and behavior of the victim can solve a number of issues, in particular: to most fully clarify the elements of criminal behavior, to reveal the forms of conflict behavior of the victim and the offender.

**Conclusions.** Thus, it should be noted that domestic violence occurs in all sectors of society, regardless of religion, race, sexual preferences, professional and educational level. Those who commit violence try to gain power and control over close partners. To know the genesis of any criminal encroachment, especially domestic violence, it is not enough to limit the study of the identity of the offender, because in some cases depends largely on the behavior of the victim. In this regard, only taking into account the identity and behavior of the victim can solve a number of issues, in particular: to most fully clarify the elements of criminal behavior, to reveal forms of conflict behavior of the victim and the offender, to determine a typical criminological portrait of the offender and, consequently, to develop recommendations for improving activities to combat domestic violence.

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**Юлія ГРИШКО**

**КРИМІНАЛІСТИЧНА ХАРАКТЕРИСТИКА ОСОБИ ЗЛОЧИНЦЯ ТА ОСОБИ ПОТЕРПІЛОГО ДОМАШНЬОГО НАСИЛЬСТВА**

**Анотація.** Наукова стаття присвячена дослідженню криміналістичної характеристики особи злочинця та особи потерпілого домашнього насильства. Розглянуто кримінологічні ознак структури особи злочинця, а також особливості постраждалого, як елемент криміналістичної характеристики домашнього насильства**.** Проаналізовано питання пов'язані з характеристикою осіб, які вчиняють домашнє насильство та жертву домашнього насильства.

***Ключові слова:*** *домашнє насильство, криміналістична характеристика, особа злочинця, особа потерпілого.*

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**ESTABLISHMENT OF QUALIFICATION FEATURES OF SHORT-BLADE COLD WEAPONS AND CONSTRUCTIVELY SIMILAR PRODUCTS**

**Abstract.** The conducted scientific work is devoted to the study of qualification features of short-bladed melee weapons and structurally similar products. On the basis of a careful study of the opinions of weapons scientists, information and reference literature, a thorough analysis of expert practice, certain discrepancies in the assessment of research objects, their structural elements, etc. were identified. Modern and sustainable approaches to the definition of cold steel in terms of reflection of qualifications and their consideration in the process of short-bladed cold steel are studied. Examples from our own expert practice and illustrative material of short-bladed melee weapons were used to illustrate the study.

**Key words:** cold steel, short - bladed cold steel, qualification features

**Relevance of the study**. Among the forensic examinations of weapons assigned by pre-trial investigation bodies and courts to the divisions of the Expert Service of the Ministry of Internal Affairs of Ukraine, almost a quarter are forensic examinations appointed as part of the investigation of crimes under Part 2 of Art. 263 of the Criminal Code of Ukraine by expert

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specialty 3.3. "Cold Weapons Research".

There is no separate division by types of melee weapons. However, the results of the study of expert opinions and interviews with forensic experts show that among the research in the field of cold steel research, 80% are short-bladed products. It is clear that the most common objects are (types of short-link) and so on. And if during the expert study on cold steel of industrial manufacture more or less there are no controversial issues, then on short-bladed products, especially knives, the situation is opposite.

Therefore, to establish whether an object is a melee weapon and to what type it is necessary, it is necessary to have basic knowledge about the existing system of classification of melee weapons, its structure and so on.

**Resent publications review.** The basis of this scientific work were the scientific achievements of prominent forensic scientists: R. Belkin, P. Bilenchuk, I. Gerasimov, V. Berger, L. Drapkin, A. Ishchenko, B. Komarinets, A. Kofanov, O. Podshibyakin, E. Tikhonov, A. Ustinov, A. Filippov, N. Yablokov and others. However, it should be noted that the current requirements for the study of short-bladed melee weapons do not fully reflect the scientific and practical achievements, which are certain conflicts in expert research and require further study.

**The article's objective** is an expert study of short-bladed melee weapons and the influence of qualifications on the outcome of the study.

**Discussion.** It is known that the history of criminal liability for the manufacture, carrying and sale of cold steel dates back to the 30s of last century – due to the increase in 1934-1935 malicious hooliganism with the use of cold steel. Until now, there are different views on the recognition of short-bladed products as cold steel. Let's analyze how well-known weapons scientists in different periods reveal the concept of cold steel.

Thus, according to the definition of A. Ustinov: an object specially made to inflict bodily harm and intended for attack and active defense in hand-to-hand combat [4, p. 35]. Adds a qualification feature – the appointment of N. Emelyanov. The scientist notes that a cold weapon is an object specially made or adapted to inflict bodily harm, convenient and suitable for its size, shape and strength for this purpose and has no direct purpose in the household and in everyday life [4, p. 34].

In turn, in the content of the concept of cold steel M. Lyubarsky includes certain qualifications. According to his definition, a cold weapon is an object that has no direct industrial or household purpose; Specially designed or adapted to inflict bodily harm on them during an attack or active defense; corresponding to these goals in terms of design features of their parts, their size and properties of materials (strength, hardness, elasticity) [4, p. 35].

If we transfer the requirements of certain concepts to the plane of current realities and expert practice of today in relation to knives, we tried to separate from the concept of "cold steel" qualifications and take them into account in short-bladed weapons.

Cold steel - objects and devices, structurally designed and by their properties suitable for repeated tasks by direct action of severe (life-threatening at the time of infliction) and fatal injuries, the action of which is based on the use of human muscular strength [3, p. 1].

According to the Methodology of forensic research of cold steel and structurally similar products, the concept of cold steel blades includes objects and devices, the striking element of which is the blade. There are weapons with short (up to 40 cm), medium (40 to 52 cm) and long (more than 52 cm) blade [3, p. 2].

After a thorough examination of the subject submitted for examination, checking the presence of structural elements, measuring its linear dimensions, etc., the expert establishes its purpose and suitability for the target. At this stage, the first problem arises, which requires positive consideration – the sufficiency of the established features.

According to the Methods of forensic examination of cold steel and structurally similar products for the recognition of objects as short-bladed cold steel, when analyzing the identified general technical and forensic requirements must take into account that the determinant for the recognition of a particular device cold steel there is a set of features:

– main purpose; design features of the striking element (for example, for the blade – shape, size, sharpening of the blade, shape and location of the tip relative to the longitudinal axis);

– design features of the handle (ease of holding, availability, shape and size of the handle or limiter);

– design features of the connection of the handle with the striking element;

– strength and elasticity of the structure as a whole;

– the possibility of defeating the target [3, p. 8].

However, a significant number of knives under study do not fully meet the above for any one or more indicators.

An example of this is the following fragments of expert opinion (Fig. 1, 2). During the experiment, the expert found that due to the configuration of the tip, it penetrates the target by 7 mm. The method established that the tip must penetrate the target at least 10 mm. (In general, in the presence of a blade with a sharpening angle of more than $70^0$, it is problematic to immerse the knife blade in the target to a depth of more than 10 mm).

**Fig. 1.** Type of knife with a sharpening angle of $74^0$

During the experiment, the expert found that due to the lack of a plug or limiter, when applying 2 blows, the hand slips on the blade. No further studies were performed due to the possibility of damage to the experimenter. (In general, in the absence of a plug or limiter, it is problematic to hold the knife when hitting a pine board with a force increasing to the maximum).

**Fig. 2.** Type of knife with no stick or limiter

From the examples we see that the above knives do not comply with the Methodology: "the shape and location of the tip relative to the longitudinal axis" and "the presence of the shape and size of the plug or limiter". We have clearly demonstrated only a few cases of non-compliance with the qualifications. Expert practice indicates the prevalence of similar manifestations. Along with this, the expert is faced with a conflict of norms. On the one hand, he is obliged to conduct static and dynamic tests of the subject.

On the other hand, it would be logical to stop the research at this stage and form a categorical conclusion. In addition, it is possible to avoid such collisions under the condition of clearly regulated features, in particular:

– click length not less than 90 mm;
– blade thickness not less than 2.6 mm;
– the presence of a tip with a sharpening angle up to $70^0$;
– the presence of a limiter or plug;
– strength of the structure;
– ease of use;
– the presence of subdigital notches.

In the final assessment of the object, the expert is guided by the above set of requirements and the absence of at least one of the signs gives grounds for a negative conclusion.

**Conclusions.** In conclusion, during the research of short-bladed melee weapons in practice there are some inconsistencies in the assessment of research objects, their structural elements, and so on. Taking into account the historically formed scientific point of view of weapons scientists and modern expert experience, ways to eliminate this problem and establish

the necessary set of permanent features for the recognition of cold steel were proposed. In particular, we proposed to supplement the general requirements of Methods of forensic examination of cold steel and structurally similar products, namely: the length of the blade; blade thickness; the presence of a tip; the presence of a limiter or plug; structural strength; ease of use. In their absence - to stop research.

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

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**Роман МОСКАЛЕНКО**

**ВСТАНОВЛЕННЯ КВАЛІФІКАЦІЙНИХ ОЗНАК КОРОТКОКЛИНКОВОЇ ХОЛОДНОЇ ЗБРОЇ ТА КОНСТРУКТИВНО СХОЖИХ З НЕЮ ВИРОБІВ**.

**Анотація.** Наукова робота присвячена дослідженню кваліфікаційних ознак короткоклинкової холодної зброї та конструктивно схожих з нею виробів. На підставі ретельного вивчення думок вчених-зброєзавців, інформаційно-довідкової літератури, ґрунтовному аналізі експертної практики було встановлено певні неузгодження в оцінці об’єктів дослідження, їх конструктивних елементів тощо.

Досліджено сучасні та сталі підходи до визначення холодної зброї з точки зору відображення кваліфікаційних ознак та врахування їх в процесі короткоклинкової холодної зброї. Привернуто увагу до встановлення загальних техніко-криміналістичних критеріїв, як основне цільове призначення; конструктивні особливості уражуючого елементу, конструктивні особливості руків’я тощо. Запропоновано можливі варіанти усунення зазначених проблем шляхом окремих змін та уточнень загальних вимог Методики криміналістичного дослідження холодної зброї та конструктивно схожих з нею виробів поняття холодної клинкової зброї, а саме: довжину клинка; товщину клинка; наявність вістря; наявність обмежувача або утику; міцність конструкції; зручність застосування.

Задля наочності проведеного дослідження були використані приклади з власної експертної практики та ілюстративний матеріал різновидів короткоклинкової холодної зброї.

***Ключові слова**: холодна зброя, короткоклинкова холодна зброя, ніж, кримінальна відповідальність.*

## ECONOMIC AND INFORMATION SECURITY

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# FORMATION OF THE ANTI-CRISIS CONCEPT OF INCREASING THE STRATEGIC STABILITY OF UKRZALIZNYTSIA

**Abstract**. The author revealed the essence of existing models of reform in railway transport. The Ukrzaliznytsia Anti-Crisis Change Management Program has been developed. New elements of corporate culture of Ukrzaliznytsia are singled out. Measures are offered for formation of favorable conditions for conducting economic activity of railways, creation of favorable information background of railway transport, activization of investment and innovation process.

There are certain rules for financial risk management, namely: There are a number of certain rules that must be followed if the organization wants to strengthen the effectiveness of financial risk management: 1) Responsibility of senior management; 2) Existence of a common policy line and risk management infrastructure, different management chains, must be reliable and efficient; 3) Integration of risk management; 4) Responsibility of responsibility centers; 5) Assessment and ranking of the level of risk; 6) Independent expertise; 7) Contingency planning.

The essence of the methods of Ukrzaliznytsia's corruption program is revealed. It is emphasized that an important element of any corporate culture are such concepts as: motivation, dedication of company employees. For Ukrzaliznytsia, it is especially important not only to educate its own staff, but also to form from the existing base of employees loyal to it and loyal members of the company who feel their involvement in its activities and its development. The directions of formation of a positive image in the eyes of the general consumer are offered. The directions of creation in national companies in various branches (not only for transport enterprises) of steady stimuli to search of new niches and aspiration to an exit on leading positions both in the domestic, and in the world market are outlined. The characteristic of methods of management of anti-crisis changes is given.

***Keywords:*** *Ukrzaliznytsia, anti-crisis management, railway reform, development strategies*

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**Relevance of the study.** In order to ensure the sustainable development of the railway industry, it is necessary to choose an effective model of reform, because, first of all, the success of the company's work as a whole will depend on the organizational structure of management. Of course, there are many models of reform, they are suitable for a particular industry. In Table 1, we present only a few examples of possible models of reform in railway transport. The variety of options considered suggests that the state must choose its own original model that will correspond to the national characteristics of the economy. The European model of reform is more suitable for Ukraine. At least to transfer to private investors all the burden of organizing freight traffic, and the state to take over passenger traffic, which will direct public funds to provide passengers with a modern product of transportation services and related services.

*Table 1*

**Models of railway reform**

| № | Model of reforming | Characteristic |
|---|---|---|
| 1 | European | Separation of infrastructure from transportation. The main emphasis on increasing competition is the development of various directions of the transport network throughout the country. Investors are more focused on freight. |
| 2 | Russian | The single transport market is divided into separate segments on a geographical basis. In the most competitive areas, modern market mechanisms are being implemented, market pricing is in place and appropriate operating conditions which have been created. |
| 3 | American | The entire railway network is divided into several parallel transport directions. Between these areas the competition for the provision of services in parallel moves is beginning to develop. Ukrainian railways will not be able to do this yet, because there is not enough track of proper quality. |
| 4 | Asian | Locomotive traction services stand out from the technological process of transportation and again, the competition between them is developing. |

Ukrzaliznytsia needs an anti-crisis concept that will help smooth out existing crises at the enterprise and prevent new ones.

**Recent publications review.** The works of such scientists as: M. Aistov, I. Akimova, Yu. Barash, L. Batenko, V. Boyko, R. Galgash, O. Gnenny, V. Goncharenko, O. Golovnya, B. Danylyshyn, M. Dambrovsky, V. Dykan, T. Efimenko, G. Eitutis, J. Petrovich, L. Pozdnyakova, V. Sai, N. Malakhova, O. Kirdina, O. Kuzmin, M. Makarenko, O. Melnik, T. Mukminova, N. Mukhina, Yu. Tsvetov, S. Shershnev are devoted to the issue of reforming Ukrzaliznytsia. The works of these scientists revealed theoretical and practical aspects of railway transport reform, such as: problems of practical modernization of rolling stock, implementation of changes in the management structure of the industry, improving the efficiency of available resources, ensuring financial transparency, increasing investment. attractiveness, etc.

**The article's objective** is to form the directions of the anti-crisis concept of increasing the strategic stability of the transport company.

**Discussion.** The most effective methods, in terms of modern science, the development of anti-crisis program for the transport company are two well-known methodologies: SADT – methodology and the so-called road map method. The road map is a key element in the development of SADT-algorithm.

A methodology for aggregate assessment of current and forecast processes of strategic development and change management in the production and economic system, based on the principles of structural analysis and design (SADT), based on diagnosis and implementation of anti-crisis measures approaches to successful implementation of the concept of crisis management. , primarily aimed at achieving strategic stability, which allows successful or useful preventive identification of possible crises in the financial and managerial condition of the organization, as well as to prevent further negative consequences of deteriorating

macroeconomic conditions and shutdown as such [1-3].

The roadmap is a technique that, on the one hand, includes many different components that best meet the requirements of this century: brainstorming, roadmapping, the use of part-time multi-round examinations, a combination of quantitative and qualitative methods. On the other hand, this method is an ideal basis for SADT methodology, as it combines well with the forecast components and regulatory impact on which structural analysis and design are based. The various methods presented above are a practical symbiosis with the management program of Ukrzaliznytsia at different levels of management of modern market anti-crisis changes, which is presented in Table 2.

*Table 2*

**Ukrzaliznytsia Anti-Crisis Change Management Program**

| № | Name of the program | Action plan |
|---|---|---|
| 1 | Initial identification of change needs | 1.1. Anti-crisis diagnostics.<br>1.2. Determining the points of probable resistance to change.<br>1.3. Evaluation and selection of the optimal method.<br>1.4. Motivating employees to change.<br>1.5. Informing and training staff.<br>1.6. Search for talents in the internal environment.<br>1.7. External assistance. |
| 2 | Crisis change planning | 2.1. The main processes of the organization must be correlated with the solution of strategic problems.<br>2.2. Develop a plan for anti-crisis changes.<br>2.3. Use a modular SADT approach based on a road map.<br>2.4. Consider and diagnose each module separately. |
| 3 | Anti-crisis changes as a separate category of activity | 3.1.Clustering of management responsibilities.<br>3.2.Targeted financing of anti-crisis changes.<br>3.3. Tactical actions are preceded by strategic changes.<br>3.4. Reward for achieving transitional targets. |
| 4 | Planning the implementation of anti-crisis program changes | 4.1. A separate category of managers, concentrated around the implementation of the anti-crisis change program.<br>4.2. Third-party consultations to determine the effectiveness of specific solutions.<br>4.3.SMART-ranking. |
| 5 | Current activities | 5.1. Correspondence of changes and current activities.<br>5.2. Parallel conduct of both planning and implementation of change implementation policy.<br>5.3. Tight control. |
| 6 | Institutionalization of anti-crisis strategy | 6.1. Creating a corporate culture that supports change.<br>6.2. Adaptation of innovations.<br>6.3. Purposeful training of all staff.<br>6.4. Creation of a specialized permanent system of existing bodies of anti-crisis management: anti-crisis committee, anti-crisis meeting, field anti-crisis solitude, anti-crisis dialogues and more. |
| 7 | Timely response to change | 7.1. Formation of responsible persons for both tactical and strategic activities.<br>7.2. SMART-control over specific anti-crisis changes.<br>7.3. Target reward for achieving critical parameters of anti-crisis activity.<br>7.4. Anti-crisis budgeting. |

The implementation of the above priorities involves the creation of favorable conditions for the economic activity of railways, creating a favorable information background for railway transport, intensifying investment and innovation process, creating sustainable incentives for

national companies in various fields to seek new niches and strive for leadership and on the world market.

Based on the presented program and strategic directions of activity it is necessary to build a detailed structure of direct and reverse approach to crisis management in Ukrzaliznytsia and achieve a new level of strategic stability of the system as a whole, because Ukrzaliznytsia is a lot of departments. The initial and key point of the anti-crisis program is the development of a system of measures to reduce the risk of insolvency and further bankruptcy. The main problem in risk management is the presence of a conflict of interest between owners and employees, as owners cover the company's losses, but employees are often not very interested in maximizing profits and, consequently, reducing system costs. Employees are interested, first of all, in their own salaries and other privileges in the form of leave and more. At the same time, the increase in the profitability of employees is often closely related to the increase in the amount of risk in their actions. Thus, the interests of employees are summarized as an increase in income, sales and, thus, the levels of risk of the activities carried out - that is, how aggressive in its activities and how intensive this process is.

Since all modern factor models are based on the assessment of the financial condition of the enterprise, the main direction of the risk management program is the financial direction. Ukrzaliznytsia is no exception in this sense. There are a number of specific rules that must be followed if an organization wants to strengthen the effectiveness of financial risk management:

1. Responsibility of the top management of the enterprise. Frequent changes in the top management of Ukrzaliznytsia do not yet lead to positive financial results of the company. An overall risk management policy, including methods for identifying, measuring, monitoring and controlling, should be implemented by the company's top management. This ensures that the risk is in line with the overall strategy and legal requirements, as well as that the culture of risk management is shared by all members of the company. At the same time, either the employees of the controlling service or risk managers should point out the potential risks in the work of the organization to the top management.

2. Existence of a common policy line and risk management infrastructure. The organization must develop an effective and realistic policy in the field of external and internal risk management and ensure its implementation, allocating sufficient human and financial resources. The creation of a risk management infrastructure is aimed at timely identification and management of risks in accordance with the decision of senior management, as well as ensuring communication, coordination and correction of actions of specialists at various levels. At the same time, the information held by managers of different management chains must be reliable and up-to-date.

3. Integration of risk management. In order to understand and manage the risks in their relationship, the identification and assessment of various risks should be carried out continuously and comprehensively. Risk analysis is high enough to assess the risks of the company as a whole.

4. Responsibility of responsibility centers. This approach encourages decision-makers to be fully aware of the risks associated with these decisions and to adjust the calculation of expected returns to take into account the risks. The centers of responsibility on the railways are structural units.

5. Assessment and ranking of the level of risk. Periodic risk assessment should be carried out by qualitative and quantitative methods.

6. Independent expertise. Risk assessment methods and results should be tested with the help of independent experts and practitioners in the field who have sufficient resources, qualifications and experience to determine the full effectiveness of the organization's risk assessment and management mechanisms and make the necessary recommendations. This will provide an objective approach to assessing and monitoring the risks of the external and internal environment of Ukrzaliznytsia.

7. Contingency planning. Adequate risk management tools and policies in non-standard and crisis situations should be developed. This will allow Ukrzaliznytsia to respond effectively and in a timely manner to the unpredictable impact of negative factors.

A key aspect of the success of the external environment is the correct localization of the market, as well as the analysis of market mentality. The synthesis of the concepts of market localization and market mentality leads to the formation of one of the main factors of anti-crisis changes and the achievement of a new level of strategic stability – the creation of a culture of transportation: both passenger and freight.

The culture of transportation is the place that transportation occupies both at the level of small groups and in the activities of macrosystem units, i.e. how deeply they penetrate into social habits; contribute to new ways of implementing and achieving various goals, as well as how this type of culture affects the model of behavior and attitude to the choice of rail transport as a major factor in implementing the strategy. At the same time, the culture of transportation is a dual factor, i.e. it is presented both in the external environment of the company, where it is broadcast, and is an important element of internal (corporate) culture.

The culture of freight and passenger traffic in different countries has its own identification factors that affect the development of the railway complex as a whole. Thus, it is necessary to consider the railway market as a set of product portfolios, which will make it possible to understand how open the market is, how consumers can and are ready to consume the product, how consumer groups are segmented, and whether it is possible (key aspect of traffic culture) to change market behavior.

If it is impossible to create an optimal environment for the consumption of railway services, the company has no chance to develop its potential, adapt to crisis changes and achieve a new level of strategic resilience. If the state monopoly company instead of moving forward by intensifying the use of internal strengths and market opportunities uses subsidies from the state, further market monopolization, the society develops a negative attitude towards such a company, which leads to declining attractiveness of services.

Ukrzaliznytsia, as an enterprise providing transportation services, provides low support from consumers (both passenger and freight), which is formed mainly by negative economic reasons. Poor marketing, unsatisfactory transport infrastructure, poor quality of services, aging rolling stock, low level of service – together negatively affect the consumption of railway services, create incentives to find alternative ways of transporting both goods and people; which in turn leads to a decline in the intensity of positive interest in UZ and the services it provides. The level of competitiveness of road transport is increasing.

*Table 3*

**New elements of Ukrzaliznytsia's corporate culture**

| Element of corporate culture | The essence of the element |
|---|---|
| Timeliness | All activities of Ukrzaiznytsia must meet the requirements of the time. |
| Competitiveness | An element of competitiveness is implemented into the daily work of railway workers, ie creates an artificial competitive environment between different departments, suppliers, drivers, repair plants and more. Leaders receive bonuses |
| New budgeting | Orientation of own budgets to work with non-core assets |
| Mass | Coverage of all company activities in the media. Work to improve the image |
| Charity | Development of charitable activities |
| Education | Advanced training of own staff |

For the transport railway company there is an opportunity to change the attitude to itself and its products as follows: to increase the quantitative and qualitative base of both freight and passenger traffic; change and modernize the cost structure; change the structure of the formation of the final price of transportation and related services; to diversify activities; to become a more modern and mobile company [4, 5].

In our opinion, one of the factors that can help form a sustainable model for the development of Ukrzaliznytsia is the comprehensive support of the media and the attractiveness of the brand. However, the media will support the railway department only if it sees real changes for the better, namely: renewal of rolling stock, modernization of infrastructure, improvement of service, provision of services to people with disabilities,

maximum digitalization of services. Today, the consumer chooses modern rolling stock, he is interested in safe, inexpensive and fast travel. Ukrzaliznytsia's activity is associated by most consumers with the provision of transportation services from point A to point B. Accordingly, the key areas of such activities are safety, quality and timeliness. These categories should form the basis for the formation of a new corporate culture (Table 3).

Ukrzaliznytsia's activities are aimed at achieving profitability on the one hand, and on conducting socially responsible business on the other. Thus, the funds received should be spent not only on current activities, but also on the implementation of policies that will increase revenues in the future - the development of new business relationships; expansion of work with VIP-clients; renewal of the park; improvement of railway infrastructure; development of international relations. An important aspect of corporate culture is the creation of a corporate code of ethics.

*Table 4*

**The essence of the methods of the corruption program of Ukrzaliznytsia**

| Element of corruption struggle | The essence of the method |
|---|---|
| Strengthening internal regulations in the field of anti-corruption | Prohibition of corrupt agreements with external agents; threat of dismissal with financial compensation for losses from corrupt activities for both the employee and the external agent |
| Moral popularization | Reorientation from personal interests to public ones |
| Financial incentives | Development of a system of additional incentives |
| Presumption of guilt | An employee convicted of illegal, corrupt activities must provide evidence of his innocence |
| Conducting special auctions | Sale of property earned through corruption |
| Development of a system of prohibitions | Employee suspected of corruption is restricted in labor rights |
| Confiscation of property | Confiscation appears as an additional measure of punishment for specific crimes |
| Internetization | The introduction of innovative technologies and software can help identify corruption. |
| Creating a single database | This database will provide information on any civil servant |
| Establishment of an appointment committee | All appointments to management positions in the company should be made by the Appointment Committee, which consists entirely of independent directors |
| Creating an anonymous messaging system | Each large company should have a system of anonymous abuse reports |
| Openness and publicity | Some company documents should simply be published by companies on their sites for sharing |

Most of these measures, enshrined in law, together lead to the creation of a positive legal framework within a single company, in our case - in Ukrzaliznytsia, which will reduce corruption (Table 4).

Creating a positive image of Ukrzaliznytsia is possible through the diversification of activities and the transition from just a transport company to an organization with a broad profile of activities that provide modern services. The formation of a positive image in the eyes of the general consumer is possible only through the development of modern social services of the organization for vulnerable groups.

An important element of any corporate culture are such concepts as: motivation,

dedication of company employees. For Ukrzaliznytsia, it is especially important not only to educate its own staff, but also to form from the existing base of employees loyal to it and loyal members of the company who feel their involvement in its activities and its development. Especially valuable is the employee of Ukrzaliznytsia, who not only works an 8-hour working day, but completely sacrifices himself to the company, ready to rework for the strategic development of the company. In order to orient employees to strategic sustainability and better prepare them for crisis management, it is important to use tools such as stocks.

A fairly simple method is to distribute part of the company's shares among its employees. Thus, they are not just employees, but co-owners of the company. Accordingly, the better they work, the more active the quality of services, which increases the company's income, reduces costs, and as a result leads to increased profitability, which results in increased dividends received by all shareholders of Ukrzaliznytsia. Thus, a small additional issue of shares can increase the motivation and commitment of employees and increase their personal efficiency, which will have a multiplier effect on the activities of the transport company.

The Ukrainian market is a market that is constantly changing. Thus, any company, even as large and time-tested as UZ, must have a strategy to adapt to market transitivity. If you do not respond in a timely manner to disruptive innovations, then after a certain period of time you may find yourself in the position of catching up, which is doomed to failure. Thus, in order not to become such a company, Ukrzaliznytsia needs to properly assess its own competitive advantages, identify strengths and understand how capable this or that innovation is.

Ukrzaliznytsia has a number of advantages: developed infrastructure, scientific base, well-established processes and others. It is important for a large corporation to assess how stable it is in an existing market. To do this, it is necessary to analyze five types of obstacles that may hinder the emergence of competitors in the market: inertia, the technical side of the application, the ecosystem, innovation, business model. For Ukrzaliznytsia, this business model may include outsourcing of management services, office and related infrastructure, rolling stock, consulting and documentation management. We summarize the methods of crisis management in Table 5.

*Table 5*

**Characteristics of crisis management methods**

| Method name | The essence of the method | Characteristic | Applied approach |
|---|---|---|---|
| Elementation | Correct formulation of elements of system evaluation in the future | Defining the elements of each part of the system; elementation of structural interrelations of internal and external environment; definition and evaluation of criteria | Strategic, anti-crisis, change management |
| Pre-crisis planning | Primary concentration on the indicators of the financial component of the system | Reducing the number of financial goals | Financial, social, strategic |
| Staff training | Change the behavior of employees by focusing on feelings | Using a strategy of psychological support | Psychological, sociological |
| Team building | Creating a team that has enough strength and experience to create a synergy effect | Creating conditions that motivate participation in transformations | Psychological, sociological, marketing |
| Management style | It is important to clearly define your management style | There are 5 approaches: commander, controller, partner, cultural leader and educator of champions | Strategic, psychological |

| | | | |
|---|---|---|---|
| Optimization | Decomposition of the whole structure to identify ineffective mechanisms | Cost structure optimization and outsourcing of non-critical functions | Economic, strategic, anti-crisis |
| Business process reengineering | The method of implementing change, which means starting from scratch | It is necessary to correctly identify the group of people involved in business process reengineering. Measuring the qualities of participants:<br>1. Attitude to change - everything suits as it is, the desire for change;<br>2. Culture of management and thinking - representatives of the old school, modern | Strategic, technological, psychological, sociological, anti-crisis |
| Control system | Evaluating the effectiveness of managers at the corporate level | Comparison of the achieved results of the project with the expected ones | Economic, strategic, psychological, situational |
| Corporate culture | Correspondence of changes to the original meaning of the company's existence | Identify objects and objects of evaluation and control by managers | Situational, anti-crisis, psychological |

**Conclusions.** The effectiveness of previous initiatives to increase the level of strategic stability of the enterprise is based on two principles: benchmarking and crowdsourcing and crowdfunding. Benchmarking is a process of identifying, understanding and adapting existing examples of the effective functioning of Ukrzaliznytsia in order to improve its own work. Crowdsourcing – the transfer of some production functions. Solving socially significant tasks by a large number of volunteers, who often coordinate their activities with the help of information technology. Crowdfunding is the collective collaboration of people who voluntarily pool their money or other resources together, usually over the Internet, to support the efforts of others or organizations. A platform for cloud democracy can become a platform for attracting broad sections of the population for optimal solutions, for overcoming the problems and conservatism of Ukrzaliznytsia.

The model of cloud democracy is based on three main principles: disclosure of information, delegation of the voice with the possibility of its recall and live feedback. Thus, a model of collaborative decision-making for a large group of people is concentrated, which is concentrated on the Internet. In the future, such a system may grow to the level of the state and involve every citizen in the political process. The basis of the overall strategy to increase the level of strategic resilience and the mechanism of crisis management of the production and economic system of Ukrzaliznytsia is a synergistic and multiplier effect of all planned activities.

*Conflict of Interest and other Ethics Statements*
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**ФОРМУВАННЯ АНТИКРИЗОВОЇ КОНЦЕПЦІЇ ПІДВИЩЕННЯ СТРАТЕГІЧНОЇ СТІЙКОСТІ УКРЗАЛІЗНИЦІ**

**Анотація.** Розкрито сутність існуючих моделей реформування на залізничному транспорті. Розроблено Програму управління антикризовими змінами Укрзалізниці. Виокремлено нові елементи корпоративної культури Укрзалізниці Запропоновано заходи для формування сприятливих умов для ведення господарської діяльності залізниць, створення сприятливого інформаційного фону залізничного транспорту, активізацію інвестиційного та інноваційного процесу. Виокремлено певні правила для управління фінансовими ризиками, а саме:

Існує ряд певних правил, яких необхідно дотримуватись, якщо організація бажає зміцнити ефективність управління фінансовими ризиками: 1) Відповідальність вищого керівництва підприємства; 2) Наявність загальної політичної лінії та інфраструктури ризик-менеджменту. різних ланцюгів управління, повинна бути достовірною та оперативною; 3) Інтеграція ризик-менеджменту; 4) Відповідальність центрів відповідальності; 5) Оцінка та ранжування рівня ризику; 6) Незалежна експертиза; 7) Планування для непередбачених ситуацій.

Розкрито сутність методів корупційної програми Укрзалізниці. Підкреслено, що важливим елементом будь-якої корпоративної культури є такі поняття як: мотивація, відданість співробітників компанії. Для Укрзалізниці особливо актуально як виховання власних кадрів, а й формування з вже існуючої бази співробітників лояльних їй і відданих членів компанії, які відчувають свою причетність до її діяльності, її розвитку.

Запропоновано напрями формування позитивного образу в очах широкого споживача. Окреслено напрямки створення в національних компаніях у різних галузях (не тільки для транспортних підприємств) стійких стимулів до пошуку нових ніш та прагнення до виходу на лідируючі позиції як на внутрішньому, так і на світовому ринку. Надано характеристику методів управління антикризовими змінами.

***Ключові слова:*** *Укрзалізниця, антикризовий менеджмент, реформування залізниць, стратегії розвитку.*

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**PECULIARITIES OF PROVING GUILT OF A TAX VIOLATION COMMITMENT**

**Abstract.** The article highlights the problems of defining the concept of "guilt" in a tax offense, which was introduced relatively recently, and therefore there is no established practice of law enforcement in this area. The author raises the issue of the need to be held liable for various types of liability for committing a tax offense in a certain order, for example, bringing to administrative responsibility must precede bringing to financial responsibility.

The author also draws attention to the problem of the relationship between guilt and responsibility of officials of the legal entity and the legal entity itself and suggests solutions by introducing certain legislative changes. Attention is also drawn to the need to apply different standards of proof to certain types of tax offenses.

***Keywords****: tax offense, guilt, administrative liability.*


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**Relevance of the study.** Reforming tax legislation, which has significantly increased the size of sanctions for tax offenses, and introduced a new doctrinal concept – the fault of the taxpayer, requires the development and implementation of a clear, unified and understandable mechanism by which public authorities should establish the guilt of the taxpayer, and the taxpayer, in turn, will be able to defend himself against the charges.

In the absence of a definition of "guilt" and methods of establishing and proving it in the Tax Code of Ukraine, conditions may be created under which bona fide taxpayers will be prosecuted, while real offenders will be able to avoid liability due to imperfect legal techniques. The effective implementation by the state of the function of collecting taxes and fees to the state budget should be based on a clearly defined mechanism, which provides not only the range of responsibilities of taxpayers, but also the procedure for applying sanctions for their violation. Therefore, this issue is important and needs comprehensive research.

Also problematic and unresolved issue is the relationship between guilt and liability of officials of the legal entity and the legal entity itself, as well as the coexistence of administrative and financial liability for tax offenses, which should certainly be unified to improve the effectiveness of such liability.

**Recent publications review.** The issues of development of the conceptual and categorical apparatus of tax law of Ukraine were dealt with by such leading scientists as M. Kucheryavenko, V. Teremetsky, T. Kolomoets, O. Glukhyi, I. Getmantsev, R. Makarchuk, Ya. Tolkachev, T. Kravtsova, Z. Budko, A. Ivansky, S. Bondarenko and others.

However, given the ongoing process of reforming tax legislation, this issue needs further study, in particular in terms of normative definition of the concept of taxpayer guilt, methods of establishing and proving it.

**The article's objective.** The purpose is to consider the doctrinal concept of "wine" and the normative possibility of its application in tax legislation to bring the taxpayer to responsibility, as well as to develop proposals for normative and legal improvement of the definition of the taxpayer's guilt, methods of its establishment and proving to the extent necessary for bringing to justice.

**Discussion**. From 01.01.2021 the Tax Code of Ukraine contains a new definition of a tax violation: illegal, culpable (in cases provided directly by the Code) action (activity or inactivity) of the taxpayer (including persons equated with him/her), regulatory authorities and / or their executive officers (officials), other entities in cases provided directly by the Code [8].

Such changes were made by the Law of Ukraine "On Amendments to the Tax Code of Ukraine for the improvement of the tax administration, elimination of technical and logical inconsistencies in tax legislation" № 466-IX from 16.01.2020, which entered into force on 23.05.2020, which introduced the concept of holding a taxpayer liable for tax violation, provided that his/her guilt is proven [12].

Thus, the crucial difference of the new version of the definition of a tax violation contained in the Tax Code of Ukraine is the indication of the criterion of guilt of an action (activity or inactivity) of a taxpayer. That is, we can conclude that the legal responsibility for committing a tax offense occurs only in the presence of the guilt of the taxpayer.

However, D. Kobylnik draws attention to the fact that currently for the state and regulatory authorities the attitude of a person to the fact that such a person has violated the provisions of tax legal regulations (intentionally or negligently) is of no importance. This is due primarily to the fact that the main task for the state, as a subject of tax relations, is to fill the revenue side of the budgets at different levels [4].

Whereas, R. Khanova and A. Barikova note that even after all the changes, the Tax Code of Ukraine still does not contain a definition of "guilt". The guilt of a person in committing a tax offense is evidenced, if it is proved by the regulatory authorities, by the unreasonable, unscrupulous and inconsiderate activity, providing that the person is able to comply with the rules and regulations, for violation of which the Code provides liability, but he\she failures to take sufficient measures for the rules submitting. Due to the legislator's use of the conjunction "and" between the words "unreasonable, unscrupulous and inconsiderate", it is important to prove all the above-mentioned circumstances entirely, if the payer had the opportunity to behave properly. All these three criteria are evaluative concepts, the true content of which should be determined by the results of judicial interpretation [15].

Therefore, A. Litvintseva identifies the following features of a tax violation:

1) an action in the form of an activity or inactivity;

2) illegal feature;

3) the presence of a special subject;

4) illegal consequences of such an action;

5) the presence of responsibility for such actions [9, p. 123].

It should be noted that the doctrine of tax law fully recognizes the classical structure of the tax violation, which is analogous to criminal and administrative offenses, that is the body of the tax offense is formed by the object, the objective side, the subject, the subjective side.

The doctrine of tax law contains the following definition of the subjective side of the tax offense. It is the mental attitude of the subject of the tax violation to the socially dangerous action he commits, and its socially dangerous consequences at the time of the tax offense commitment. We can summarize that with the presence of sufficiently complete and well-established definitions for the determination of the subjective side of the offense, the relevant normative act – the Tax Code of Ukraine does not contain a definition of guilt.

For the most part, scholars express ambiguous positions that, in fact, in the case of tax violations, we can only talk about the degree of activity and willingness of officials of taxpayers' organizations to take measures to prevent tax offenses. It is not possible to evaluate the activity of a legal entity from the point of view of intention or negligence [9, p. 125].

Thus, the most problematic issue both in determining the component of the tax offense and in the application of administrative liability for the tax violation is the concept of the subjective side of the tax offense. At present, guilt, as a component of a tax offense, still has neither a clearly determined definition nor the practice of proving it by both regulatory authorities and courts in tax disputes resolution.

We will make an attempt to determine for ourselves under what conditions legal liability for a tax offense can be applied. Therefore, as if the Tax Code of Ukraine does not contain the concept of "guilt", it is possible in this case to appeal to the analogy of the law.

On July 17, 1997, Ukraine ratified the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) [5]. According to Art. 9 of the Constitution of Ukraine, valid international treaties, the binding nature of which has been approved by the Verkhovna Rada (The Supreme Council) of Ukraine, are part of national legislation, i.e., the Convention is applicable in Ukraine as an integral part of national legislation [9].

In this case, in accordance with Part 1 of Art. 17 of the Law of Ukraine "On enforcement of judgments and application of the case law of the European Court of Human Rights" (hereinafter – ECtHR) [11], courts in the process of cases use the Convention and the case law of the Court as a source of law. That is, due regard for the case law of the European Court of Human Rights is a matter of ensuring the principle of the rule of law supremacy in Art. 8 of the Constitution of Ukraine. It should be noted that the European Court of Human Rights considers that the legal relations that have developed in the tax sphere are in many respects analogous to those in the field of criminal offenses.

Thus, in 1976, in the case "Engel and Others v. The Netherlands" [14] the European Court of Human Rights (ECtHR) concluded that for the purposes of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), the notion of "criminal prosecution" has an autonomous meaning and is not limited to the qualification of "criminal" under the national law. The ECtHR has established its own criteria for defining the concept of "criminal prosecution", which have been called the 'Engel' criterion and are now widely used in the practice of the ECtHR. In fact, according to the "Engel" criterion, a significant part of tax charges and fines in Ukraine is qualified as a criminal charge against the payer; as well as such sanctions are noticeable and more punitive (not aimed at compensating for the damage). Based on an analysis of the nature of tax penalties, the ECtHR concluded that since such fines are applied to an unlimited number of taxpayers (the second criterion) and are intended to penalize the taxpayer (partly the third criterion), tax penalties should be considered as "criminal" for the purposes of the Convention.

Therefore, in the case of determining of "guilt", it is possible to refer to the definitions contained in the Criminal Code of Ukraine in Articles 23-25 [7], and to the doctrine of criminal law. So, guilt is a person's mental attitude to his\her illegal activity or inactivity and its consequences in the form of intention or negligence. Guilt is one of the elements of the subjective side of any offense, and therefore legal liability is generally possible only if a person is guilty of a prohibited action. Liability without fault is possible only in certain cases provided by law in civil law (for example, when causing damage by a source of increased danger).

Forms of guilt are combinations of certain features of consciousness and will of a person committing a socially dangerous action specified in the criminal law.

According to Art. 23 of the Criminal Code of Ukraine, the guilt is a mental attitude of a person to an activity or inactivity provided by the Criminal Code, and its consequences, expressed in the form of intention or negligence. The interesting is the case law of the Supreme Court. Thus, in the resolution of 27.04.2018 in case № 820/4064/17 the court made the following legal conclusion: tax offenses within the meaning of paragraph 109.1 of Article 109 of the Tax Code of Ukraine are illegal actions (activity or inactivity) of taxpayers, tax agents, and / or their officials, as well as officials of regulatory authorities, which led to non-fulfillment or improper fulfillment of the requirements established by this Code and other legislation, the control over observance of which is entrusted to the regulatory authorities.

The court also points to signs of guilt of the legal entity: "the guilt of the legal entity in this case, according to the panel of judges, is proved by negligence of the payer's officials, which was expressed in the lack of control over the safety and validity of personal keys of taxpayer, that makes impossible the fulfillment of payer's duty for the registration of excise invoices in time" [10].

In paragraph 110 the judgment of 23 July 2002 in the case of Westberg Taxi Aktiebolag Company and Vulich against Sweden, the ECtHR stated that "… administrative courts dealing with applicants' complaints against tax administration decisions have full jurisdiction in these cases and the power to overturn contested decisions. Cases must be considered on the basis of the submitted evidence, and to prove the existence of grounds provided by the relevant laws for the imposition of tax fines is the tax administration" [13].

Therefore, it is the tax authority that is obliged to prove the existence of a tax offense, including the subjective attitude of the taxpayer to the committed tax violation (if it is committed), which is an irrevocable condition for bringing the taxpayer to the responsibility.

The fact what exactly should the tax authority be guided with in establishing the guilt of the taxpayer is not defined by law. Currently, the practice of bringing the taxpayer to both administrative and financial responsibility is well-established. According to Article 61 of the Constitution of Ukraine, no one can be twice brought to responsibility of the same type for the same offense [6]. However, Article 112 of the Tax Code of Ukraine stipulates that bringing taxpayers to financial responsibility for violating tax laws and other legislation, the control of which is entrusted to the supervisory authorities, does not release their officials if there are appropriate grounds for administrative or criminal liability.

Administrative liability of officials occurs only under certain conditions and in cases established by law. Discretionary powers of regulatory authorities in these cases are absent. From the above-mentioned facts, we can conclude that administrative sanctions are a measure of administrative influence through administrative law, which contain a conviction of the perpetrator and his\her action and which have negative consequences for the offender [8]. Financial responsibility for tax offenses is mostly imposed on the taxpayer and is established in accordance with the Tax Code of Ukraine, and is applied in the form of penalty (financial sanctions). The presence of guilt is a prerequisite for bringing a person to financial responsibility in the following tax offenses:

– paragraph 119.3 of the TCU (violation by the taxpayer of the procedure for submitting information about individuals – taxpayers);

– paragraphs 123.2 – 123.5 of the TCU (penalty sanctions in case of determination by the regulatory authorities of the amount of tax liability and / or other obligation, the control over payment of which is entrusted to the regulatory authorities, reduction of budget reimbursement or detection the facts of the use of tax benefits not for the intended purpose or contrary to the conditions or purposes of their provision);

– paragraphs 124.2 – 124.3 of the TCU (violation of the rules of payment of a monetary obligation);

– paragraphs 1251.2 – 1251.4 of the TCU) (violation of the rules of accrual, withholding and payment (transfer) of taxes to the sources of payment).

Therefore, it becomes necessary to define the concept of guilt of a legal entity. As it is mentioned above, guilt is a certain mental state of a person, his\her attitude to his / her behavior and its results. As the basis of responsibility, guilt makes sense only when it is possible to influence the motives of human behavior. Therefore, the guilt of a legal entity should be taken into account when establishing liability, if it is possible to identify the person or persons who, acting as bodies, representatives or employees of the organization, violated or contributed to

the violation of contract, caused property damage to other participants of civil case. It is often difficult or impossible to identify specific individuals whose activity or inactivity have violated the subjective rights of other participants. However, even if these persons are identified, they, as a general rule, do not bear pecuniary responsibility to the person who was harmed. They will be liable to the legal entity for violation of their official and labor duties. There is a kind of transformation of the responsibility of a legal entity into the responsibility of its officials and employees. This fact raises the question of the guilt of the individuals, but in a different way [3, p. 163]. Thus, it can be concluded that administrative liability arises only in the presence and proof of guilt of the taxpayer-individual or official of the legal entity. Financial liability for a tax offense arises on a set of conditions when it will be proved not only the guilt of the official – the taxpayer, but also in the presence of signs of unreasonableness, dishonesty and lack of due diligence.

Based on the above-mentioned facts, the author concludes that there is a need to introduce a mechanism of direct dependence of bringing the taxpayer to financial responsibility from the primary establishing by the court of guilt of an individual – taxpayer or legal entity to official to administrative liability for an administrative offense, as well as the need to classify tax offenses for those that require or do not require a form of ascertainment of guilt.

**Conclusions.** Based on a study of the specifics of proving guilt in committing a tax offense, we found out and suggested the following:

1) The primary outcome should be the result of consideration of the case of bringing an individual – a taxpayer or an official of a legal entity to administrative responsibility for committing an administrative offense.

2) The tax authority should obtain the function of a prosecution party by analogy with the activities of the prosecutor's office in criminal proceedings. Thus, the tax authority must collect the appropriate amount of evidences and present them to the court, which will assess them and make a conclusion about the subjective attitude of the person to the action.

3) The court's conclusion should be the basis for the next stage of liability of the taxpayer – his / her bringing to financial responsibility.

4) The tax offense must contain a reference to a specific form of guilt, taking into account the volitional factor. It should be considered that the standard of proof "out of a reasonable doubt" requires a significant amount of evidences to be collected by the tax authority.

5) It is rational to establish a more detailed classification of tax offenses with the possibility of prosecuting some of them without establishing the form of guilt of the taxpayer, defining in these cases the standard of proof is the "balance of probabilities" inherent in civil proceedings.

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**Катерина РЕМЕЗ**

**ОСОБЛИВОСТІ ДОВЕДЕННЯ ВИНИ У ВЧИНЕННІ ПОДАТКОВОГО ПРАВОПОРУШЕННЯ**

**Анотація.** Стаття присвячена аналізу запровадженої у 2020-2021 роках концепції притягнення до відповідальності платника податків за податкові правопорушення за умови доведеності його вини та розробці на цій основі пропозицій щодо вдосконалення правових механізмів притягнення платників податків до відповідальності. Розглянуто проблемні питання відсутності законодавчого визначення поняття «вина» та методів її встановлення та доведення у Податковому кодексі України, а також проблему співвідношення вини та відповідальності посадових осіб юридичної особи та власне юридичної особи, а також співіснування адміністративної та фінансової відповідальності за вчинення податкових правопорушень. Запропоновано ряд заходів щодо нормативно-правового вдосконалення механізму встановлення та доведення вини платника податків, необхідного для притягнення їх до відповідальності шляхом наділення додатковими повноваження органів податкової служби.

Також автор звертає увагу на можливість запозичення норм кримінального права та процесу при розгляді справ про притягнення до адміністративної відповідальності за податкові правопорушення у частині зібрання доказів, представлення їх суду, надання їм оцінки, а також можливості захисту платника податків від пред'явлених звинувачень. Проаналізовано доцільність встановлення першочерговості судового розгляду справ про притягнення платників податків до адміністративної відповідальності, що має стати правовим підґрунтям для притягнення в подальшому до фінансової відповідальності, надання можливості пред'явлення регресних вимог, а також запропоновано застосовувати різні стандарти доказування до окремих видів податкових правопорушень. Автор також приділяє увагу можливості класифікації податкових правопорушень за принципом необхідності встановлення та доведення форми вини платника податків, акцентуючи увагу на необхідності дотримання балансу між значимістю порушення та його адмініструванням в процесі притягнення порушника до відповідальності.

***Ключові слова:*** *податкове правопорушення, вина, адміністративна відповідальність.*

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# APPLICATION OF FINANCIAL LIABILITY FOR TAX OFFENSES: FOREIGN EXPERIENCE AND UKRAINIAN REALITIES

**Abstract.** Peculiarities of application of the mechanism of financial responsibility for tax offenses in Ukraine and in foreign countries are considered. It is argued that violations of tax law are a common type of offense. It is noted that the legal system of many countries, including Ukraine, provides for strict regulation of the tax system, severe control of taxpayers' reporting and the application of financial sanctions in case of violation of tax laws. The tax legislation is analyzed, the norms of which are difficult to understand, and some are ineffective, which is one of the reasons for their non-compliance and the growing number of tax offenses.

Emphasis is placed on the fact that the issue of financial sanctions for tax evasion and other tax offenses has a significant impact on the intensification of globalization processes in the global financial system. Under such conditions, further development of Ukrainian legislation on financial liability for tax offenses should take into account global trends in this area.

***Keywords:*** *tax, tax offenses, financial liability, tax legislation, financial sanctions, tax evasion.*

**Formulation of the problem.** In today's world, among the main tasks of any state there should be: ensuring economic growth, increasing investment potential, building the economy, helping to solve many social problems. One of the important factors in their solution is the implementation of an effective tax policy – the activities of the state to establish, regulate and organize the collection of taxes. Among its main priorities today are improving the quality and efficiency of tax administration; ensuring justice and equality of the tax system; adaptation of tax legislation to the norms and rules of best foreign practices and international standards.

Violation of tax legislation is a very common type of offense. Therefore, the task of tax policy, and hence tax regulation in any state is to ensure law and order in the field of taxation, which depends on the effectiveness of the mechanism of financial liability arising from violations of the rules governing it. Legislation on financial liability for tax offenses in Ukraine has gone through several stages of formation and further development. Clarification of this issue, as well as the peculiarities of the application of financial liability for violations of tax laws is crucial for identification of prospects for this institution.

**Recent publications review.** The issues of the application of the mechanism of financial liability for tax offenses were investigated by E. Dmytrenko, D. Getmantsev, L. Oleynikova, M. Trypolska, A. Ivansky, R. Usenko and others. However, scholars have not studied this issue in terms of current realities that affect the application of financial liability for tax offenses in Ukraine and around the world.

**The article's objective** is to analyze the peculiarities of the application of the mechanism of financial liability for tax offenses in Ukraine and abroad, also to identify trends that will affect the development of this mechanism in the future.

**Discussion.** The legal system of many countries around the world provides for strict regulation of the tax system, and severe control of reporting of taxpayers and the application of financial sanctions in case of violation of tax legislation.


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The tasks of tax policy and hence tax regulation, in any state can be divided into three main groups:

– economic (regulatory) tasks – aimed at achieving the established indicators of economic and social development of the country, revival of business activity, increasing international economic relations, solving urgent social problems;

– fiscal tasks – provide for the formation of the required amount of financial resources to perform the state assigned to it functions;

– control tasks – provide effective tax control over the results of tax payments.

Analysis of tax legislation shows a high level of complexity of its norms, the ineffectiveness of some norms and the lack of incentives to comply with their instructions and the procedure for conducting business transactions and payments through formal banking channels. All this affects the mechanism of tax administration and the content of tax policy, among the main areas of which – reducing the number of tax offenses.

In today's environment, the development of the tax system is significantly influenced by the intensification of globalization processes in the financial system. One of its consequences is the cooperation of different countries on taxation, which is reduced to such positions as: transparency of taxation; ensuring fair tax competition between countries. However, there may also be increased tax competition between individual countries, the consequences of which are a reduction in the tax base in the countries where certain stages of the production process take place, lower tax rates, changes in the structure of direct and indirect taxes, etc. [1, p. 193].

Consequently, law and order in the field of taxation depends, among other factors, on the effectiveness of the mechanism of financial responsibility, which comes for violation of norms of tax legislation.

E. Dmitrenko, studying the issues of financial responsibility, notes that a financial offense is an illegal, socially dangerous, guilty act of a tortfeasor (a person who can be legally responsible for its actions) who has violated the order of mobilization, distribution and use of public funds regulated by financial and legal norms for which financial liability is provided [2, p. 201]. We support this approach and emphasize that such violation can be committed both by action and inaction. Violation of the deadline for registration with a tax authority, evasion of registration, failure to submit a tax return are the most common examples of tax violations committed by omission. Violations on accounting of income and expenses, objects of taxation can be committed both by action (incorrect reflection of business transactions in the accounting accounts) and inaction (not documenting and not reflection of business transactions in the accounting). A feature of the current mechanism of financial liability for tax offenses under quarantine restrictions related to COVID-19 in Ukraine is that taxpayers are exempt from fines (with some exceptions) and penalties for late payment for the period from March 1, 2020 year to the last day of the month in which the quarantine period ends [3].

Note that the mechanism of financial liability for tax offenses changed with the reforms of the tax system, which were aimed at improving it, making better the quality and efficiency of tax administration, as well as the effective accumulation of resources needed to perform its functions. Special changes were made to: corporate income tax, value added tax, personal income tax and excise tax. The formation of a modern mechanism for applying financial liability to violators of tax legislation (as well as the tax system in general) has passed the following periods:

– the first period (1991-1995) – the formation of the tax system. During this stage, the main taxes in Ukraine were introduced, the principles of taxation were established, and certain norms on the application of liability for violations of tax legislation were adopted;

– the second period (1996-1997) – the development of institutional foundations of the tax system, during which the State Tax Administration of Ukraine was established, which was subordinated to the President of Ukraine, but there was an increase in arrears of taxes and fees, which became a problem to be solved;

– the third period (1998-2007) – introduction of alternative taxation systems, development of a simplified taxation system;

– the fourth period (2008-2009) – further development of the tax system, increasing the efficiency of the tax regulation mechanism, the level of fiscal and regulatory function of taxes. The State Tax Service has become the central body of executive power, the activities of which are coordinated by the Cabinet of Ministers of Ukraine through the Minister of Finance of Ukraine;

– the fifth period (2010-2014) – improving the institutional framework of the tax system, the adoption of the Tax Code of Ukraine and regulatory regulation of the modern mechanism of administration of taxes and fees, significant improvement of financial liability for tax offenses;

– the sixth period (from 2015 to the present) is a stage of modern development of the tax system, during which the number of taxes was significantly reduced and the optimal number of national and local taxes and fees was formed. National taxes include: corporate income tax; income tax; VAT (value added tax); excise tax; environmental tax; rent; toll. Local taxes include: property tax; single tax, and local fees include: fee for parking spaces for vehicles; tourist tax.

Analyzing the stages of formation of the tax system of Ukraine, we note that the mechanism of financial liability for tax offenses was determined only with the adoption of the Tax Code was determined. However, the process of developing legislation in this area is still ongoing and needs the attention of both scholars and legislators, as it is influenced by a large number of external and internal factors. For its development, it is important to implement international standards in the field of taxation, as well as mechanisms for controlling the payment of taxes. It is necessary to draw parallels with foreign tax legislation to understand the prospects for domestic development. World experience is a valuable basis for developing methods to combat tax evasion, creating effective norms that will help taxpayers comply their tax obligations. Globalization and integration of Ukraine into the European space is a difficult challenge facing the legislator. Domestic tax legislation, including aspects of financial liability, need to be further developed on the basis of foreign experience.

At present, the tax system of Ukraine includes all major types of taxes that operate in developed countries. However, the presence of a certain type of tax in the tax system is not yet evidence of the effectiveness of its administration, as the establishment of taxes and fees is insufficient for the formation of state revenues [4, p. 114]. Any economic system of the state cannot exist without revenues, and any tax system cannot function without state bodies that implement state tax policy, apply financial sanctions and ensure the receipt of taxes and fees.

The use of tax functions depends on many factors, including economic, social, political conditions in which such a tax system operates. The set of taxes and fees available in the state cannot be realized without the active and professional activity of executive bodies, which, in accordance with the law, are entrusted with the performance of tax collection functions. The activities of these bodies "ensure" the payment of taxes and fees, "collection of taxes in the prescribed manner", the implementation of "control and responsibility" for the payment of taxes, and so on.

According to the legislation of Ukraine, the State Tax Service of Ukraine is currently empowered to apply financial responsibility for tax offenses. This body in different time periods had different names: the Main State Tax Inspectorate of the Ukrainian SSR (1990-1994); Main State Tax Inspectorate of Ukraine (1994-2000); State Tax Administration of Ukraine (2000-2012); State Tax Service of Ukraine (2011-2012); Ministry of Revenue and Duties of Ukraine (2012-2014); State Fiscal Service of Ukraine (2014-2019); State Tax Service of Ukraine – since 2019.

One of the divisions of the State Tax Service of Ukraine was entrusted with the functions of detecting and disclosing tax offenses, at a certain initial stage it is the tax police. Later it became the tax militia (this term is used by former soviet republics as an analogous to «police»), as a unit specializing in the fight against tax offenses, also conducted a pre-trial investigation in the field of tax evasion and budget violations. The methods of the tax militia have been repeatedly criticized. The tax militia was accused of abuse of power through the use of special "schemes" of pressure on company directors. The number of seizures of documents by tax militia investigators often significantly exceeded the number of initiated proceedings.

On March 25, 2021, the Law of Ukraine "On the Bureau of Economic Security" came into force, which for the first time in the country created a new law enforcement agency with pre-trial investigation and operative-search activity instead of another similar law enforcement agency without any succession (Law No. 1150) [5]. For the first time in the history of Ukraine, the law enforcement body was not reformed, but terminated as a legal entity, without any guarantees of employment of former tax police officers in the newly formed Bureau of Economic Security.

Along with organizational changes in the mechanism of liability for tax offenses, approaches to the composition of such offenses are also changing. In particular, we should pay

attention to the Law of Ukraine "On Amendments to the Tax Code of Ukraine to improve tax administration and eliminate technical and logical inconsistencies in tax legislation" dated 16 January 2020 № 466-IX (Law No. 466) [6], which introduces a new concept of a tax offense. Now the criteria of guilt and intent must be clearly taken into account in the case of prosecution for tax offenses (paragraph 109.1 of the Tax Code of Ukraine (TCU)) [7].

A prerequisite for bringing a person to financial responsibility is the presence of guilt in the following tax offenses: paragraph 119.3 of the TCU (violation by the taxpayer of the procedure for submitting information about individuals - taxpayers); paragraphs 123.2-123.5 of the TCU (determination by the supervisory authority of the amount of tax liability and/or other liability, the control of which is entrusted to the supervisory authorities, reduction of budget reimbursement or detection of facts of use of tax benefits for other purposes or contrary to conditions or purposes of their provision); paragraphs 124.2-124.3 of the TCU (violation of the rules of payment (transfer) of monetary obligations); paragraphs 1251.2-1251.4 of the TCU (violation of the rules of accrual, withholding and payment of taxes to the source of payment).

The subjects of tax offenses were also corrected by the Law No. 466. Entities prosecuted for tax offenses as of 01.01.2021:

1) taxpayers, tax agents – are financially responsible for committing tax offenses in cases expressly provided by the TCU (paragraph 110.1 of the TCU);

2) a natural person (a taxpayer) – bears financial responsibility provided that at the time of the tax offense full civil capacity (paragraph 110.2 TCU);

3) controlling bodies – are liable in the form of compensation for damage to the person in respect of whom the tax offense was committed, in accordance with the provisions of Article 114 (paragraph 110.3 of the TCU);

4) legal representatives of taxpayers – bear the financial responsibility established for taxpayers in case of non-fulfillment of obligations specified by the TCU (paragraph 110.4 of the TCU);

5) a legal entity (a taxpayer) – is financially responsible for the commission of tax offenses by its separate units, defined by the TCU (paragraph 110.4 of the TCU).

It should be noted that case law contains an analysis of guilt as a key factor in tax offenses. In the court decision of 15 February 2021 in case No. 420/8853/20, the court concluded the absence of the taxpayer's fault due to the entry of erroneous information in the State Register of Real Property Rights was absent [8].

Analysis of the decision of the Khmelnitsky District Administrative Court on February 17, 2021 in case № 560/7224/20 demonstrates that the plaintiff willfully did not reflect the agreed amount of tax/monetary obligation, although he had a real opportunity to file a declaration of value added tax in time, but did not submit it intentionally [9]. Consequently, the issue of financial penalties for tax evasion and other tax offenses is often decided on a case-by-case basis, depending on the damage caused.

Tax offenses are common in all countries, despite the differences between the tax systems of different countries. However, tax tools still remain common. The tax must have the object, subject, unit of taxation, source, rate, tax incentives, method of collection and method of determination. The negative trend of the tax system of Ukraine is the volume of the general tax burden, which is gradually increasing. There are administrative problems of tax regulation, although digitalization and development of information technologies have not the least impact on the de-shadowing of the economy. The introduction of new technologies in the field of taxation not only simplifies the ability to pay taxes by taxpayers, but also improves the interaction between the relevant government agencies and the taxpayers themselves. This is evidence of a tendency to a different understanding and approach to paying taxes, understanding it as a service rather than a burden. However, it is necessary to change the perception of society, motivating the voluntary payment of taxes through information and advertising campaigns.

If we talk about other current trends in the analyzed sphere, we should pay attention to the experience of the United States of America, where such an effective preventive tool as extradition is used to address the growth of transnational crime, tax evasion and strengthen human rights [10]. Note that high-income countries lose more taxes due to global tax abuses. Thus, such countries as a whole lose more than $ 382 billion annually, while low-income countries lose $ 45 billion. But low-income countries' tax losses are equivalent to nearly 52 % of their combined health care budgets, while high-income countries' tax losses are equivalent to 8 % of their combined health care budgets. Similarly, low-income countries lose the equivalent

of 5.8 % of the total tax revenue they typically collect in a year due to global tax abuses, while high-income countries lose an average of 2.5 %.

The same pattern of global inequality is clearly visible when comparing regions of the global north and south. North America and Europe lose over $ 95 billion in tax and over $ 184 billion respectively, while Latin America and Africa lose over $ 43 billion and over $ 27 billion respectively. However, North America and Europe's tax losses are equivalent to 5.7 % and 12.6 % of the regions' public health budgets, respectively, while Latin America and Africa's tax losses are equivalent to 20.4 % and 52.5 % of the regions' total health budgets respectively [11].

Foreign experience shows that the effectiveness of activities to prevent tax offenses depends on the tax authorities, which should have a number of strategies to encourage taxpayers to comply with tax laws. A general strategy can be characterized as a document that defines the content of preventive activities aimed at preventing tax offenses, based on a risk-based approach. This requires tax authorities to apply enhanced control and risk minimization measures and define a plan to overcome those risks when there are current, emerging, and future risks that may entail a violation of tax law. In general, there should be an overall tax compliance strategy that covers the full spectrum of compliance, from encouraging voluntary compliance, combating inadvertent noncompliance, to avoidance, evasion, and serious crimes. However, the specific strategy should be based on each jurisdiction's legal system, policies, legislative environment, and overall law enforcement structure at the stage [12].

However, the strategy can be more effective if the risks (current, new, future) are first assessed, as taking them into account ensures that the risks are minimized. Such a process helps to improve decisions by reasonably prioritizing how to more effectively overcome various risks, including the commission of tax offenses. This should take into account the specific context or environment (cultural, political, legal, economic, and technological) and, if appropriate, draw on the views of other authorities responsible for combating financial crimes [12]. In order to resolve the above mentioned and other problems, taking into account global trends in taxation, the following changes in the tax legislation of Ukraine can be proposed:

– introduce a tax on excess income for transnational corporations which make superprofits during a pandemic, such as global digital companies, to avoid abuses related to profit shifting. Determine multinationals' excess profits at the global rather than national level to prevent corporations from under-reporting profits by moving them to off-shores and taxing them with a flat tax method;

– introduce a wealth tax to fund measures related to the proliferation of Covid-19, penalties for opaque offshore assets, and commitments by governments to eliminate that opacity;

– implement an international tax standards and the comprehensive multilateral tax transparency [11].

**Conclusions.** Analyzing the peculiarities of the application of the mechanism of financial responsibility for tax offenses in Ukraine and abroad, we can conclude that the intensification of globalization processes has a significant impact on the tax system. Compliance with the rule of law in the field of taxation is essential. For this purpose there must be an effective and modern mechanism for the application of financial liability arising from violations of tax law.

A financial offense is an illegal, socially dangerous, culpable act of a tort person who violated the procedure of mobilization, distribution and use of public funds, which is regulated by financial and legal norms, for which financial liability is provided. Such a violation can be committed by either action or inaction. Trends in financial liability in Ukraine are affected by quarantine restrictions related to COVID-19. The current difficult situation in the world makes it possible to predict the continued exemption of taxpayers from fines (with some exceptions) and penalty (interest fine), as well as the extension of the moratorium on in-house inspections of taxpayers. The mechanism for applying financial liability for tax offenses is also changing, in particular, nowadays the criteria of guilt and intent must be clearly taken into account when prosecuting for such offenses.

Foreign experience shows that tax losses in many countries make up a large part of their income, especially in low-income countries. An effective mechanism for applying financial liability, risk assessment, and developing tax strategies by authorities to encourage taxpayers compliance with tax laws can address this issue. Analysis of the formation of the tax system of

Ukraine shows that only with the adoption of the Tax Code was determined the mechanism of financial liability for tax offenses. For the further development of this institute it is necessary to implement international standards in the field of taxation, as well as mechanisms for controlling the payment of taxes. World experience is a valuable basis for developing methods to combat tax evasion, creating effective rules that will help taxpayers meet their tax obligations. Domestic tax legislation, including aspects of financial liability, need to be further developed in the light of globalization processes and Ukraine's integration into the international financial system.

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

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**ЗАСТОСУВАННЯ ФІНАНСОВОЇ ВІДПОВІДАЛЬНОСТІ ЗА ПОДАТКОВІ ПРАВОПОРУШЕННЯ: ЗАРУЖНИЙ ДОСВІД ТА УКРАЇНСЬКІ РЕАЛІЇ**

**Анотація.** Порушення податкового законодавства є поширеним видом правопорушень. Правова система багатьох країн світу передбачає жорстке регулювання системи оподаткування, суворий контроль звітності платників податків та застосування фінансових санкцій у випадку порушення податкового законодавства. Законодавство про фінансову відповідальність за податкові правопорушення в Україні також передбачає фінансові санкції у випадку їх вчинення.

Аналіз податкового законодавства свідчить про високий рівень складності його норм, неефективність окремих із них та відсутність стимулів для дотримання їх приписів. Зазначене впливає на рівень тіньової економіки та зростання кількості податкових правопорушень.

На розвиток систем оподаткування в розвинутих країнах значний вплив має активізація глобалізаційних процесів у світовій фінансовій системі. За сучасних умов податкові органи повинні мати низку стратегій для ефективного реагування на різне ставлення платників податків до виконання своїх зобов'язань. Податкові органи мають здійснювати профілактичну діяльність на основі ризик-орієнтованого підходу. За наявності поточних, нових та майбутніх ризиків, що можуть спричинити порушення податкового законодавства, застосовувати посилені заходи контролю та мінімізації ризиків.

Акцентовано увагу на тому, що питання фінансових санкцій за ухилення від сплати податків та вчинення інших податкових правопорушень часто вирішується в індивідуальному порядку залежно від нанесеної шкоди. За таких умов подальший розвиток законодавства України про фінансову відповідальність за податкові правопорушення має відбуватися з урахуванням світових тенденцій у цій сфері.

***Ключові слова:*** *податок, податкові правопорушення, фінансова відповідальність, податкове законодавство, фінансові санкції, ухилення від сплати податків.*

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# MECHANISMS FOR TAXATION BY VAT OF TRANSACTIONS ON CROSS-BORDER SUPPLY OF SERVICES IN ELECTRONIC COMMERCE: INTERNATIONAL CONTEXT AND UKRAINE

**Abstract.** The article is devoted to the analysis of the mechanisms for taxation by VAT of transactions on the supply of services in case the supplier and consumer are residents of different states (jurisdictions). The research shows that for B2B supplies the most viable mechanism is reverse-charge, while for B2C supplies such appropriate mechanism would be the registration of non-resident as VAT payer in jurisdiction of the consumer. It was established that Ukrainian legislation implements both these mechanisms. However, the registration of non-residents as VAT payers model should apply in Ukraine as of 1 January 2022, therefore it was emphasized that it is important to properly control the implementation of this mechanism in order to ensure prompt and effective response to problems which may arise in this respect.

***Keywords:*** *taxation, VAT, cross-border e-commerce, OECD, non-resident*

**Relevance of the study.** The development of tax law at the international level is quite intensive now. This is caused by the need to respond to new challenges in the world, in particular to changes in business processes due to the significant expansion of Internet and digitalization of most areas of public and private relations, rapid growth of e-commerce role. One of the directions for developing such changes is the revision of the concept and mechanism of taxation by value added tax (hereinafter – VAT) of cross-border supply of electronic services and intangible assets by residents of one state (jurisdiction) to consumers from other states (jurisdictions).

**Recent publications review.** Issues related to the taxation of transactions on remote supply of services in e-commerce were studied by N. Boreyko, I. Belik, K. Solodan, T. Zatonatska, O. Melnichuk and others. At the same time, the issue of mechanisms for collection of VAT on cross-border supply of services by residents of one state (jurisdiction) to consumers from other states (jurisdictions) requires further scientific development.

**The article's objective.** The purpose of the article is to identify the internationally recognized mechanisms for taxation by VAT of transactions on the supply of services by residents of one country (jurisdiction) to consumers from other countries and to assess status of the Ukrainian legislation in the context of such mechanisms.

**Discussion.** The issue of suitable mechanisms for charging VAT on transactions on the supply of services by residents of one state (jurisdiction) to consumers from other states (jurisdictions) has been relevant for a long time. One of the main platforms on the basis of which it has been discussed is the Organization for Economic Cooperation and Development (hereinafter – the OECD).

In particular, on OECD platform in 1998 the Committee on Fiscal Affairs issued a report "Electronic Commerce: Taxation Framework Conditions" (hereinafter – the 1998 Report). In the 1998 Report it was stated that rules for the consumption taxation of cross-border trade should result in taxation in the jurisdiction where consumption takes place and an international consensus should be sought on the circumstances under which supplies are held to


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be consumed in a jurisdiction. It was also noted that for the purpose of consumption taxes, the supply of digitised products should not be treated as a supply of goods. Where business and other organisations within a country acquire services and intangible property from suppliers outside the country, countries should examine the use of reverse charge, self-assessment or other equivalent mechanisms where this would give immediate protection of their revenue base and of the competitiveness of domestic suppliers [1, p. 5].

Subsequently, in the Report by the Consumption Tax Technical Advisory Group (TAG) issued on OECD platform in December 2000 (hereinafter – the Consumption Tax TAG Report), taking into account previous work, it was stated that the most practical solution to identify the place of consumption is to look at the customer's usual place of residence [2, p 4].

In addition, the Consumption Tax TAG Report outlined developments on possible tax collection mechanisms. The expediency of applying a particular mechanism was considered based the consumer status – business representatives (business-to-business transaction) (hereinafter – B2B transactions) or end consumers (business-to-consumer transaction) (hereinafter – B2C transactions). The Consumption Tax TAG Report states that it was agreed as common ground that a "self-assessment" or "reverse charge" mechanism is a logical way for tax B2B transactions. In turn, for B2C transactions "consumer self-assessment", "registration of non-resident suppliers", "tax at source and transfer" and "withholding by third parties" were considered as potentially relevant mechanisms [2, p. 5]. At the same time, the possibility of implementing a simplified interim approach was considered as an intermediate step towards the transition to one of these or a newly developed mechanisms. This approach provided creation of a tax system, which would simplify all aspects of tax compliance, including registration, identification of turnover and calculation of tax, electronic submission of returns and audit processes [2, p. 6].

In another report issued in December 2000 by the Technology Technical Advisory Group (hereinafter – the Technology TAG Report), these mechanisms are explained in more detail. In particular, it is stated that the consumer self-assessment mechanism provides that tax is collected directly from consumers relying on a self-assessment process. Consumers would be required to determine the tax owing on imports of goods and services. This amount would then be remitted to their domestic revenue authority [3, p. 15]. The mechanism of registration of non-resident suppliers provides that a non-resident supplier is required to register with the revenue authority in the consumer's jurisdiction and collect and remit consumption taxes to that revenue authority of that jurisdiction [3, p. 16]. The tax at source and transfer mechanism provides that a business would collect indirect taxes on exports to non-residents at the rate payable in the consumer's jurisdiction. This amount would then be remitted to the business' domestic revenue authority, for on-forwarding to its counterpart in the country of consumption [3, p. 17]. The next mechanism described in the Technology TAG Report is the trusted third party model. This mechanism provides for the split of functions between the supplier and the authorized third party, where the relevant tax obligations are performed by such third party. This mechanism requires the interaction of the supplier, a trusted third party and the tax authority [3, pp. 17-18]. The withholding by financial institutions model is considered as a variation of the trusted third party mechanism, where such a third party is a financial institution [3, p. 19]. It is important to note that the Technology TAG Report also considers the possibility of applying a hybrid approach, that takes parts of both the tax at source and transfer and the clearinghouse (trusted third party) models, where the strengths and weaknesses of these two models in some ways counteract each other [3, p. 65].

Subsequently, a Report from Working Party No. 9 on Consumption Taxes to the Committee of Fiscal Affairs "Consumption Tax Aspects of Electronic Commerce" issued in 2001 (hereinafter – the Working Party Report) regarding the place of consumption clarifies that for B2B transactions intangible services should be viewed as consumed where the recipient has located its business presence. In turn, for B2C transactions, a more appropriate criterion for determining the place of consumption is the jurisdiction in which the customer has his/her usual place of residence [4, pp. 12-13].

As to the tax collection mechanisms, the Working Party Report further considered the possibility of using technology-based and / or technology-facilitated options, which are technological solutions for tax collection and might assist in developing alternative tax collection mechanisms in the future. The Technology Technical Advisory Group pointed out the need to study hybrid models and its own favoured approach, from a technological perspective, was to combine elements of a global registration, tax at source and transfer and

trusted third party models. [4, pp. 16-17]. It was also emphasized the importance of further examination of the possibilities of using such technology-based models, given their potential [4, p. 8]. At the same time, as previously, it was considered that for B2B transactions an effective mechanisms of tax collection would be reverse charge or self-assessment. In turn, for B2C transactions, in the short term it was recommended to consider a system of simplified registration for non-resident suppliers, which ensures that the potential compliance burden is minimised, consistent with the effective collection of tax. In the medium and long terms a move towards technology-based options was supposed to be envisaged [4, p. 18].

At the same time, it was stressed that when introducing tax collection mechanisms based on the registration of non-resident suppliers as taxpayers, a number of considerations are recommended to be taken into account, in particular ensuring that the potential compliance burden is minimised, application of registration thresholds in a non-discriminatory manner and consideration of appropriate control and enforcement measures to ensure compliance of non-residents [4, p. 27]. These developments have formed the basis of more comprehensive documents, including "Taxation and Electronic Commerce: Implementing the Ottawa Taxation Framework Conditions" issued in 2001, Consumption Tax Guidance Series issued and approved in 2003 and other OECD documents. Subsequently, the issue of suitable mechanisms for collecting consumption taxes was included in the Action Plan on Base Erosion and Profit Shifting (hereinafter – the BEPS Action Plan), which consists of 15 Actions.

In particular, in the document "Addressing the Tax Challenges of the Digital Economy" issued by the OECD in 2014, which is dedicated to Action 1 of the BEPS Action Plan, it is stated that the first challenge regarding collection of VAT arises from the growth that has occurred in e-commerce and in particular, online purchases of physical goods made by consumers from suppliers in another jurisdiction. [5, p. 133]. The second challenge regarding collection of VAT arises from the strong growth in cross-border B2C supplies of remotely delivered services and intangibles. In turn, such remote supplies of services and intangibles present challenges to VAT systems, as they often result in no or an inappropriately low amount of VAT being collected and create potential competitive pressures on domestic suppliers. It is further stated that the approach that allocates the taxing rights to the jurisdiction where the customer is resident would, in principle, result in taxation in the jurisdiction of consumption, but the question arises as to how to ensure effective tax collection in the jurisdiction of the consumer. One option is to require the private consumer to remit the VAT in its jurisdiction at the rate applicable in this jurisdiction, however, such consumer self-assessment mechanism has proven to be largely ineffective and as result, it is highly likely that no VAT would be paid by the consumer in this scenario. The OECD's E-commerce Guidelines therefore recommend a mechanism that requires the non-resident supplier to register, collect and remit VAT according to the rules of the jurisdiction in which the consumer is resident. At the same time, if such jurisdiction does not implement a suitable mechanism to collect the tax in this jurisdiction, no VAT would be paid [5, pp. 135-136].

One of the most comprehensive studies, which examines in detail the issue of taxation by VAT of cross-border supply of goods and services, is reflected in International VAT/GST Guidelines which were presented in 2015 and later in 2016 were adopted as a Recommendation by the Council of the OECD. First of all, these Guidelines once again declare, in particular with reference to the World Trade Organization, that there is widespread consensus that the destination principle, with revenue accruing to the country of import where final consumption occurs, is preferable to the origin principle from both a theoretical and practical standpoint [6, p. 16]. Further the Guidelines state that for cross-border B2B supplies of services and intangibles that are taxable in the jurisdiction where the customer is located these Guidelines recommend the implementation of a reverse charge mechanism. At the same time, this mechanism does not offer an appropriate solution for collecting VAT on B2C supplies of services and intangibles from non-resident suppliers. The level of compliance with a reverse charge mechanism for B2C is likely to be low, since private consumers have little incentive to declare and pay the tax due, at least in the absence of meaningful sanctions for failing to comply with such an obligation. Moreover, enforcing the collection of small amounts of VAT from large numbers of private consumers is likely to involve considerable costs that would outweigh the revenue involved. Work carried out by the OECD and other international organisations, as well as individual country experience, indicate that, at the present time, the most effective and efficient approach to ensure the appropriate collection of VAT on cross-border B2C supplies is to require the non-resident supplier to register and account for the VAT

in the jurisdiction of taxation. When implementing a registration-based collection mechanism for non-resident suppliers, it is recommended that jurisdictions consider establishing a simplified registration and compliance regime to facilitate compliance for non-resident suppliers. The highest feasible levels of compliance by non-resident suppliers are likely to be achieved if compliance obligations in the jurisdiction of taxation are limited to what is strictly necessary for the effective collection of the tax [6, p. 71].

In the document "Consumption Tax Trends 2020: VAT/GST and Excise Rates, Trends and Policy Issues" it is stated that most OECD countries apply a reverse charge mechanism to collect VAT on inbound B2B supplies of services and intangibles. At the same time, for B2C supplies, all OECD countries that operate a VAT, except for Canada and Israel, now require the foreign supplier to register and account for VAT. A simplified registration and collection regime (without right to deduct input taxes in the taxing jurisdiction) applies in these countries, except in Japan and Switzerland. At the same time, such non-residents are usually allowed to use the standard registration regime as an option [7].

It should be noted that some challenges of taxation of transactions in e-commerce has been studied by Ukrainian scientists. T. Zatonatska and O. Melnychuk, with reference to foreign research studies, point out that the basic principles of Internet taxation in the EU are the following: a) there is no need to introduce new taxes. All efforts should be focused on the accelerated adaptation of existing taxes, primarily VAT, to the peculiarities of the e-commerce market; b) electronic supply of products should be considered for VAT purposes as a supply of services; (c) in order to avoid unfair competition, the neutrality of the tax system between EU and non-EU suppliers, as well as between online and offline sales, must be maintained; d) ensuring compliance with the tax rules of all e-commerce operators; (e) the tax system and its management tools should ensure that the supply of services within the EU in the e-commerce market to both businesses and individuals are taxed. e) the tax system should be transparent and fair, avoiding the levelling of the benefits of working in this market [8, p. 18].

I. Belik, with reference to T. Fetzer and S. Poznyakov, when examining the experience of the EU points out that the provisions of the Directive on the application of value added tax (VAT) to the sale of services through telecommunications channels are based on proposals from the European Commission as of 7 June 2000. The Directive stipulates that supplies of digital products consumed within the EU are subject to VAT, while supplies of digital products outside the EU are exempt from VAT. Foreign suppliers of digital products should register for VAT purposes in the competent authorities of one of the EU member states (it is assumed that this will be the country to which the first delivery takes place).

However, the tax will be levied at the rate applicable in the country where the consumer is located. These rules should apply only to those foreign suppliers who sell their products in the EU to non-entrepreneurs (B2C). If the sale is carried out according to the B2B model, the VAT should be accrued, withheld and paid directly by the purchaser located in the EU. The EU Council emphasized that such VAT regulation is in line with the principles of indirect taxation developed at the OECD Conference in Ottawa in 1998. According to these principles, VAT should be levied in the country of consumption of goods and services. The mentioned rules of taxation of e-commerce by VAT were introduced in the EU in 2002. These rules, on the one hand, allow tax authorities to effectively exercise state control in the field of e-commerce, and on the other hand, – to encourage businesses to legitimate economic activities and timely payment of taxes [9, p. 52].

Thus, as an intermediate conclusion, it should be noted that within the OECD as a reputable international organization, considerable attention is paid to taxation by VAT of the supply of services and intangibles when the supplier and consumer are located in different jurisdictions. The importance of this issue comes from the need to respond to changes in business models, in particular due to the intensive development of the Internet and e-commerce, when the provision of services often does not require the presence of supplier and consumer in the same state (jurisdiction). The destination principle according to which the place of supply of services and intangibles should be the jurisdiction of the presence of the consumer is widely accepted. This raises the question of applying effective VAT collection mechanisms.

Such mechanisms vary depending on who is the consumer of the services or intangibles. In particular, if the consumer is representative of a business (B2B transactions), the most effective mechanism to charge VAT is reverse-charge. If the consumer is an individual who is not a representative of a business, the most effective mechanism to charge VAT is the registration of a non-resident supplier as a VAT payer in the jurisdiction of the consumer. The

expediency of using these approaches is confirmed by the practice of OECD countries, the vast majority of which have introduced these VAT collection mechanisms.

It should be noted that the experience of Ukraine shows the adherence to these approaches. In particular, in accordance with Article 208 of the Tax Code of Ukraine (hereinafter – the TCU) [10] in case of supply of services by a non-resident, where the place of supply is the customs territory of Ukraine, to Ukrainian VAT payer or other resident of Ukraine which is representative of a business (except for individual entrepreneurs), or to a permanent establishment of a non-resident in Ukraine, the recipient of services must accrue and charge VAT. The standard VAT rate is 20 %, while 7 % rate applies in the cases specifically provided by the TCU. In this case, the procedure of accrual and payment of tax, as well as the possibility of including the amount of VAT to the tax credit depends on the VAT status of the recipient of services [10].

If the recipient of services is registered as a VAT payer, it must issue a tax invoice indicating the amount of VAT charged, and this invoice should serve as the basis for accruing by the recipient of VAT credit for the same amount as the tax accrued. Such a tax invoice must be registered the Unified Register of Tax Invoices. The amounts of VAT obligations and VAT credit must be reflected in the VAT return. In turn, if the recipient of services is not registered as a taxpayer, the tax invoice is not issued. Such a recipient prepares the calculation of tax liabilities in the established form and pays the tax to the budget. In this case, the recipient of services is not entitled to get VAT credit against the tax payable [10].

Thus, for taxation of B2B transactions on the supply by non-residents of services, the place of supply of which is located in the customs territory of Ukraine, Ukrainian legislation provides reverse-charge mechanism. It should also be noted that the place of supply of a significant part of B2B services is defined as the location of the recipient of services (destination principle). This approach is in line with OECD recommendations and the practice of European countries.

As to the taxation by VAT of B2C transactions on the supply of services by non-residents to Ukrainian end consumers, it should be noted that Ukraine has recently adopted the Law of Ukraine "On Amendments to the Tax Code of Ukraine on Abolishment of Taxation of Income Received by Non-residents in the Form of Payment for Production and / or Distribution of Advertising and Improvement of Taxation by Value Added Tax of Transactions on Provision of Electronic Services by Non-Residents to Individual" [11] (hereinafter – the Law), which introduces a mechanism for such a taxation. Prior to the adoption of the Law, the legislation of Ukraine did not provide for such a special mechanism.

In particular, according to the Law non-residents which supply electronic services to Ukrainian consumers are required to register as VAT payers in Ukraine, submit VAT returns, pay tax to the budget and comply with other formalities. This Law, among other things, introduces the definition of electronic services and establishes that place of supply of such services should be identified by the location of the recipient, provides simplified procedures for registration and cancellation of registration of non-residents by VAT payers, submission of tax returns, special procedure for interaction of such non-residents with Ukrainian tax authorities, accrual and payment of VAT. The relevant rules will apply in tax periods starting from 1 January 2022 [11].

Thus, the adoption of the Law shows that Ukraine has chosen the concept according to which in case of supply of electronic services by non-residents to Ukrainian end consumers such non-residents shall be responsible for charging and paying VAT and for this purpose they are obliged to register as a VAT payers in Ukraine. At the same time, non-residents are subject to a simplified registration and tax compliance procedures, and they are provided with the possibility of remote interaction with the tax authority. This approach shows that the legislator considered the peculiarities of relations with non-residents due to potential absence of their representatives in Ukraine. In addition, this Law testifies the expansion by Ukraine of the destination principle for determining the place of supply of services. This approach is in line with OECD recommendations and the practice of European countries.

At the same time, as the mechanism of registration of non-resident suppliers as VAT payers in Ukraine is new and has not yet started its operation in practice, it is currently impossible to assess the practical aspect of such a mechanism. Due to this, it is important to ensure proper control over the implementation of this mechanism and its effectiveness, as well as timely response of the legislator and authorized executive bodies to practical problems that may arise in the process of implementation and operation of this mechanism. Such control and

response will facilitate the ability of non-resident suppliers to perform their tax obligations and exercise their rights, as well as the ability of public authorities to perform their functions effectively, while reducing the probability of occurrence of controversial issues and disputes.

**Conclusions.** Changes in the interaction between suppliers of services and consumers due to the expansion of opportunities with use of the Internet, in particular due to the rapid growth of e-commerce, led to a revision of approaches on taxation by VAT and other consumption taxes of cross-border supply of services. In particular, the international community has come to consensus that the place of supply of services should be determined primarily by the location of the recipient of services. This raised the necessity of developing tax collection mechanisms. In particular, for B2B transactions it was defined that the most effective VAT collection model is the reverse-charge mechanism, according to which the recipient of services from a non-resident must charge tax in the jurisdiction of its location. Instead, for B2C transactions, the most effective mechanism is the registration of a non-resident service provider as a VAT payer in the jurisdiction of the consumer (recipient of services). The acceptability of such approaches is confirmed, in particular, by the practice of OECD countries, the vast majority of which have implemented these approaches.

Ukrainian legislation is also in line with such approaches. In particular, for cross-border B2B transactions on supply of services with the place of supply on the customs territory of Ukraine the legislation provides reverse-charge mechanism. For cross-border B2C transactions on supply of electronic services with the place of supply on the customs territory of Ukraine, a mechanism for registration of a non-resident supplier as a VAT payer has already been introduced. Thus, considering current Ukrainian legislation, it should be noted that it is in line with OECD recommendations and the practice of other European countries. At the same time, since registration of non-resident as VAT payers will operate only starting from 1 January 2022, it is quite important to ensure effective control over implementation and operation of this mechanism in order to properly address potential problems which may arise in practice.

*Conflict of Interest and other Ethics Statements*

The author declares no conflict of interest.

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**Віталій ЛАБАДІН**

## МЕХАНІЗМИ ОПОДАТКУВАННЯ ПДВ ОПЕРАЦІЙ З ТРАНСКОРДОННОГО ПОСТАЧАННЯ ПОСЛУГ В РАМКАХ ЕЛЕКТРОННОЇ КОМЕРЦІЇ: МІЖНАРОДНИЙ КОНТЕКСТ І УКРАЇНА

**Анотація.** Статтю присвячено дослідженню механізмів оподаткування ПДВ операцій з постачання послуг в рамках електронної комерції за умови, коли постачальник і споживач є резидентами різних держав (юрисдикцій).

У статті проаналізовано міжнародно визнані підходи щодо порядку оподаткування ПДВ та подібними податками на споживання операцій з такого постачання послуг. З'ясовано, що для цілей визначення прийнятного механізму доцільно розділяти відносини із такого постачання послуг залежно від статусу їх отримувача. Зокрема, якщо отримувач послуг є представником бізнесу (суб'єктом господарювання), найбільш доцільним механізмом оподаткування ПДВ операцій із такого постачання послуг є нарахування та сплата податку отримувачем послуг у юрисдикції його реєстрації як суб'єкта господарювання (reverse-charge). Якщо отримувачем послуг є кінцевий споживач, найбільш доцільним механізмом оподаткування ПДВ операцій із постачання таких послуг є реєстрація нерезидента-постачальника платником податку у юрисдикції отримувача послуг із відповідним покладенням на нього обов'язків платника ПДВ.

Встановлено, що чинне законодавство України узгоджується із такими міжнародно визнаними підходами. Зокрема в Україні законодавчо передбачено та діє механізм, відповідно до якого резидент, який є суб'єктом господарювання, у разі отримання послуг з місцем постачання на митній території України повинен виконати обов'язки із нарахування та сплати ПДВ.

Також в законодавстві України нещодавно запроваджено механізм реєстрації платниками ПДВ нерезидентів, які постачають електронні послуги на користь кінцевих споживачів або фізичних осіб-підприємців, які не є платниками ПДВ. Такі нерезиденти повинні самостійно виконувати обов'язки із нарахування та сплати ПДВ. Однак на практиці цей механізм почне діяти з 1 січня 2022 року. У зв'язку з цим наголошено на важливості контролю за впровадженням цього механізму і оперативного реагування на проблеми, які можуть виникати у процесі його реалізації.

***Ключові слова:*** *оподаткування, ПДВ, транскордонна електронна комерція, ОЕСР, нерезидент.*

# PSYCHOLOGICAL AND EDUCATIONAL ASPECTS OF MODERN PROFESSIONAL ACTIVITIES

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## FORMATION OF PROFESSIONALLY ORIENTED FOREIGN LANGUAGE COMMUNICATIVE READINESS OF TECHNICAL SPECIALTIES STUDENTS

**Abstract.** The article presents the opinion on the necessity of readiness formation of professionally oriented foreign language communication of future technical specialists. The essence of the concept of readiness for any activity, including professionally oriented foreign language communication is revealed. It is considered in detail the problem of psychological readiness as a complex education and individual traits. The article focuses on the main components of preparedness activities. It is summarized the scientists approaches to the interpretation of the concept of readiness as a result of future specialist training. The author analyzes different approaches to the definition of “readiness”. The article is devoted to the problem of formation of readiness for professional oriented foreign language communication of future specialists in technical educational establishments. Some aspects of this concept influencing formation process success of readiness for foreign language communication were examined.

***Keywords:*** *readiness, readiness formation, professionally oriented foreign language communication, specialist, professional activities.*

**Relevance of study.** Conditions of social life, modern production technologies, the development of global ties in the labor markets, production and science, the integration of Ukraine into the world society have changed the labor market requirements for specialists in various industries whose professionalism depends on the level formation of professional foreign language communicative competence and readiness for professional business communication with representatives of other cultures. Foreign language training should ensure the active command of future specialists in the technical sphere in a foreign language as a means of forming and formulating thoughts during the performance of professional duties, as well as the formation of the personality of the future specialist Professionalism of a specialist is determined not only by professional training since the overall efficiency of his activities largely depends on the skills formed to organize and use the acquired knowledge, educational and life experience in a particular professional situation; the ability to find and analyze the necessary information; the ability to resolve conflict situations and find compromise solutions; the ability to conduct a dialogue. It is the humanitarian disciplines that play an important role in the formation of a creative and harmonious personality of a future specialist in the technical field, contribute to the development of his worldview, professional communication skills and communication skills. Knowledge of foreign languages contributes to the creation of a person


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positive image in everyday life, scientific and business spheres. Therefore, the study of a professionally oriented foreign language is a prerequisite for effective interaction at different levels, mobility, establishing business contacts with national and foreign colleagues.

At the present stage development of new intellectual educational technologies, it is envisaged to use means of increasing the efficiency of perception and preservation of information, development of memory and attention, the formation of logical thinking, processing and computer processing of information. It is necessary to use pedagogical means of educational purpose, that is, the means in which the subject areas are reflected, the technologies of their study are implemented to a certain extent, conditions for the implementation of various types of educational activities are provided.

**Recent publications review.** The main goal of the pedagogical process is the formation of a personality that is able to work independently and creatively, fostering such an attitude to study and profession, activity, independence, which ensure the ability and readiness of an educational establishment graduate for future professional activities. The works of scientists M. Artyushina, L. Baranovska, R. Gurevich, O. Dominskiy, L. Yershova, I. Zyazyun, M. Kademia, A. Lobanov, V. Madzigon, N. Moiseyuk, N. Nychkalo are devoted to the problems of theory and methods of vocational education.

In our opinion, special attention should be paid to the development of cognitive and professional activities. Cognitive and professional activity as a psychological and pedagogical problem is actively discussed in the scientific community. Scientists S. Velikanova, Ye. Skibitskiy, N. Talyzina and others indicated the need for the permanent development of cognitive activity.

An important feature of the learning process in technical educational establishments is the professional orientation of foreign language teaching. Studies on the professional orientation of foreign language teaching were carried out by T. Alekseyeva, L. Birkun, L. Gaidukova, S. Gaponova, N. R. Petrangovska, L. V. Pukhovska, S. Radetska, T. Serov, S. Folomkina.

**The article's objective** is to reveal the essence of the concept of readiness for professionally oriented foreign language communication, as well as to attempt to analyze theoretically the peculiarities of formation of readiness for professionally oriented foreign language communication of future specialists in technical establishments.

**Discussion.** The determining factor of the effectiveness of professional activity is communicative activity, the leading component of which is communicative skills. The practice of a foreign language teaching testifies to the diversity of the organizing educational forms and cognitive activities for mastering communication skills in a language that is studied and based on the educational materials provided by the program. These forms of work provide an opportunity to realize more fully the goal of education – mastering the foreign language communicative skills, taking into account the students' future specialization. Without mastering communicative skills at foreign language lessons, any activity cannot be effective.

Analyzing the current state of foreign language training in technical educational establishments it can be concluded that teachers of foreign languages meet a number of problems at professionally oriented foreign language teaching. Their efforts are aimed at eliminating the negative factors that exist in the organization of the teaching process and hinder the achievement of the necessary results. It should be noted that a low communicative orientation of classes in a professionally oriented foreign language in technical educational establishments is due to the richness of the educational process with formal language exercises that minimizes the number of communicative exercises, doing which students learn to express a certain content of the communicative professional situation in the communication process. The low level of intensity of foreign language learning is caused by the insufficient amount of time for active training and practice in using the language. Analysis of the current state in foreign language teaching at technical educational establishments allows us to assert that there are certain difficulties associated with the problems of language specialization in technical sphere: 1) the lack of professionally oriented textbooks; 2) the contradiction between the amount of information and the study time allotted for its assimilation; 3) insufficient consideration of students' individual abilities.

The dynamics of the modern science development leads to the fact that technical educational establishments are not able to respond quickly with the appropriate level of professional foreign language training of future specialists in technical specialties. The current state of affairs can be characterized as a gap between the level of professional foreign language

training of future specialists and the requirements of the labor market. Consequently, the relevance of this issue is determined, first of all, by the growing requirements for foreign language training of specialists in technical specialties and the need to form readiness for foreign language professional activity in the context of growing competition.

The issue of improving foreign language training in vocational education is relevant and is considered in details in the works of L. Bekrenyova, O. Bernatska, P. Bekh, L. Birkun, L. Morska, S. Nikolaeva, N. Sura. Despite the high degree of urgency of the problem, which is associated with the formation of professionally oriented foreign language communicative readiness of future technical specialists, it is not fully covered in special literature.

The analysis of psychological and pedagogical scientific research on this problem has shown that in the modern theoretical base there are various approaches to the definition of this concept. Basically, "readiness" is defined as the result of training. So, in the dictionary of S. Ozhegov, this term is defined as a state in which everything is done, everything is ready for something [5].

If we consider readiness as integrated new formations in thinking, consciousness, self-awareness, personality traits (intellectual, mental, physical), ensuring the productive performance of professional activities, then we can argue that readiness is an integral stable personal formation which is characterized by emotional-cognitive and volitional mobilization of the subject at the moment of its inclusion in a certain type of activity. We understand readiness as a unity of two directions – moral and psychological, which includes professional and moral views and beliefs, professional orientation of mental processes, self-control, working capacity, attitude to work, the ability to overcome difficulties, self-assessment of results, the need for professional self-education that ensures high work results.

The main component of readiness, according to scientists, is the unity of the personal and procedural components. Willingness is personal, emotionally intellectual, strong-willed, motivational. This includes interest, attitude towards activities, a sense of responsibility, confidence in success, the need to perform tasks at a high professional level, management of your feelings, mobilization of forces, overcoming uncertainty.

D. Usmonov believes that the state of readiness is a psychological prerequisite for the effectiveness of activities. It is a complex dynamic formation, has a complex dynamic structure that includes motivational orientation, operational, volitional and evaluative components [6, p. 58]. The scientist considers the state of psychological readiness as a complex dialectical structure, which is a personality trait and is characterized by a set of intellectual, emotional, motivational and volitional components of the human psyche in relation to external conditions and future tasks.

Based on the analysis of the literature [7] on the problem of the readiness formation, we determine that psychological readiness is the presence of an orientation towards activity, general psychological stability, the presence of qualities and abilities for further personal self-improvement, the presence of interest in learning, and developed professional thinking. Scientific and theoretical readiness is a deeper and more complete mastery of concepts, laws, theory, widespread use of similar subjects and knowledge of innovative technologies. Practical readiness is the presence of professional knowledge, skills and abilities of effective work, formed at the appropriate level, the ability to generalize world and personal experience. It also includes cognitive (understanding professional tasks, assessing them), motivational (interest in the profession, striving to achieve success), and volitional (overcoming doubts, the ability to mobilize one's strength) components. We believe that readiness is a variable characteristic that depends on age, experience, individual characteristics. It is advisable to consider this phenomenon as a complex multilevel form, an established structure of a person's qualities and abilities that is realized in activities.

M. Levitov distinguishes long-term, short-term, normal, increased and decreased readiness for activity [4]. In turn, we can distinguish temporary and sustainable readiness. Based on many years of experience in Vinnytsia technical college, we state that in order to form the professionally oriented foreign language communicative readiness of a future technical specialist it is important to have both temporary and sustainable readiness. Their positive sides can be: 1) sustainable readiness – the compliance of the structural composition of the individual professional qualities with the work's content and conditions in the specialty, actualization and inclusion in the process of completing tasks, a combination of stability and dynamism; 2) temporary readiness – relative stability, the ability to switch and concentrate attention, instantly make professional decisions to achieve a goal. The development and

inclusion of these two types of readiness in the process of activity is not an automatic process, which leads to an increase in the productivity of thinking, representation, memory, knowledge, skills, and the work of a specialist as a whole. They become effective only when creating appropriate conditions for influencing the consciousness and subconsciousness of a future technical specialist in the process of his professional training.

Based on the research, we concretize the concept of "readiness for activity" as a complex formation in the structure of the personality, and the term "readiness" is used in two meanings: training, readiness to perform the tasks ahead and the presence of competence, knowledge and skills necessary to perform the assigned tasks.

Regarding the concept of professional readiness, since the 70s of the twentieth century, it has been studied as the influence of personality traits on future professional activities. Therefore, it can be argued that professional readiness is a subjective state of a person who considers himself capable and prepared to perform a certain professional activity. Professional training includes knowledge, abilities and skills corresponding to the profile of the activity and is considered at professional levels.

L. Akhmetov, I. Fayzrakhmanov, A. Fayzrakhmanova see the basis of the future specialist readiness in the totality of qualities and properties necessary for effective professional activity which determine the position of a specialist in relations with colleagues at work. These are professional self-determination, readiness and ability for self-education, quality of professional training, responsibility [1, p. 35]. With regard to technical specialists, in our opinion, the quality of foreign language professionally oriented training and knowledge of information and communication technologies can be added here. Since professional readiness is an integrative characteristic of a person, including a set of professional qualities necessary for independent professional activity, we can say that this is an indicator of professional competence.

Formed readiness for professional activity ensures high work results. It includes professional knowledge, abilities, skills; professional views and beliefs; professional orientation of the psyche; the need for professional development; the ability to evaluate the results of their work. Considering the above mentioned it can be argued that the basis of the readiness of a future specialist is the degree of professional qualities and properties expressed in him, his readiness in the process of professional interaction to confirm his qualifications, improve its level, achieve results in work and cope with emerging difficulties.

The concept of professional communicative competence is inextricably linked with the concept of professional readiness because it is the formation of competence in a particular industry that is a prerequisite to readiness for professional activity. I. Vyakhk understands communicative competence as a set of knowledge, skills and abilities, covering the functions of communication and the features of the communication process (types and means of communication) [2, pp. 32-33]. We deem it necessary to note that the specificity of professional communication is due to the personal structure. Professionally significant personality traits in the basis of their development depend on the individual properties of a person.

Mastering the basics of the profession begins with the assimilation of a certain amount of general and professional knowledge that can include mastering the language of professional communication. The language of professional communication (professional language) is a functional type of language used by representatives of a certain profession, occupation. Therefore, a professional language is a set of linguistic means that provide mutual understanding between people working in the same professional field. To know the language of professional communication means: to adhere to the grammatical and lexical norms of professional communication; know special terminology; use all this knowledge in practice. We consider it necessary to point out that professional speech is first of all terminology inherent in one or another branch of science and technology. A real specialist must have a well-formed linguistic, speech and communicative competence.

Linguistic professional competence is the sum of systematized knowledge of the language rules, according to which the correct language constructions and messages in the specialty are built. Professional language competence is a system of skills and abilities to use knowledge during professional communication to transfer information. Consequently, in order to form readiness for professionally oriented foreign language communication of technical specialists, it becomes necessary to create a favorable language environment. The language environment can be considered a certain information space that surrounds a person in everyday

life. A favorable linguistic environment is a special foreign language environment that purposefully contributes to the formation of linguistic knowledge and speech skills. The teacher's function is to influence the formation of a productive linguistic environment in the classroom. He should be aware that his behavior is an important component of the learning environment – the environment in which language acquisition takes place. The effectiveness of the communicative skills forming process is ensured by attracting students to activities, which maximally simulates the educational process and creates conditions for professionally oriented communication.

In the process of teaching a foreign language, elements of future professional activity are combined with linguistic phenomena which act not only as a means of communication, but also as a way to familiarize students with a new activity for them. From a socio-psychological point of view, a student should be ready to assimilate new information, intercultural communication and mutual understanding. This readiness manifests itself in such qualities of a future specialist as: 1) the ability to show your world to representatives of another country in a foreign language: 2) the ability not to be afraid of meeting with foreign-speaking colleagues, to contact with them.

In our opinion, the main task of developing professionally important qualities associated with foreign language speech activity is the modeling of professional foreign language situations. One of the directions for solving this problem is the specially organized work of the teacher, aimed at the formation of students' readiness for professionally oriented foreign language communication.

During the formation of professionally oriented foreign language communicative readiness in technical establishments, it is necessary to take into account the peculiarities of student age, which are characterized by a gradual growth of self-awareness, deepening interest in professional activity, and independence in making decisions. In our view, the process of professionally oriented foreign language training of engineering students will be more effective if the following set of pedagogical conditions are observed: 1) creation of a favorable professional and linguistic environment in the educational institution for studying a foreign language of a professional direction; 2) modeling of real professional situations of foreign language communication; 3) the use of information and communication technologies; 4) taking into account the peculiarities of interdisciplinary integration. For the successful implementation and introduction of special disciplines educational material into foreign language classes in professional areas, we propose to carry out: 1) analysis of basic professional training subjects; 2) selection of professional topics; 3) study of general issues:4) discussion of terminology together with teachers of special disciplines.

**Conclusions.** The analysis of the scientific research on the subject led to the assertion that the readiness of a future technician to communicate professionally in other languages is an important component of overall professional competence, an integrative personal quality which is defined by the ability to set productive communicative contacts with partners in professional activity, effective use of verbal and non-verbal means of communication. Thus, we consider professionally oriented foreign language communicative readiness as a multi-aspect integrated formation of personality, who has a complex, multilevel structure, the degree of component formation of which determines success and productivity of professionally oriented foreign language communication of future professionals. We are convinced that professionally oriented foreign language communicative readiness is not only a professional necessity for successful business contacts with foreign partners, but also influences the satisfaction of the expert by the process and the result of his professional activity, influences the culture of information and communication interaction. Therefore, readiness to communicate professionally in other languages will be considered as one of the main characteristics of future technical specialists. Among the promising explorations in this direction is the experience of foreign countries scientific research.

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

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## ФОРМУВАННЯ ГОТОВНОСТІ ДО ПРОФЕСІЙНО ОРІЄНТОВАНОГО ІНШОМОВНОГО СПІЛКУВАННЯ СТУДЕНТІВ ТЕХНІЧНИХ СПЕЦІАЛЬНОСТЕЙ

**Анотація.** У статті викладений погляд на необхідність формування готовності до професійно-орієнтованого іншомовного спілкування майбутніх фахівців технічного профілю. Розглянуті деякі аспекти даного поняття, що впливають на успішність процесу формування готовності до спілкування іноземною мовою. Розкривається сутність поняття готовності до будь-якої діяльності, зокрема професійно-орієнтованого іншомовного спілкування. Детально розглядається проблема психологічної готовності як складного утворення і властивості особистості. Акцентується увага на основних складових готовності до діяльності. Проаналізовані праці з проблеми формування готовності людини до певної діяльності, зокрема, професійно орієнтованого іншомовного спілкування; окреслена й змістовно обґрунтована проблема організації навчання професійно спрямованої іноземної мови, формування комунікативної іншомовної компетентності майбутніх фахівців технічного профілю. Метою автора є експлікація змісту поняття «готовність».

На підставі аналізу наукової літератури можна констатувати, що в психолого-педагогічній науці є різні дефініції поняття готовність до діяльності. Ураховуючи зміст діяльності, цілі, установки, потреби, суб'єкт діяльності, науковці витлумачують це поняття як особливий психічний стан, сукупність персональних якостей, особистісне утворення, яке спрямовує свідомість на виконання дії.

Із поняттям професійної готовності нерозривно пов'язане поняття професійної комунікативної компетентності, адже власне її формування в певній галузі є передумовою готовності до професійної діяльності. Комунікативну компетентність розглядаємо як сукупність знань, умінь і навичок, що охоплюють функції спілкування й особливості комунікаційного процесу (види та засоби спілкування). Отже, готовність до професійно орієнтованого іншомовного спілкування – сформованість професійних комунікативних іншомовних знань, що використовуються під час фахового спілкування. Автор визначає готовність як результат професійної підготовки.

***Ключові слова:*** *готовність, формування готовності, професійно-орієнтоване іншомовне спілкування, фахівець, професійна діяльність.*

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# PROBLEMS OF PHYSICAL TRAINING OF FUTURE POLICE UNDER CONDITIONS OF QUARANTINE RESTRICTIONS

**Abstract.** This article analyzes and considers the practical experience of organizing distance learning in higher education institutions with special learning conditions on the example of teaching a particular discipline. The paper also analyzes the specifics of the National Police during quarantine restrictions, proposed organizational measures during physical education classes with cadets in quarantine.

It is analyzed that in higher education institutions of the Ministry of Internal Affairs of Ukraine to ensure full and comprehensive training of future police officers there is a question of implementing new approaches to classes on "special physical training", "physical education" and "tactical special training" and other disciplines. It is also worth noting that the educational process in the Ministry of Internal Affairs of Ukraine is closely related to the promotion of a healthy lifestyle, the involvement of cadets and students in sports sections and gyms.

***Keywords:*** *quarantine restrictions, specifics of police activity in a pandemic, organizational measures, physical education, training.*

**Relevance of the study.** The beginning of 2020 put the civilization of mankind before a difficult test - the pandemic of the coronavirus COVID-19. In an attempt to counter this danger, governments have begun to introduce a number of restrictive measures. The government of Ukraine did not stay aside in this situation.

The times of quarantine restrictions related to the pandemic provide an opportunity to rethink the educational process in higher education institutions in Ukraine. Thus, conducting classes by videoconference, performing distance tests become necessary in the course of obtaining higher education in the new conditions.

Low physical activity of the younger generation, the rapid spread of the COVID-19 pandemic and quarantine-related psychological crisis, anxiety, fear and anxiety disorders, the traditional growth of chronic and cold diseases, and, as a result, deteriorating academic performance, aggression among children and youth encourage professionals to find optimal ways to improve the modern educational system.

**Recent publications review.** In the process of researching literature sources domestic and foreign specialists: V. Kukharenko, V. Bondarenko, Giorgio Marinoni, Hans de Witt found that in the domestic scientific space the question of the impact of the pandemic that led to the rapid transformation of education, as well as the consequences of such changes, challenges and prospects currently need better study. Features of physical education as an effective tool physical activity of man considered V. Buguslavsky [1], M. Pozhydaiev, D. Anisimov, K. Vozniuk, M. Logvinenko [2], D. Petrushin, V. Rohalsky, V. Sheverun [3] and others.

Organizational principles of introduction of information technologies in educational student environment are reflected in the works of M. Kozhokar, Y. Moseychuk, O. Tsybanyuk.

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But creating an online environment for motor activities of cadet youth, with the use of Internet resources in physical education classes have so far gone unnoticed.

**The article's objective** is to analyze the state and importance of physical education of cadets of the system of the Ministry of Internal Affairs of Ukraine in the conditions of quarantine restrictions.

**Discussion.** The 21st century is a time of transition to a high-tech information society, in which the quality of human potential, the level of education and culture of the entire population are crucial for the economic and social progress of the country. M. Denisenko and S. Breus notes that «the integration and globalization of social, economic and cultural processes taking place in the world, the prospects for the development of the Ukrainian state for the next two decades require a deep renewal of the education system, determine its advanced nature».

Today, the problems of communication in modern society both affect and pose new challenges to the remote form. For example, raising the level of digital skills and abilities of the teaching staff and students of the Free Economic Zone, the level of practical interaction between teacher and student in the process of organizing physical education; self-design of the student's activity on physical self-improvement, formation of self-analysis by the student of own activity and himself as the subject which is independently capable to form a high level of motor activity. From the methodological point of view of formation of value orientations of students on systematic physical exercises, preservation and strengthening of health is possible, in particular, at own choice, but on condition of integral and systemic influence on it of the health-preserving environment of HEI [4, p.11].

According to the Resolution of the Cabinet of Ministers of Ukraine on prevention of the spread of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2 and the Order of the Ministry of Education and Science «On approval of the Regulations on distance learning» classes in free economic zones were transferred to distance learning; training in fitness, hand-to-hand combat, strength exercises, various types of martial arts – canceled or postponed indefinitely, and local public parks, sports grounds in general have become inaccessible to our youth.

Such quarantine measures imposed certain restrictions on the full educational process in higher education institutions, namely the issue of providing quality distance learning for students in various disciplines, especially physical education. Although this discipline is not always called the main subject area, teachers, educators and workers in the field of physical education and sports see good reasons to include it in daily schedules for today's youth, even when all training is conducted in Google meet, Zoom and others. to maintain physical culture and health as part of a full education during a pandemic and a way to help comply with the national recommendation on daily physical activity – regardless of full-time, online or both [5, p. 67]. Having switched to distance learning, the vast majority of teachers faced the problem of conducting physical education classes in sports (volleyball, basketball, football) and students' lack of understanding of the importance and necessity of physical exercises. Therefore, the Department of Special Physical Education faced the task of a more detailed explanation of the concept of physical education and its role in the development and formation of man as a person.

However, with the beginning of the quarantine of the broadcast of fitness classes on social networks Instagram, Facebook YouTube has become very popular among the younger generation. Fitness is a new modern trend in the system of physical education, which is very popular among the younger generation. Therefore, conducting online fitness classes was quite easy, there was support on the other side of the screen. Of course, the teachers thought over the technical points, checked the volume of the musical accompaniment, tried different options for the best shooting angle, so that all students could see what exercises the teacher shows. Of course, there are also disadvantages. For example, the teacher is not able to control those who perform the exercises. If second-year students already have basic classes and do everything right, then there is no opportunity to approach newcomers, to make comments [6, p. 185].

We would like to note that the concept of "fitness" is common in many other areas of physical education and sports, in particular the state system of physical education in higher education and indicates its priority. Recently, in many institutions of higher education in Ukraine, the process of physical education focuses on goals that are adequate to the concept of "fitness". We are talking about health fitness, which consists of those components of physical fitness that have a relationship with good health. It aims to achieve and maintain physical well-

being and reduce the risk of disease (cardiovascular system, metabolism, etc.). Increasing the level of health fitness in physical education classes is correlated with a low risk of disease and improved quality of life, which is more relevant today than ever.

Theoretical analysis of literature sources shows that the process of physical education in higher education requires the introduction of innovative fitness technologies in distance learning aimed at improving health, improving vitality, education of physical qualities, gaining vital energy, vigor, cheerful mood, counteracting and resistance to stress. Thus, we can say that the change in the education system, which was caused by the introduction of quarantine restrictions, affected physical education. Specialists in this field were faced with the issue of developing this type of classes and the scheme of teaching the subject to maintain the mode of motor activity of the student and interest at the appropriate level during distance learning.

In fact, never having to deal with distance learning, after the introduction of quarantine restrictions, physical education professionals had to make adjustments to their work fairly quickly. A feature of the profession of coach, instructor, and physical education teacher is a direct interaction with his student (student). This requires safety, visual analysis of the condition of students, timely correction of errors during the exercises. Equally important is the psychological component: support, words of approval, maintaining a high emotional background. The issue of abolishing the discipline "Physical Education" in higher education institutions and schools at the time of quarantine is completely wrong and irresponsible. Young people are already experiencing a significant deficit of physical activity, which, in turn, has led to the appearance of extra pounds and deterioration of health.

Also, the development of physical culture among young people during quarantine restrictions can take place in the consolidation of old and learning new theoretical knowledge, when you have more time and opportunities at home to explore in more detail and depth issues that you have not studied before, it is also a good opportunity to find a type of physical activity that will be practiced at home, without contact with other people and reduce the risk of getting sick [7, p.15]. In today's world, the Internet is full of all kinds of physical education, from regular videos on the YouTube platform to specialized sites that clearly indicate and display videos and describe how and what to do. There are also distance learning classes in educational institutions, which must be attended and improve their physical education skills.

During quarantine restrictions, you also need to strengthen not only muscles, but also strengthen your knowledge of physical culture, because it was not easy to perform exercises, of course you need to perform them with some knowledge, then classes will be more beneficial and will not harm health young people, because physical culture is aimed only at improving health. In the context of the acute epidemiological situation in the world and in Ukraine, competitive activity was stopped, this was done in order to reduce the risk of disease in athletes. Gradually, competitive activity returns to normal, but it will not immediately be as it was before, at first it will be without spectators during sports matches or competitions, people may be allowed to watch the competition, but the main condition will be social distance.

So, based on all the above, it becomes clear to us that physical education during quarantine restrictions has undergone significant changes, in particular, it is a change from the usual, habitual distance learning, but it did not prevent you from engaging in physical culture. The main thing is to find a good source of information, which will be clearly written theoretical material for physical education and will be supported by videos for proper implementation, it will not be difficult enough, because nowadays the Internet is full of different athletes, teachers and coaches who are happy will help to find exercises for all without exception.

While there is no opportunity to work in a group, there is time for deeper theoretical material, there is also the opportunity to find a new type of exercise, physical education at home, or outdoors, if the quarantine restrictions are not so severe. Eventually, the competitive activity will also return to its usual form, you just have to wait a bit. Therefore, it is possible and necessary to engage in physical culture even during quarantine restrictions, in order not to lose good physical shape. At the same time, in higher education institutions of the Ministry of Internal Affairs of Ukraine (hereinafter – HEI MIA of Ukraine) to ensure full and comprehensive training of future police officers, the question arises about the implementation of new approaches to training in "special physical training", "physical education" and -special training "and other disciplines (hereinafter – physical training). It is also worth noting that the educational process in the Free Economic Zone of the Ministry of Internal Affairs of Ukraine is closely related to the promotion of a healthy lifestyle, the involvement of cadets and students in classes in sports sections and halls. At the same time, future police officers for further

performance of tasks and implementation of functions must constantly maintain a high level of moral and volitional qualities, freely master the techniques of hand-to-hand combat [8, p.116].

The need for distance learning of the above disciplines in the Ministry of Internal Affairs of Ukraine is also dictated by the general needs of the population of Ukraine and the world in combating panic attacks in stressful situations, maintaining high efficiency in quarantine, effective time management, and maintaining proper physical condition streets.

At the same time, the National Police in quarantine implements the state policy on prevention and control of coronavirus in Ukraine, conducts daily patrols of public places, monitors compliance with the law, responds to relevant offenses and crimes in the field of sanitation and prevention of infectious diseases. Police officers are forced to work intensively, constantly communicate and interact with potentially infected citizens. In such conditions, the issues of a high level of physical fitness to perform the above tasks and strong immunity to prevent and combat coronavirus disease come to the fore. Cadets of the Free Economic Zone of the Ministry of Internal Affairs of Ukraine are involved in such activities during patrols together with employees of territorial police units [9]

Based on the new conditions in Ukraine and the world in connection with the spread of coronavirus, as well as analyzing the specifics of the National Police in a pandemic, we can identify the main tasks, the achievement is necessary during physical training of cadets of the Ministry of Internal Affairs of Ukraine in quarantine conditions:

– training of cadets in hand-to-hand combat techniques, actions when criminals are threatened with firearms or cold steel, as well as during the detention of offenders, their search and escort, methods of insurance and mutual assistance in the performance of official duties.

– training of highly qualified specialists for the National Police of Ukraine, who are able to quickly and clearly perform combat missions in a difficult operational environment;

– hardening of cadets, stimulation of their physical development, formation of strong immunity, psychological stability for performance by them of the duties connected with the big physical activity;

– strengthening the health of cadets, educating them in the desire to constantly improve their sports level and lead a healthy lifestyle in conditions of less mobility;

– formation of high moral and volitional qualities in cadets, necessary during the performance of combat missions in conditions of panic in society.

**Conclusions.** To implement the above tasks, we consider it appropriate to implement the following organizational measures:

1) active use in teaching disciplines of information and computer technology, including online conferences using Zoom or Skype services. We emphasize the fundamental importance of media literacy among teachers and cadets. This will allow for the interaction of coaches with athletes during their training, as well as provide distance learning with cadets;

2) development of memos for cadets on the importance of independent physical training, sets of exercises for morning exercise, video recording with demonstration of hand-to-hand combat techniques, actions when criminals are threatened with firearms or cold steel, as well as during the detention of offenders;

3) conducting briefings with cadets on the importance of a healthy lifestyle, healthy sleep, balanced diet, abandonment of bad habits, resistance to panic attacks in stressful situations under coronavirus, education of stress resistance, balance, willpower;

4) assistance to cadets scientific activity by organizing and conducting scientific-practical conferences, round tables in remote format, online meetings with leading athletes and coaches of Ukraine and the world, discussions of outstanding matches, sports games, relevant documentaries and feature films online;

5) creation of cloud storage, organization of mailings or posting on the site, in social networks of educational literature, useful links, regulations governing the use of physical force or special means by police, theoretical materials in relevant disciplines;

6) organization of online trainings aimed at acquiring related knowledge for the athlete, in particular learning a foreign language, which is desirable for participation in international sporting events; formation of comprehensive development of the athlete's personality, education of leadership qualities, critical thinking, which is achieved during the reading of fiction, creative activity;

7) organization of social activities of cadets in the field of sports, in particular the organization of online training for peers, flash mobs, promotions and other events in a remote format, volunteer activities to help vulnerable groups.

Thus, during quarantine, the issue of conducting special physical training classes for cadets of the Ministry of Internal Affairs of Ukraine becomes extremely important. This issue is closely related to the support and development of sports activities in the Free Economic Zone of the Ministry of Internal Affairs of Ukraine. Thus, the active introduction of information technology and the development of media literacy become necessary conditions for conducting physical training classes for cadets of the Ministry of Internal Affairs of Ukraine.

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

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**ПРОБЛЕМИ ФІЗИЧНОЇ ПІДГОТОВКИ МАЙБУТНІХ ПОЛІЦЕЙСЬКИХ В УМОВАХ КАРАНТИННИХ ОБМЕЖЕНЬ**

**Анотація.** В даній статті аналізується та розглядається практичний досвід організації дистанційного навчання в закладах вищої освіти з особливими умовами навчання на прикладі викладання окремої навчальної дисципліни. Також у роботі проаналізована специфіка діяльності Національної поліції під час карантинних обмежень, запропоновано організаційні заходи у ході проведення занять з фізичної підготовки з курсантами в умовах карантину. Визначено, що часи карантинних обмежень, пов'язаних із пандемією COVID-19, дають можливість переосмислити освітній процес у закладах вищої освіти України. Так, проведення занять у режимі відеоконференцій, виконання дистанційних тестів стають необхідними у ході здобуття вищої освіти у нових умовах.

Проаналізовано, що у закладах вищої освіти системи Міністерства внутрішніх справ України для забезпечення повноцінної та всебічної підготовки майбутніх поліцейських постає

питання щодо втілення в життя нових підходів до проведення занять зі «спеціальної фізичної підготовки», «фізичного виховання» та «тактико-спеціальної підготовки» та інших дисциплін. Також варто зауважити, що освітній процес у ЗВО МВС України тісно пов'язаний з пропагандою здорового способу життя, залученням курсантів та студентів до занять у спортивних секціях та залах. Доведено важливість Проведення інструктажів з курсантами щодо важливості здорового способу життя, здорового сну, збалансованої їжі, відмови від шкідливих звичок, протистояння панічним атакам у стресових ситуаціях в умовах коронавірусу, виховання стресостійкості, врівноваженості, сили волі.

Виокремлено, що під час карантину стає надзвичайно важливим питання проведення занять з фізичної підготовки для курсантів ЗВО МВС України. Це питання тісно пов'язано з підтримкою та розвитком спортивної діяльності у ЗВО МВС України. Таким чином, активне впровадження інформаційних технологій та розвиток медіаграмотності стають необхідними умовами проведення занять з фізичної підготовки курсантів ЗВО МВС України.

***Ключові слова:*** *карантинні обмеження, специфіка діяльності поліції в умовах пандемії, організаційні заходи, фізичне виховання, тренінг.*

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## NEW COMMUNICATIVE METHODS OF TEACHING GERMAN AS A FOREIGN LANGUAGE

**Abstract.** In this article, modern methods of teaching a foreign language are considered. Learning a foreign language in educational institutions is an integral part of the educational process and is now coming to the fore. From the methods used by the teacher in practice, corresponds to the success of the entire learning process. Among the modern teaching methods are: collaborative learning, the use of new information technologies and Internet resources, as well as various game tasks that help to implement a personality-oriented approach to learning, provide individualization of learning based on students' abilities, their level of foreign language proficiency and other important factors.

***Key words:*** *foreign language, teaching methods, learning process, German language, learning a foreign language.*

**Relevance of the study.** At present, when studying foreign languages at a university, the practical mastery of a foreign language comes to the fore, i.e. the formation of students' communicative competence or the ability to speak in accordance with the speech situation. The task of the teacher is to activate the cognitive activity of students in the process of teaching foreign languages. Modern teaching methods: learning in cooperation, the use of new information technologies and Internet resources, shell programs, as well as various game tasks help to implement a personality-oriented approach to learning, provide individualization and differentiation of learning, taking into account the abilities of students, their level of proficiency in a foreign language, inclinations, etc. Due to the variety of training options and teaching tools, the requirements for the professional training of a teacher of foreign languages

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are increasing, who, in the new conditions, needs to become familiar with various methodological systems. An invaluable role here is played by internships in the country of the target language and the exchange of experience with foreign colleagues.

International refresher courses can help. Such courses for teachers of German as a foreign language are successfully conducted by the Institute of International Communication in Dusseldorf (Germany), which was founded on the basis of the University. Heinrich Heine in 1989 with the aim of increasing the level of international exchange and education. The Institute for International Communication is located on the premises of the Heinrich Heine University and works closely with it, assisting in the organization of international events. Various language courses are offered every year, international exchange programs are organized, as well as educational programs during the summer holidays, including for teachers.

**Recent publications review.** The importance of using of new methods in foreign languages teaching were underlined by different scientists. Theoretical and practical aspects of foreign languages teaching are developed by H. Lements, A. Pfau, A. Schmid, O. Kazartseva, E. Passova, V. Tsarkova, M. Kalenchuk and others.

**The article's objective.** In this article, I would like to dwell on some didactic ideas used in the classes in German as a foreign language by colleagues from European universities (Germany, Hungary, Poland, Slovakia, Slovenia, France, Italy, Spain, etc.), who underwent a two-week internship at the Institute International Communication in July 2011.

**Discussion.** I. Group forms of organizing the educational process in the classroom in German. Group form of training is a form of organizing educational and cognitive activities in the classroom, involving the functioning of various small groups working on both general and specific tasks. Estonian scientist H. Limets distinguishes the following principles of group work [1, p. 20]:

1) Students are divided into several small groups of 3 to 6 people.

2) Each group gets its own task. Tasks can be the same for all groups or differentiated.

3) Within each group, roles are distributed among its members.

4) The process of completing an assignment in a group is carried out on the basis of an exchange of views and assessments.

5) The decisions worked out in the group are discussed at the plenum. The positive aspects of group work are that each student learns to express and defend his own opinion, listen to the opinion of others, compare, compare his point of view with the point of view of others. The skills of control over the actions of others and self-control are developed, critical thinking is formed. Group discussion, discussion enliven the search activity of students. German teacher and methodologist Frank Pieper, who in the summer of 2011 participated in a seminar on the topic of group work held by the Institute for International Communication in Dusseldorf, shares his experience on the distribution of roles in the group and the rules for organizing group work. He proposed to distribute the following roles among students:

1) Chef – makes sure that the group clearly adheres to the goal set for it and does not deviate from it.

2) Timekeeper – is responsible for ensuring that the task is completed at the set time.

3) Observer – monitors the atmosphere in the group: do all participants have the opportunity to speak? Will there be a discussion?

4) Secretary – records the results of the discussion and conclusions.

The organization of group work changes the role of the teacher. If in a traditional lesson he transfers knowledge in a finished form, then here he must be the organizer and director of the lesson, an accomplice in collective activities. His actions should be reduced to the following:

– an explanation of the purpose of the forthcoming work;

– dividing students into groups;

– distribution of tasks for groups;

– control over the execution of the task;

– alternate participation in the work of groups, but without imposing their point of view as the only possible one, but encouraging an active search;

– after the report of the groups on the completed task, the announcement of the results of the work, drawing attention to typical mistakes;

– assessment of the work of students.

The group method of teaching is increasingly used in modern higher education pedagogical technology. Example of group work: Topic "Travel by train, plane, sea". All

participants work out the type or route of travel. Each group is looking for material for itself (for example, a program is drawn up for a group of tourists at the place of stay, tickets are ordered at a hotel, the route of movement is determined, etc.). Then there is a meeting of "experts" (representatives of different teams meet, but on the same issue) and the "experts" exchange information. Then the "experts" return to their teams and pass on what they have learned from other "experts". Everyone listens, takes notes. All teams report in turn. At the final stage, the teacher frontally asks anyone about the topic, or the questions are asked by team members instead of the teacher. Answers can be supplemented within the team itself.

II. Music in the classroom of German as a foreign language. Purposes of using music in foreign language classes:

1. Development of speech skills of listening and speaking in a foreign language.
2. Introduction to the topic under discussion.
3. Deepening the covered topic.
4. Repetition, activation or expansion of vocabulary.
5. Obtaining regional information.

Tasks:

1. Creation of a reason for discussion.
2. Emotional impact followed by a description (in a foreign language) of the expression of feelings.
3. Performing creative tasks (changing the text, transformation, adding stanzas, etc.) [2, p. 30].

As an example of working with a piece of music in a German lesson, let us take an excerpt from the song "Deutsche" by the German group "Basta" from Cologne (from the disc "Wir sind wie wir sind" 2007):

Deutsche werden Helden über Nacht,
Deutsche lassen auch mal Frauen an die Macht,
Deutsche sind zwar blond, aber nicht doof,
Deutsche lieben Zäune und jagen sich vom Hof.
Deutsche wären gern Amerikaner,
Deutsche sind nicht so, sie sind viel humaner,
Deutsche Wohnzimmerschränke sind schwedisch,
Deutsche wollen’s französisch und essen italienisch.
Deutsche reden auch in Spanien deutsch,
Deutsche sind nicht deutsch, das ist typisch deutsch.
Wir sind, wie wir sind, weil wir Deutsche sind,
Deutsche waren wir schon als Kind.
Unser Land ist klein, doch es passen viele rein,
Nicht alle müssen Deutsche sein.
Wir sind Deutsche.

Examples of assignments after listening to a song offered by Achim Kelenbach, teacher of German as a foreign language and methodologist at the Institute for International Communication:

1. Hören Sie sich das Lied zweimal an, füllen Sie die Lücken aus! Group "Basta": "Deutsche"

Deutsche werden Helden über _____,
Deutsche lassen auch mal _____ an die Macht,
Deutsche sind zwar _____, aber nicht _____,
Deutsche _____ Zäune und jagen sich vom Hof.
Deutsche wären gern _____,
Deutsche sind _____, sie sind viel humaner,
Deutsche Wohnzimmerschränke sind _____,
Deutsche wollen ’s _____ und essen _____,
Deutsche _____ auch in _____deutsch,
Deutsche sind _____ _____, das ist _____ deutsch.
Wir _____, wie wir _____, weil wir _____ sind,
Deutsche waren wir schon als _____.
Unser Land ist_____, doch es passen _____ rein,
Nicht alle _____ Deutsche sein.
Wir sind Deutsche

The bands Wise Guys and Basta from Cologne, the singers Anett Louisan and Funny van Dannen, and many others have interesting songs to use in German classes. The lyrics can be found on the Internet and on artist websites.

III. Games in the classroom in a foreign language. New methodological developments indicate the relevance of using various game tasks at different stages of learning a foreign language, which allows you to increase and maintain the interest and motivation of students, stimulate educational and communication activities. Currently, a large amount of methodological literature is offered, containing samples of games and exercises for classes in the German language. Here are some examples of a playful form of learning:

Sternenlauf [3, p. 45].

Level: A1, A2

Grammar: personal pronouns, pronominal adverbs.

Materials: copies of sheets with tasks, playing field, cube, chips.

Game rules: students are divided into groups of 4 people. Each group receives game materials. Each player is assigned a number from 1 to 4, and he receives a sheet with tasks corresponding to his number. Each sheet contains 10 questions and 10 answers. Purpose of the game: The winner is the one who reaches the finish line first. On the way to the finish line, on each move, an answer to another player's question must be received. Course of the game: Players place their chips at the start. They take turns rolling the dice and making moves. As soon as a player enters the field with any number, he receives a question from the player with this number.

The answer must contain one or two pronouns. The player who asked the question checks the correctness of the answer using the keys he has. If the answer is correct, the player's chip remains on the playing field, if not, the gyro is returned back to the number of fields that it dropped out. Wrong answers are corrected by the player who asked the question. If a player enters the field with his own number, he does not need to complete tasks, but he can ask a question to any player. Usually the question is asked to the player who is closest to the finish line in order to prevent him from winning in case of an incorrect answer. If the answer is incorrect, the player goes back 6 fields. If a player hits a star, he must move in the direction of the arrow.

IV. Communication exercises. It is known that any exercise must be consistent with the learning goal in nature. Consequently, communication exercises must correspond to the real properties of the communication process, its linguistic and psychological characteristics. In order for an exercise to be called communicative, it must:

1) be situational, i.e. consist of a number of similar speech situations containing an automated grammatical sign or structure;

2) be vital in each of its elements: the elements of the exercises should be typical variants of speech situations for this type of communication;

3) ensure an active attitude of the student to the material;

4) eliminate the need for grammatical reflection. The speaker's attention should be directed to what to say and why to say; that, how to say, is acquired involuntarily, thanks to appropriately organized exercises;

5) exclude the possibility of switching consciousness to the native language;

6) ensure the accuracy of their implementation, since the success of the action is the basis of a solid skill, and constant mistakes in speech are not a positive reinforcement, as a result of which a dynamic stereotype is not formed [5, p. 45].

In order for the exercises to have all the listed properties (to be communicative), they obviously must be based on the same principles on which the communication process is based. What are these principles?

Let's compare the two dialogues.

1. – Und ich habe gestern ein Sofa gekauft. – Ist es gross?
– Jawohl. Das wollte ich schon lange. – Grün?
– Nein, schwarz. Und überhaupt nicht teuer. 40 Euro.
– Ja, es ist wirklich billig.

2. – Hast du gestern ein Sofa gekauft? – Ja, ich habe es gekauft.
– Was für ein Sofa hast du gekauft? – Ich habe ein großes Sofa gekauft.
– Hast du ein grünes Sofa gekauft? – Nein, ich habe ein schwarzes Sofa gekauft.
– Ist es ein teures oder billiges Sofa? – Es ist ein billiges Sofa.
– Wie viel ist Ihr Sofa wert? – Mein Sofa kostet 40 Euro.

In terms of content, both dialogues are the same, but in terms of expression, they are

different. Each phrase of the second dialogue is individually possible in speech, but collectively, they are certainly unlikely.

The first question of the dialogue "Hast du gestern ein Sofa gekauft?" can only be asked in a very specific situation. From the point of view of the student, it would be quite logical to answer: "Ich war gestern nicht im Laden". This, however, is absolutely unacceptable from the point of view of the need to build an exercise to automate a certain, given structure or sign, since the exercise in this case falls apart. Another thing is the message: "Ich habe gestern ein Sofa gekauft". Due to the presence of a logical context in this phrase, a prerequisite for a speech situation is created. It is safe to say that in any conditions the interlocutor will ask: "Welche Größe?", "Welche Farbe?", "Wo?" etc. [5, p. 16].

It should be noted that the range of logical context is very wide. The same statement, for many reasons, can cause different reactions (replicas). But since we are talking about the automation of a certain grammatical form, the exercise should be organized so that the replica of each student is unambiguous. In other words, the logical context should be revealed in one direction necessary for the automation of the grammatical form.

This can be done under one condition - to change the exercise settings. Until now, the following settings are often used: "Put a sentence in Perfekt" or "Put negatives nicht, kein". These attitudes induce only certain grammatical transformations, devoid of any interest, since they do not contain communicative tasks. It is never the speaker's job to put a sentence in Perfekt or to use nicht or kein. His task is to express a certain thought, judgment, caused, for example, by the desire to inquire whether the action took place in the past (then he will use Perfekt), or the desire to deny the interlocutor's thought (then he will use nicht or kein in his remarks).

So the act of communication is stimulated by certain feelings. Our speech is distinguished by a wealth of stimuli: objection, request, clarification of thought and confirmation of it; expression of guess and doubt, confidence and surprise, assurance of something, agreement, etc. Consequently, the attitudes when performing the exercises must correspond to the variety of stimuli that induce speech. Instead of the usual "Put in Perfekt", you can say "I'll talk about what I usually do, and you ask me if I have done this before".

For example:

– Jeden Abend lese ich ein wenig.

– Haben Sie gestern Abend auch gelesen?

– Natürlich.

Instead of "Form an Imperativ Form", you can say "Ask me not to do what I am about to do".

– Ich will heute fortfahren.

– Fahren Sie nicht fort!

Instead of "Put the endings of adjectives" use "Inquire about the quality of the subject that I will mention". For example:

– Ich habe ein Kleid gekauft.

– Ein seidenes Kleid?

– Nein, ein wollenes.

Thus, the first principle of constructing communicative exercises is the principle of imitating the speaker's communicative task. However, the presence of a communicative task in an exercise does not yet make it an exercise for automating a certain grammatical form. For this purpose, the exercise should be organized so that the assimilation of the grammatical form takes place simultaneously with the expression of a particular communicative task [3, p. 49]. A speech pattern to be learned is presented on the board. A student, performing a certain communicative task, follows this pattern, uses a number of similar phrases with an automated form, and he develops a dynamic stereotype.

The use of the grammatical form occurs subconsciously, as if in the background of consciousness, while consciousness itself is aimed directly at expressing thoughts in accordance with the speaker's task [3, p. 56]. There comes a time when the need to follow the pattern disappears, the student pronounces the subsequent phrases by analogy with the formed structural model, on the basis of a dynamic stereotype and an acquired sense of form. Consecutive repetition of the same grammatical form in different (but of the same type) phrases and in different speech situations ensures the automation of this grammatical form, i.e. ensures the creation of a solid grammatical skill. For example:

1. – Ich habe gestern ein Buch gelesen. – Ein interessantes Buch?
   – Nein, ein sehr langweiliges.

2. – Ich habe ein Zimmer bekommen. – Ein großes Zimmer?
– Ja, ein großes und helles Zimmer.

Consequently, the second principle of constructing communicative exercises is the principle of analogy in the assimilation of grammatical forms. It has been noticed, however, that the automated form by itself is not yet sufficient for the ability to express one's opinion in a foreign language. It often happens that a student in isolation from communication can form one form or another, say, Perfekt, but if he has to ask something about the past, he is not able to do it. This happens because in this case Perfekt is perceived by him only as a certain (one of many) form of the verb, but not as a form for expressing the past tense in speech. Such cases are also the result of dividing exercises into linguistic (exercising in the formation of signs in isolation from the function of the sign) and speech (developing the ability to use these signs in speech). In the process of communication, however, the form is inextricably linked with its meaning and use in speech, with its function. Consequently, the third principle of constructing communicative exercises is the principle of linking the form with its function in speech. The proposed principles allow you to build a huge variety of exercises to automate any grammatical sign or structure [4, p. 68].

V. The use of information technology in teaching German. In modern education, the ability to master the methods of searching for information using information technologies is gaining more and more importance. It is necessary to teach students the ability to independently obtain additional material, critically interpret the information received, and be able to draw conclusions.

Working with information in a foreign language, especially when you consider the opportunities offered by the global Internet, is becoming very important. Modern technological capabilities aimed at the mass computer user allow a foreign language teacher to create own e-learning materials and assignments for specific groups of students, without the help of programmers. One of these software tools are shell programs that are designed to create training courses, exercises, tests based on specified formats for presenting educational material using texts, graphics, audio and video materials for the subsequent work of students in offline mode or in a local / global network. An example of an educational shell is the Moodle shell. This platform allows you to post various tasks in Word format, as well as video and audio files, accompanying them with various tasks, create forums and chats to discuss various materials. The teacher gets the opportunity to fully control the actions of users (students), it is possible to view the results of completed tasks, control the time during which these tasks were performed, etc. Listening assignments can be prepared using the Audacity audio processing software.

The program allows not only to process the existing sound file, but also to combine several files, overlay sounds, record your own files and combine them with the existing ones. HotPotatoes allows you to create the following types of exercises: filling in the gaps; establishment of correspondences; crossword; questions with input and choice of answer; restoration of the sequence of letters in a word / words in a sentence; tasks with an open answer; selection of a title to the text; reconstruction of the text, etc. A teacher of a foreign language must be proficient in software that allows to create electronic educational materials.

**Conclusion.** In conclusion, I would like to once again note the enormous importance of internships in the country of the target language for improving the professional level of teachers, getting acquainted with innovative teaching methods and acquiring skills in using modern information and computer technologies in the field of teaching foreign languages.

*Conflict of Interest and other Ethics Statements*

The authors declare no conflict of interest.

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**Марина ШЕВЧЕНКО, Юлія КЛАВДІЄВА**
**СУЧАСНА МЕТОДИКА ВИКЛАДАННЯ НІМЕЦЬКОЇ МОВИ ЯК ІНОЗЕМНОЇ**

**Анотація.** Вивчення іноземної мови в учбових закладах є невід'ємною частиною навчального процесу та нині виходить на передній план. Від методів, застосованих викладачем на практиці, залежить успішність всього навчального процесу. Перед викладачем стоїть чимало завдань щодо вдалого засвоєння студентами викладеного матеріалу. Одними з таких завдань є: формування у студентів комунікативної компетенції або вміння говорити відповідно до мовної ситуації. Завдання викладача полягає у тому, щоб активізувати пізнавальну діяльність студентів у процесі навчання іноземних мов. У зв'язку з великою кількістю методичної літератури, яка пропонується в наш час, новими технологіями та доступністю інформації через систему Інтернет, викладання іноземної мови може бути не тільки легшим, а також успішним. Серед сучасних методів викладання слід виділити : навчання у співпраці, використання нових інформаційних технологій та Інтернет – ресурсів, програм-оболонок, а також різних ігрових завдань, які допомагають реалізувати особистісно-орієнтований підхід у навчанні, забезпечують індивідуалізацію та диференціацію навчання з урахуванням здібностей студентів, їх рівня володіння іноземною мовою , нахилів та інших важливих факторів.

Та у зв'язку з різноманіттям варіантів навчання та навчальних засобів зростають вимоги до професійної підготовки викладача іноземних мов, якому в нових умовах потрібне знайомство з різними методичними системами. Хотілося б відзначити, що величезне та навіть неоцінене значення, для підвищення професійного рівня викладачів, має стажування у країні мови, що вивчається, та обмін досвідом із закордонними колегами. А також знайомства з інноваційними методиками навчання та набуття навичок використання сучасних інформаційних та комп'ютерних технологій у галузі викладання іноземних мов.

***Ключові слова:*** *іноземна мова, методика викладання, процес навчання, німецька мова, вивчення іноземної мови.*

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**FORMATION OF COMMUNICATIVE COMPETENCE IN THE PROCESS TEACHING STUDENTS THE GERMAN LANGUAGE**

**Abstract.** This article discusses the competence in the process of teaching foreign language students. To date, knowledge of a foreign language is a competitive advantage, as it is considered as one of the most important criteria for employment. In this regard, one of the key problems of modern methods of teaching a foreign language is the formation of students' communicative competence. Despite the significant number of works of theoretical and practical nature, many aspects of the formation of communicative competence of students in the process of teaching them foreign languages remain in the field of view of researchers.

***Key words:*** *foreign language, competence, communication, learning a foreign language, teaching methods, the German language.*

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**Relevance of the study.** Today, society and the state define a fairly wide range of requirements for the subject and general cultural training of students, including the ability to analyze and synthesize information presented in various languages and in various sources, the ability to competently navigate in the global socio-cultural space and identify oneself with it, and also find the right communication strategies, both with compatriots and with representatives of other cultures. This explains the need for the formation of the communicative competence of schoolchildren in the process of learning a foreign language, as well as the formation of their ability and readiness for intercultural communication. First of all, it is necessary to consider the concept of competence.

**Recent publications review.** A significant amount of dissertation research of recent years is devoted to the problems of formation of communicative competence of students at different levels of education. Today there are many approaches to the consideration of this concept. Consider the various definitions of this concept, which are key in our study. N. Chomsky was the first in the context of the theory of language to use the concept of "competence" in his work "Aspects of the theory of syntax" in 1965. Linguistic competence, according to the scientist, is nothing more than "the speaker's – hearer's knowledge of his own language", and this knowledge is put in opposition to the actual use of the language in everyday life. Systemic changes in the field of education in the context of the formation and development of a competence-based approach to learning contributed to constant changes in the concept of "competence", which was interpreted by various scientists and authors in different ways. Following A. Khutorsky, by competence, we mean a set of interrelated personality traits, namely knowledge, skills, and methods of activity used in relation to a certain range of objects and processes, and necessary for high-quality activity in relation to these processes. We will adhere to this definition in our work. Summarizing the above, we came to the conclusion that competence is not only a set of certain knowledge, skills and abilities of a person, but also a set of individual abilities of a person, a certain final result of the formation of the required qualities – given requirements for the preparation of a graduate, a kind of set of personal qualities, to strive for.

**The article's objective** is to investigate the features of formation the communicative competence in the process of teaching students the German language.

**Discussion.** The subject of our final qualifying work is the process of forming the communicative competence of schoolchildren in teaching them foreign languages, therefore, it is necessary to analyze the content of the concept of "communication". Communication is the transfer of any information. The communication process is presented as one of the foundations of human life and society. Speaking about communication, it can be argued that it is an exchange of holistic sign formations that reflect ideas, thoughts, knowledge, emotions of the communicating parties. Consequently, the concept of "communicative" (from Lat. "Communicabilis") implies a relationship to the movement of information with the help of signs, signals, messages from the transmitting device to the receiver, and also denotes something related to communication and characterizing communication skills.

Let us consider in more detail the scientific expression "the formation of communicative competence". The category "formation" is considered one of the key in pedagogy. From the point of view of theory and teaching methodology, "formation" is the process of creating something, giving a certain completeness, completeness to something. For a deeper understanding of the problem of the formation of communicative competence in students, its current state and relevance in the theory and practice of education, it is necessary to analyze the works of scientists devoted to the study of this issue.

The implementation of the pedagogical model proposed by the author presupposes the obligatory presence and observance of pedagogical conditions, including the creation of positive motivation for communicative activity, the use of interactive modeling, the use of interactive teaching methods in the process of working with students, the orientation of listeners to tolerant business communication; development and implementation of communication and speech training in the educational process. Obviously, one of the most important conditions for the implementation of this pedagogical model is the teacher's use of interactive teaching methods in the process of working with students.

The main components of the pedagogical model of the formation of the communicative competence of future officers are situational-behavioral, cognitive, motivational and emotional blocks. The implementation of the components of this model in the educational process, according to the author, is possible subject to a number of organizational and pedagogical

conditions, such as the creation of a special communicative and developing educational environment in an educational organization, the use of interactive methods in the educational process and constructive interaction of all subjects of the pedagogical process.

Having analyzed the state of the problem of the formation of communicative competence in the theory and practice of modern education, we came to the conclusion that the leading approaches in the process of forming communicative competence in students of any level are competence-based and communicative, and an essential condition for the implementation of these approaches is the use of interactive teaching methods in the organization by teachers. educational process.

We will devote a more detailed consideration of this issue to the next paragraph of our final qualifying work. The formation of communicative competence implies the obligatory formation of students' readiness to transfer and assimilate information by generating speech throughout life at different levels of education and by organizing self-education. Based on the results of dissertation research in recent years and agreeing with the points of view of scientists, we believe that interactive methods of teaching a foreign language play a particularly important role in the process of forming the communicative competence of students. Interactive teaching methods (from the English interaction – interaction, influence on each other) in the most general sense in modern pedagogy are understood as teaching methods based on active social interaction of students with each other.

In the modern methodology of teaching the German language, interactive learning is usually understood as a special form of organizing cognitive activity, a method of cognition in the form of joint activities of students. All participants interact with each other, exchange information, jointly solve problems, simulate situations, evaluate the actions of others and their own behavior, immerse themselves in a real atmosphere of business cooperation to resolve a problem. One of the goals of interactive teaching methods is to create comfortable learning conditions, such as in which the student feels his success, intellectual competence, which makes the learning process itself productive. The use of interactive teaching methods suggests that the educational process should be organized in such a way that all students are involved in the learning process, they have the opportunity to understand and reflect on what they know and think, while "it is necessary to build the educational process on the principles of interaction and cooperation of students and teachers". Interactive activities in German classes focus on five basic elements: positive interdependence, personal responsibility, facilitative interaction, teamwork and group work. Interactivity means the ability to interact or be in a conversation mode, dialogue with something (for example, a computer) or someone (person).

The activation of the student appears to us as his understanding by the main character in the educational process, actively interacting with other participants in this process. In this context, it is relevant to create situations in which the teacher is not a central figure, and the student realizes that the study of the German language is associated with his personality and interests, rather than with the methods and teaching aids given by the teacher, and therefore learns to work on the language independently at the level of his capabilities.

In our opinion, in the context of the use of interactive methods of teaching the German language in the process of forming the communicative competence of students, group and pair forms of work, based on a personality-oriented approach and allowing to create an atmosphere where the student feels comfortable and free, to stimulate the interests of the student, are highly relevant. develop in him the need to learn, making it a reality to achieve success. In addition, the indisputable advantage of using group and pair forms of work with students is the fact that "every day a teacher can use new communication situations, maintaining a high level of interest and motivation of students to learn a foreign language and forming an awareness of the need to use it in practical speech activity". All this necessitates the differentiation and individualization of the educational process and the use of various forms of student work: individual, pair, group, collective, which fully stimulates the activity of students, their independence and creativity. These forms of work give learners a sense of support as they exchange views in small groups and respond to others. If students go in the right direction and feel successful in solving the assigned task, they have not only responsibility for mutual cooperation, but also motivation, which "is the starting mechanism of all human activity: be it work, communication or cognition". It should be noted that students who initially do not make contact with either the teacher or with each other, after conducting a lesson using group and pair forms of work, become interested in participating in the educational process, which characterizes a high level of motivation for learning German. In combination with other forms

of teaching, these forms of educational activity are effective in teaching German: the communicative skills of students are improved, their vocabulary is expanded, the time of communication and the proportion of independent work increase. It should be emphasized that interactive forms of conducting classes awaken cognitive interest in students, encourage the active participation of everyone in the educational process, appeal to the feelings of each student, contribute to the effective assimilation of educational material, have a multifaceted effect on students, promote feedback, form students' opinions and relationships that promote behavior change. Thus, teaching using interactive methods presupposes a new logic of the educational process: not from theory to practice, but from the formation of new experience to its theoretical understanding through application.

We include the following interactive teaching methods in our work: play, discussion, creative, design. Game teaching methods, involving the use of communicative games in the process of forming the communicative competence of students, are part of the educational process, since they are united by a single content, plot, and participants. The game method is used in accordance with the main content of training, it helps the teacher to intensify the educational process, and the students – to master the necessary knowledge and skills and use them in a situation close to real life.

Discussion teaching methods (debate, case method, heuristic conversation, situation analysis, round table, lecture-dialogue, dispute, talk show) contribute to the development of partnership and the ability to work in pairs and groups, contribute to the development of critical thinking, tolerance and respect interlocutors to each other and to alternative points of view.

The possible topics for debates in the German language are the following:

Brauchen wir das deutsche Zentralabitur?

Brauchen wir eine staatliche pädagogische Schulung für Eltern (“Eltern-Führerschein”)?

Brauchen wir geregelte Arbeitszeiten für Politiker?

Soll das Rauchen in der Öffentlichkeit verboten werden?

Soll die staatliche Rente abgeschafft werden?

Brauchen wir eine Klarnamenpflicht im Internet?

Sollten die Steuererklärungen aller Bürger öffentlich einsehbar sein?

Sollen Lehrer nach Leistung bezahlt werden?

Soll wegen der Menschenrechte der Handel mit China eingeschränkt werden?

Soll Prostitution verboten werden?

Soll die private Verwendung von Feuerwerk an Silvester verboten werden?

Soll das therapeutische Klonen zur Gewinnung menschlicher Stammzellen legalisiert werden?

Brauchen wir Studiengebühren?

Soll Marihuana legalisiert werden?

Brauchen wir die bemannte Raumfahrt?

Soll E-Sport olympisch werden?

Sollen auf Luxusgütern Bilder von Armut gezeigt werden?

Sollen die Rundfunkgebühren abgeschafft werden?

Soll das Raumfahrtprogramm der ISS eingestellt werden?

Brauchen wir ein verpflichtendes Soziales Jahr?

As for social topics they can be

Teilweisgeburt Abtreibung sollte illegal sein.

Alle Eltern sollen Elternkurse erforderlich sein, um teilnehmen, bevor ein Kind zu haben.

Alle Menschen sollten Vegetarier sein.

Mixed Martial Arts sollte verboten werden.

Die Todesstrafe sollte abgeschafft werden.

Sport-Stars sollten positive Vorbilder sein.

Die Menschen sollten nicht für das Recycling bestraft werden.

Leistungssteigernde Medikamente sollten im Sport zugelassen werden.

Creative teaching methods (brainstorming, speaking on a socially significant topic) are aimed at creating creative products that are distinguished by novelty, originality, are subjective and objectively valuable. Their advantage lies in the constant mobilization of the mental forces of students and their growing interest in learning, in the presence of constant interaction between the teacher and the students and students among themselves.

Thus, interactive teaching methods contribute to solving several problems at the same

time in the formation of the communicative competence of students in the process of teaching German: they promote the establishment of emotional contacts between students, teach them to work in a team, develop the ability to formulate their own point of view and defend their opinions and positions, listen to the interlocutor's opinion, to be tolerant, to use formulas of speech etiquette to solve communication problems. Due to the active use of interactive teaching methods in the process of forming the communicative competence of students in German classes, it is possible to achieve effective results in the development of the communicative competence of students, which are necessary for life in modern society.

Summarizing the above, we came to the conclusion that in the process of teaching schoolchildren a foreign language, the formation of not just a set of knowledge, abilities and skills, but communicative competence, plays a key role. And the most effective task of forming the communicative competence of students is achieved through the use of interactive teaching methods in the organization of the process of forming communicative competence when teaching students foreign languages, which differ in a wide palette of options, are interesting to students and contribute to the formation of their most important communication skills and abilities. At the present stage of development of education and methods of teaching German, the majority of school teachers consider the communicative approach to be the most effective, which, in our opinion, is didactically justified, since artificially created exercises do not form a language user, and a person who learns a language in this way is more likely to remain silent than will say the wrong phrase. And the communicative orientation of a foreign language lesson is designed to teach a person to communicate correctly in this language. German lesson, aimed at the formation of the communicative competence of students, built on the basis and taking into account the communicative approach, develops all language skills – reading and listening, speaking and writing, while grammar is mastered in the process of communicating in the language: first, the student remembers vocabulary, basic expressions, speech cliches, formulas, phraseological units and proverbs, and only then realizes what they are in the grammatical sense. In this case, the purpose of the lesson is to teach the student to speak a foreign language competently and fluently. From the above, it should be concluded that any lesson, therefore, should be communicative in nature.

The most popular in pedagogical as well as sociological research are methods that, in a general sense, can be called survey methods. Their advantage lies in the fact that the researcher can interview a large number of people and obtain data that are easily analyzed and comparable. In addition, survey methods make it possible to obtain information about people's opinions, intentions, motives of behavior, that is, about everything that cannot yet be established using instrumental measurement methods. Depending on the methodology and conduct of the survey, there is a conversation, an interview and a questionnaire.

Conversation is a type of survey that is based on a thoughtful and carefully prepared conversation between a researcher and a competent person (respondent) or a group of people. The purpose of the conversation is to obtain information on the issue under study. Interviewing is an oral survey conducted according to a specific plan, in which the recording of the respondent's answers is carried out either by the researcher (his assistant) or mechanically (using recording devices on various media). In contrast to the conversation, in which the respondents and the researcher act as active interlocutors, the questions, built in a certain sequence, are asked only by the researcher, and the respondent answers them. The interviewer can observe the behavior of the interviewee, which greatly facilitates the interpretation of the data obtained. Questioning is a method of obtaining information through written answers to a system of pre-prepared and standardized questions with a precisely specified method of answers. A questionnaire with already suggested answer options looks very much like another document – a test. But the fundamental difference is as follows. During testing, first of all, a person's knowledge is found out. The questionnaire, on the other hand, helps to assess the character and obtain socio-psychological information about the respondent.

Testing is a purposeful, uniform examination for all subjects, carried out under strictly controlled conditions, which makes it possible to objectively measure the characteristics under study. Testing differs from other research methods in the accuracy of tasks, simplicity, availability, and the possibility of automation. This group of tasks aims to provide schoolchildren with the necessary tools for communicating on the topic under study, as well as working out this material. We understand that the formation of the communicative competence of students cannot be successful without the formation of their phonetic, lexical, and grammatical skills. To do this, at the stage of forming the knowledge necessary for the

formation of their communicative competence in students, we propose the use of phonetic exercises with their subsequent working out in pairs and allowing students to independently deduce the topic of a lesson or a series of lessons. Let's give an example of such a task for working with students.

Wir beginnen unser neues Thema mit der Mundgymnastik. Wir arbeiten an einem Zungenbrecher. Hören Sie mir zu und beachten Sie den Laut [r]:

Rund ist das Geld, rollt durch die Welt,

Rund ist die Welt, die uns gefällt.

Jetzt versuchen Sie bitte, alles selbst auszusprechen, und danach üben Sie den Zungenbrecher in Paaren! Wer kann unser Thema formulieren?

When students already have a sufficient lexical minimum on the topic being studied, it is possible to gradually introduce into the educational process buildings of an analytical and communicative nature, such as reasoned commenting on proverbs in pairs and groups, preparing messages on certain topics and discussing them with an interlocutor, and so on. There are some examples of such tasks.

1. Arbeiten Sie zu zweit! Wählen Sie ein Sprichwort aus der Liste und erklären Sie bitte, warum Sie damit einverstanden oder nicht einverstanden sind. Sammeln Sie zusammen Argumente, die Ihre Meinung begründen und unterstützen!

1) Geld regiert die Welt

2) Wer den Pfennig nicht ehrt, ist des Talers nicht wert.

3) Über Geld spricht man nicht, man hat es.

4) Geld verdirbt den Charakter.

5) Geld allein macht nicht glücklich.

6) Bei Geld hört die Freundschaft auf.

Erkundigen Sie sich bitte nach der Meinung Ihrer Mitschüler über diese Sprichwörter!

2. Bereiten Sie zu dritt einen kurzen Bericht zu einem der Themen:

1) "Wer Geld hat, hat auch Sorgen"

2) Was muss man machen, um sich in der Warenwelt nicht zu verlaufen?

3) "Alles, was man mit Geld abmachen kann, ist billig" (E. Remarque)

Stellen Sie an Ihre Mitschülern Fragen zum Thema ihres Berichts! Lassen Sie Ihre Mitschüler diese Fragen in Paaren besprechen und dann beantworten!

**Conclusions.** Modern society puts forward high requirements for the training of school graduates, including the ability to navigate the world socio-cultural space, as well as find the right communication strategies, both with representatives of their native culture and with representatives of other states and, accordingly, cultures. This necessitates the formation of the communicative competence of schoolchildren in the process of teaching them German, as well as the formation of their ability and readiness to communicate in an intercultural context. Communication in a foreign language is not only the process of transmitting and receiving information, but also the regulation of relations between partners, the establishment of various types of interaction, the ability to assess, analyze the communication situation, subjectively assess one's communicative potential and make the necessary decision, which contributes to a significant increase in efficiency communications. For the effective formation of the communicative competence of students in lessons, purposeful work should be carried out. Thus, the importance of studying the problem of the formation of the communicative competence of schoolchildren in foreign language lessons is undeniable. The relevance of the problem of forming the communicative competence of students in foreign language lessons is evidenced by a fairly large number of dissertation research in recent years. Many scientists note in their research that interactive teaching methods play an important role in the formation of students' communicative competence. A feature of interactive methods in teaching German is a high level of mutually directed activity of subjects of interaction. Interactive classroom activities focus on key elements: positive interdependence, personal responsibility, active interaction, teamwork skills, and group work.

*Conflict of Interest and other Ethics Statements*

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**ФОРМУВАННЯ КОМУНІКАТИВНОЇ КОМПЕТЕНЦІЇ У ПРОЦЕСІ НАВЧАННЯ СТУДЕНТІВ НІМЕЦЬКОЇ МОВИ**

**Анотація.** Протягом останніх десятиліть все більш помітним став вплив процесу глобалізації на ефективність процесів комунікації між представниками різних культур, що виявляється в об'єднанні та єдності різних аспектів життєдіяльності людей – їх світосприйняття та світогляду, політики та економіки, соціального життя та виробництва, науки та освіти, культури і мистецтва, релігії та мови, спорту. На сьогоднішній день володіння іноземною мовою є значущою конкурентною перевагою, оскільки воно розглядається в якості одного з найважливіших критеріїв при працевлаштуванні. У цьому зв'язку однією з ключових проблем сучасної методики навчання іноземній мові є формування в учнів комунікативної компетенції, що забезпечує можливість участі особистості в міжкультурній комунікації. Незважаючи на значну кількість робіт теоретичного та практичного характеру, присвячених цьому питанню, багато аспектів формування комунікативної компетенції учнів у процесі їх навчання іноземним мовам залишаються відкритими для дослідження. Слід також відзначити недостатню розробленість методичного забезпечення процесу формування комунікативної компетенції учнів.

Про актуальність проблеми формування комунікативної компетенції учнів свідчить достатня кількість дисертаційних досліджень останніх років, які присвячені даним питанням на різних рівнях освіти – дитячий сад, школа, вуз та післявузовське навчання. Наукова новизна результатів дослідження полягає в наступному: 1) визначена теоретико-методологічна основа рішень проблеми формування комунікативної компетенції учнів у процесі навчання іноземних мов; 2) у процесі дослідно-експериментальної роботи показано, що процес формування комунікативної компетенції учнів, що навчаються на уроках іноземної мови, плине більш успішно, якщо в навчальному процесі використовуються інтерактивні методи навчання іноземних мов і спеціально розроблений методичний інструментарій, що включає завдання комунікативного характеру.

***Ключові слова:*** *іноземна мова, компетенція, комунікація, вивчення іноземної мови, методи вивчення, німецька мова.*

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# MODERN ASPECTS OF SOCIOLINGUISTIC STUDIES

**Abstract.** The article covers the main directions of modern research in the field of sociolinguistics. General scientific and practical interest in the functioning of language, language policy, language change is due to the need to find solutions to current sociolinguistic problems. We have paid special attention to the approaches to the analysis of the relationship between language and society, highlighted in the works of foreign linguists, as the globalization processes of today more than ever touch on the integrity of world ethnic groups, preserving their uniqueness, and this is primarily related to language assimilation; declining and disappearance of languages; proper modeling of language policy by governments of countries where language issues are particularly relevant.

***Key words:*** *sociolinguistics, language policy, language and society, terminology of sociolinguistics, sociolinguistic research.*

**Relevance of the study.** Sociolinguistics is a relatively young field of scientific knowledge concerning the study of the peculiarities of the functioning of language as a social phenomenon. It has emerged as a result of the earliest studies in the branch of language acquisition by different social and ethnic groups of people as well as the study of other social aspects of language functioning. The term "sociolinguistics" is associated with the name of American sociolinguist Haver Cecil Currie – a linguistics professor at the University of Houston, Texas Lutheran University and one of the developers of the field of sociolinguisitcs. However, the problem of studying the specifics of the functioning of languages is the subject of interest not only to linguists, but also to sociologists. And this is quite logically, because the methodological basis, used by linguists, belongs to the tools of sociological science. However, borrowing these methods from sociologists, linguists use them creatively in relation to the tasks of language learning, and in addition, they develop their own methodological techniques for working with linguistic facts and native speakers. General scientific and practical interest in the issues of language functioning, language policy, language change is caused by the necessity of finding the solution of current sociolinguistic problems and the problems of conscious regulation of language situation within one country and in the global context as well. A multifaceted and comprehensive study of the language situation contributes to the realizing of all the complexity of the real language life of human communities, especially polyethnic, in which languages never function in isolation from each other, but are always interdependent and interconnected into complex and multidimensional macrosystems. Language policy and language situation issues are relevant at any stage of the human society development. These especially concern the interaction in multilingual societies, when the problem of choosing the means of communication for mutual understanding and arrangement of public life emerges and when there is a desire to use native language in any situation and at any circumstances. So now, at the beginning of the 21st century, scholars differentiate two aspects of sociolinguistic researches: the first one focuses on the impact of society structure on language, the second one – on language as a factor influencing society. And the major topic of sociolinguistic researches is the relationship between language and society.


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**Recent publications review.** Since the term "sociolinguistics" has been implemented in the terminological apparatus of linguistics it has become possible to distinguish sociolinguistics as a new branch of science that merged theoretical and methodological frameworks of sociology and linguistics as well. The researches that followed in the next decades discussed gradually different phenomena revealed by the data obtained experimentally through the interviews and surveys of different groups of language speakers. Certainly, the scientific works of previous years have created the basis for modern research in the field of sociolinguistics. Of course, sociolinguistics has its own tradition in each country, but the topics for scientists are common. So, among the scientists whose works have appeared in the last two decades, worth mentioning are the following: F. Mu'in – Doctor of Philosophy who currently works at the English Department, Faculty of Teacher Training and Education, Universitas Lambung Mangkurat; J. Blommaert – was a Belgian sociolinguist and linguistic anthropologist, Professor of Language, Culture and Globalization and Director of the Babylon Center at Tilburg University who was considered to be one of the world's most prominent sociolinguists; R. Wardhaugh – Professor Emeritus (University of Toronto); Sali A. Tagliamonte – a Professor of sociolinguistics at the University of Toronto whose main area of research is the field of language variation and change; M. Meyerhoff – a New Zealand sociolinguist; I. Paoletti – Doctor of Philosophy (Nova University Lisbon); P. Stockwell – Professor of Literary Linguistics at the University of Nottingham; S. Sokolova – Professor (Institute of Ukrainian language NAS of the Ukraine).

**The article's objective** is to analyze modern scientific works in the field of sociolinguistics. This will allow to give an objective assessment of the current state of sociolinguistic science and to identify the directions of its further development in the 21st century.

**Discussion.** Every science at the beginning of its formation needs to work out the terminological base as well as the theoretical and methodological apparatus. "Sociolinguistics" is not an exception. "Sociolinguistics" and "Language and Society" are terms that are often used interchangeably to refer to an interdisciplinary field of research in which linguistics and sociology, and other human sciences, join together to study verbal and other human conducts; but in fact their definition is a highly controversial matter [1, p. 1]. So we see that for more than half a century of its existence, sociolinguistics still has no common view on its name. F. Mu'in believes that: "When some aspects of sociology are adopted in studying a language, this means it presents an interdisciplinary study; and its name represents a combination of sociology and linguistics. In this relation, some experts call it as sociology of language; and some others call it as sociolinguistics" [2, p. 1]. In his book he tries to find out the question of what is language, what humanity knows about the language etc. The scientist consistently substantiates the understanding of language as a system, as a social phenomenon, as a means of communication. He also defines sociolinguistics as a branch of scientific knowledge that is concerned with the relationship between language and the context in which it is used. In other words, it studies the relationship between language and society [2]. F. Mu'in pays special attention to the social units of language use: speech community, speech situation, speech event, speech act, speech styles (a frozen (oratorical) style, a formal (deliberative) style, a consultative style, a casual conversations, an intimate style), ways of speaking and components of speech. The scholar believes that language is socio and culturally acquired and proves his idea by explaining such phenomena as babies' speech and dialects. It is necessary to emphasize that in the context of sociolinguistics the relationship between language and culture should be considered. Language is part of culture. Language is both a component of culture and a central network through which the other components are expressed, language reflects culture. Language is the symbolic representation of a people, and it comprises their historical and cultural background as well as their approach to life and their ways of living and thinking, and cultural features vary not only synchronically from speech community to speech community, they also change diachronically within the same speech community, and this change also reflects change of language, which will cope with the change of society actively [2, p. 65].

Canadian scholar R. Wardhaugh also pays special attention to the terminological base of sociolinguistics. He claims that a worthwhile sociolinguistics, however, must be something more than just a simple mixing of linguistics and sociology which takes concepts and findings from the two disciplines and attempts to relate them in simple ways [3, p. 11]. He also tries to explain the difference between terms sociolinguistics or micro-sociolinguistics and the sociology of language or macro-linguistics. In this distinction, sociolinguistics is concerned

with investigating the relationships between language and society with the goal being a better understanding of the structure of language and of how languages function in communication; the equivalent goal in the sociology of language is trying to discover how social structure can be better understood through the study of language, e.g., how certain linguistic features serve to characterize particular social arrangements [3, p. 13]. The scientist analyzes the terms language and dialect and explains the common features of these two phenomena. He believes that it is possible to speak of languages such as English, German, French, Russian, and Hindi as Indo-European dialects. In this case the assumption is that there was once a single language, Indo-European, that the speakers of that language (which may have had various dialects) spread to different parts of the world, and that the original language eventually diverged into the various languages we subsume today under the Indo-European family of languages [3, p. 33].

Discussing how languages can differ from one another he comes to the concept of standardization which refers to the process by which a language has been codified in some way and becomes of great importance as it usually involves the development of such things as grammars, spelling books, and dictionaries, and possibly a literature. Moreover, since a language is standardized it becomes possible to teach it in a deliberate manner. It is a well known fact that the major condition of socialization is learning of language that is widely spoken in certain society. Due to this, language takes on ideological dimensions – social, cultural, and sometimes political – beyond the purely linguistic ones [3].

Sali A. Tagliamonte [4] pays special attention to the methodology of sociolinguistic research. She describes step by step the procedures for conducting interviews; collecting and analyzing the data obtained; hypothesis formulation; variations, distributional and multivariate types of analysis. She emphasizes the significance of statistics and the correct interpretation of research results as well.

One of the relevant issues in modern sociolinguistics is the phenomenon of code-switching in bilingual and multilingual situations. R. Wardhaugh treats codes as neutral terms while such terms like dialect, language, style, standard language, pidgin, and creole are, in scholar opinion, inclined to arouse emotions. So, the term code can be used to refer to any kind of system that two or more people employ for communication [3, p. 88]. The question is how do people choose codes when they speak, why do they prefer one code to another. Finding out the answer to this question is one of the tasks of sociolinguistics in the modern globalized world. Language policy issues are extremely relevant today. Language appears to be the main identifier of belonging to a particular society. That is why finding out the problems that arise in multilingual societies requires the involvement of a wide range of methodological resources. And this, in turn, determines the emergence and formation of new areas of sociolinguistic researches. I. Paoletti distinguishes some of the research areas that have been included under sociolinguistics, in various combinations and according to different authors. This grouping of research areas is useful for descriptive reasons, but in fact many of these fields of research are strictly interrelated: Quantitative and qualitative approaches to the study of language and variations sociolinguistics; ethnographic and anthropological approaches to the study of language; Language contact: Creole studies, code-switching, language death and survival, language rights and language policy; Discursive approaches to sociology and other human sciences [1]. Thus, the methodological tools used by scientists within these approaches, determine the specifics of the data obtained. The scholar especially emphasizes the importance of the interdisciplinary nature of sociolinguistic researches as the development of these interdisciplinary areas of research is dependent on flexibility at the institutional level and consequent availability of jobs in these areas. The importance of sustaining interdisciplinary research at the institutional level can never be stressed enough, for example, the creation of specific laboratories sustained by different university departments, and based on definite interdisciplinary research objectives, would seem a feasible solution [1, p. 6].

The emergence of new methods and approaches to the study of linguistic phenomena within sociolinguistics leads to new research topics, among which, in particular, it is necessary to highlight such as improved understanding of indexical meaning, exploitation of new methods and technology, and exploration of new languages and cultural contexts.

Since its inception, sociolinguistics has combined concepts and methods not only from sociology, anthropology and linguistics. The expansion of cognitive science has influenced the study of language in its connection with the social phenomena as well. The recent development of cognitive approaches to sociolinguistic issues is a manifestation of this more general convergence between social science and cognitive science [5]. Scientists characterize the major

areas of convergence between cognitive science and sociolinguistics – cognitive sociolinguistics, sociolinguistic cognition, computational modeling of language variation and change, the study of language acquisition, and comparison of variation in human language. The first area of contact between sociolinguistics and cognitive science (cognitive sociolinguistics) explores language-internal or cross-linguistic variation linked to social dimensions, grounds on solid empirical methods and studies how language interacts with cognition. The second area of contact – sociolinguistic cognition – explores the cognitive and cerebral mechanisms underpinning the ability to encode sociolinguistic variation, to implement it during speech production, and to process it during speech perception. The third area of contact between sociolinguistics and cognitive science – computational modeling – explores the links between society, sociolinguistic variation and language change benefits and allows us to test, in a concentrated time frame, the long-term effect of parameters that are hard to control in experiments or in the usual conditions of language use. The fourth area of contact – the study of language acquisition – explores how learners acquire sociolinguistic patterns and indexical meanings, and how they stabilize linguistic knowledge by combining linguistic and social information encountered in the variable environment. And the fifth area of contact between sociolinguistics and cognitive science – comparison of variation in human language – compares dialects in human language with variation in the communication systems of many different animal species, what presents an especially promising way to improve our understanding of sociability and its links with communication and cognition [5]. In our opinion, such interdisciplinary researches contribute significantly to better understanding the relationship between human mental/cognitive processes and social behavior.

M. Meyerhoff [6] emphasizes the importance of the interdisciplinary aspect of sociolinguistics. Moreover, she pays special attention to the practical approach and methods of collecting material for further sociolinguistic analysis. Thus, the researcher identifies two ways of obtaining data for the analysis. In her opinion, some sociolinguistic patterns can only be observed systematically through close examination of lots of recorded speech and a good understanding about the speaker's background or place in a community. On the other hand, sociolinguists who are interested in investigating national language policies might never need to use any audio or video recordings at all. A lot of relevant information on language planning can be gleaned from library and archive materials, or from more free-form discussions with members of the communities being studied. A significant detail of her studies is taking into account the concept gender. M. Meyerhoff consider the field of language and gender to be one of the most dynamic in sociolinguistics [6, p. 201]. British scholar P. Stockwell also includes this issue in his field of scientific interest. He analyzes the difference between men and women's manners of speaking, choice of language means, mixed=sex conversation. "Gender certainly seems to affect every different level, from accent variation to lexical choice and syntactic preference. One of the most interesting areas of research has been in studying gender differences at the level of discursive strategies: how men and women perceive spoken discourse differently and so behave differently in conversation" [8, p. 66].

One of the current areas of sociolinguistic research in recent decades is also the study of the relationship between language and society in the context of globalization. J. Blommaert a Belgian sociolinguist linguistic anthropologists, who had contributed substantially to sociolinguistic globalization theory, focused on historical as well as contemporary patterns of the spread of languages and forms of literacy, and on lasting and new forms of inequality emerging from globalization processes. As the scholar concluded, modern sociolinguistics drew an artefactualized image of language into time and space [9, p. 4], – and this new view of language and society can find answers to many relevant questions, such as the assimilation of languages and, consequently, ethnic groups; death of languages, etc., and make a significant contribution to the understanding of the proper modeling of language policy by governments in the 21st century.

In Ukraine problems dealt with by sociolinguists concerned the corpus planning of the Ukrainian language (creation of card indexes for dictionaries and dictionaries themselves, discussion of spelling, organization of terminology) [10]. The language issue in Ukraine is extremely relevant and still remains the subject of manipulation by various political forces. Therefore, the practical application of the results of sociolinguistic research, the development of models for the implementation of laws relating to the language issue are extremely acute. Accordingly, such a situation in society determines the scientific interests of sociolinguists. So, still, according to Ukrainian scientist S. Sokolova, such areas of microsociolinguistic research as speech of representatives of certain sociogroups (professional, age, by sex, intrafamily,

foreign speech and problems of linguistics; study of professional jargon, slang); features of speech in different communicative situations; features of certain discursive practices; broadcasting of the city and village; patterns of language choice and switching language codes in the conditions bi- and polylingualism; problems of language stability and language lability are still relevant [10, p. 39].

**Conclusions.** The major characteristic feature of sociolinguistics in the second half of the 20th century is the transition from theoretical works to the experimental testing of hypotheses and mathematical description of data obtained. Modern sociolinguistics is characterized by consistency, strict focus on data collection, quantitative and qualitative statistical analysis of facts, combination of linguistic and sociological aspects of research and a diversity of new topics.

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**Алла СІРАНТ**

**СУЧАСНІ АСПЕКТИ СОЦІОЛІНГВІСТИЧНИХ ДОСЛІДЖЕНЬ**

**Анотація.** У статті йдеться про основні напрямки сучасних досліджень в галузі соціолінгвістики. Загальнонауковий і практичний інтерес до питань функціонування мови, мовної політики, мовних змін зумовлений необхідністю пошуку вирішення актуальних соціолінгвістичних проблем, а також проблем свідомого регулювання мовної ситуації в межах однієї країни, а також у глобальному контексті. Багатоаспектне і всебічне вивчення мовної ситуації сприяє усвідомленню всієї складності реального мовного життя людських спільнот, особливо поліетнічних, в яких мови ніколи не функціонують ізольовано одна від одної, а завжди взаємозалежні та взаємопов'язані у складні та багатовимірні. макросистеми. Питання мовної політики та мовної ситуації є актуальними на будь-якому етапі розвитку людського суспільства. Особливо це стосується взаємодії в багатомовних суспільствах, коли виникає проблема вибору засобів спілкування для взаєморозуміння та влаштування суспільного життя і коли виникає бажання використовувати рідну мову в будь-якій ситуації та за будь-яких обставин. Тому зараз, на початку XXI століття, вчені розрізняють два аспекти соціолінгвістичних досліджень: перший зосереджується на впливі структури суспільства на мову, другий – на мові як факторі впливу на суспільство. А головною темою соціолінгвістичних досліджень є відносини між мовою і суспільством. Особливу увагу ми звернули на підходи до аналізу проблем взаємовідносин мови та суспільства, висвітлені в працях зарубіжних мовознавців, оскільки глобалізаційні процеси сучасності як ніколи гостро торкаються питання цілісності світових етносів, збереження їхньої унікальності, а це, насамперед, пов'язано з питаннями мовної асиміляції, занепаду та зникнення мов, правильного моделювання мовної політики урядами тих країн, де мовні питання є особливо актуальними.

***Ключові слова:*** *соціолінгвістика, мовна політика, мова і суспільство, термінологія соціолінгвістики, соціолінгвістичні дослідження.*

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# DISTANCE EDUCATION IN HIGHER EDUCATIONAL INSTITUTIONS: TODAY'S CHALLENGE OR REALITY

**Abstract.** The article studies of the problem of distance education in higher education institutions and its impact on the quality of the learning process. The essence of the concept of "distance education" and its categories are specified. The authors consider Moodle, Zoom and Google Meet to be the most popular distance learning tools due to their relative ease in use and cost-effectiveness.

Surveys and analysis of the theoretical literature allowed to identify the main advantages and disadvantages of the introduction of distance education. Prospects for further research in this area are the need to improve the legal framework and scientific and methodological framework, ensuring an appropriate level of computer skills, competences in working with interactive technologies both teachers and applicants.

***Key words:*** *distance education, higher educational establishments , Moodle, Zoom and Google Meet.*

**Relevance of study.** The current global economic and social crisis caused by the global pandemic has forced most people to think about remaining an in-demand specialist even within a tough competition of labor market. Today's new realities create their requirements for a XXI century-specialist, this person should be able to improve his/her professional level or even change a profession throughout life**.**

The era of innovative technologies significantly expands the possibilities of professional self-realization through almost unlimited access to acquire new knowledge and skills important for practical application in professional activities. Higher education in the modern world is becoming more widespread and no longer serves as a specialized training for various fields of life. Modern education focuses on the perception of the world in its complexity. In order to connect knowledge and actions, one should have constant training, supplementing and expanding one's knowledge and developing skills regardless of the circumstances. This is the goal of distance education.

At the same time, the expansion of access to higher education has been one of the urgent problems in the development of higher education institutions. Bringing educational activities closer to the residence of people, including the widespread introduction of distance learning is a common world trend. Eliminating the problem of distance between an applicant and an educational institution location, independence from the teacher, educational materials providing anywhere in the world, the possibility of creating a virtual classroom or laboratory - all these factors create the preconditions for mass use of distance education using modern educational technologies.

**Recent publication review.** The analysis of scientific and psychological-pedagogical sources, thesis research, which have appeared recently, are evident of significant attention to the problems of introduction of distance technologies in the educational process of higher

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education institutions. Scientific and pedagogical principles of distance learning were developed by native scientists V. Kukharenko, V. Oliinyk, V. Rybalko, N. Syrotenko, P. Stefanenko, M. Besedina, Y. Blinov, K. Vlasenko, V. Hura, N. Datsun, M. Us, T. Koicheva, V. Zhulkevska, S. Avdoshin, V. Domrachov, V. Zinchenko, M. Karpenko, T. Koshmanova, K. Korsak, E. Polat, P. Talanchuk, E. Verenich, V. Gritsenko, A. Hurzhiy, O. Dovgii, H. Kozlakova, I. Kozubovska, V. Kolos, S. Kudriavtseva, V. Saharda, O. Pichkar, P. Stefanenko, B. Shunevych and others.

Problems of distance learning have been considered by such foreign scientists as S. White, S. Guri-Rosenblit, R. Bell, J. Bloomstock, J. Blumenstock, D. Keegan, J. Koumi, J. Andersen, St. Wheeler, T. Edward and Russian scientists O. Andreiev, M. Moisieieva, Y. Polat, V. Soldatkin, A. Khutorskaia and others.

N. Korsunska, Yu. Pasichnyk, T. Smovzhenko, P. Stefanenko, V. Toroptsov considered the problems of using information technologies in pedagogical practice. The works of V. Oliinyk and V. Hravit are devoted to the organization of distance learning in postgraduate education. The work of V. Kukharenko and V. Bondarenko is devoted to the problem of emergency distance learning.

**The article's objective** is to consider the results of mass use of distance education in higher education institutions, to explore the most popular tools of distance education, to check the readiness of teachers and applicants to study at a distance, to identify positive and negative consequences of distance education.

**Discussion.** The trigger for the widespread use of distance education in educational institutions over the past year has been a global pandemic. Quick implementation of distance learning tools without negative influence on educational process became a great challenge for teachers and applicants.

Distance education as a form of learning appeared due to the development of postal services in the late 19th century. In 1969, the world's first distance learning university was founded in the United Kingdom. When developing teaching technologies for this university, English scientists carefully studied the work of European correspondent schools and distance learning of Soviet institutes. The resulting combination of these two forms of education is designed for independent work of applicants on an individual plan [10].

The term "distance education" was first officially used in the title of the International Conference on Distance Education, which was held in Vancouver, Canada in 1982. The term "distance" replaced the term "correspondent", which is why the International Council on Correspondence Education changed its name to the International Council on Distance Education [5, p. 30]. According to research by V. Kukharenko and V. Bondarenko, distance learning in Ukraine was first initiated at the National Technical University "Kharkiv Polytechnic Institute", Kharkiv National University of Radio Electronics and Lviv Institute of Management in 1997 [6]. In 2008, by order of the Ministry of Education and Science of Ukraine, the Ukrainian Center for Distance Education was established on the basis of the National Technical University "Kyiv Polytechnic Institute". The creation of the above-mentioned center was the beginning of experimental implementation of distance learning in Ukraine and contributed to the opening of a number of distance learning centers, namely: the National Academy of Public Administration under the President of Ukraine and its Regional Institutes in Kharkiv, Dnipro, Odessa and Lviv. Sumy State University and Khmelnytsky National Technical University became the first universities to receive permission from the Ministry of Education and Science of Ukraine to conduct a distance learning experiment [6].

Recently, for obvious reasons, the attention of many scientists is focused on the problem of distance education. Most interpretations of this term are directed to the fact that modern distance education should be understood as a new organization of education based on the use of best traditional methods of acquiring knowledge and new information and telecommunications technologies, as well as the principles of self-education [9]. We agree with the opinion of N. Ivanshena that all modern technologies of distance education can be divided into three categories:

– non-interactive, including printed materials, audio and video media;

– computer training tools, which include electronic textbooks, computer testing and knowledge control, the latest multimedia tools;

– video conferencing, which are advanced means of telecommunications on audio channels, video channels and computer networks [2].

Under quarantine conditions, higher educational institutions are actively implementing

distance education through Moodle, Zoom and Google Meet systems. Unfortunately, the choice of these means is due to their prevalence and absence of payment, rather than their educational potential.

The Moodle course management system is a specially designed system for creating distance courses by teachers and publishing them on the Web. The word "Moodle" is an acronym for "Modular Object Oriented Dynamic Learning Environment". From the name of the system it is clear that it consists of a set of functional elements called modules and which are responsible for performing certain functions. The system was first developed by Australian Martin Dougiamas and is now an open project involving a large number of other developers. The Moodle system is used in 175 countries around the world and is constantly evolving. According to research by a number of researchers, Moodle is distributed as an open source software under the GNUGPL license (General Public License) and is protected by current international and national copyright. However, the use of this system provides a number of additional freedoms and opportunities compared to conventional commercial software.

The availability of a wide range of modules, which are inherent in e-learning platforms, course management systems (CMS), learning management systems (LMS) or virtual learning environments (VLE) allows you to customize Moodle easily for the learning process of higher education [3]. During lectures, laboratory and practical classes in real time, the vast majority of teachers use Zoom and Google Meet, because they are free and easy to use.

Zoom and Google Meet are video conferencing services. Zoom was developed in 2011 and Google Meet was released in 2017. There are some differences between the services regarding the number of participants and the required software, namely: the Google Meet service exists only in the form of web and mobile versions, and to run the Zoom system on a computer requires a desktop program. The maximum number of participants during the conference in Zoom is 100 people, in Google Meet – 250 people. Zoom has the ability to create a conference and the ability to join it via a link. During the conference, teachers and applicants have the opportunity to chat, transfer files, change the background and show off their screen. During the screen demonstration, the teacher has access to the "Boards" function, where he/she can draw or make notes alone or together with conference participants. In addition, Zoom has a high quality transmitted image. Among the minor disadvantages of Zoom conferences is that in the free version there is a limit of 40 minutes on the duration of the conference and the number of participants.

Google Meet allows you to create a new appointment, schedule it, or launch it instantly. In order to get to the "meeting", the applicant must request access by link or meeting number. Google Meet lets you turn on / off the camera and microphone, show browser or screen tabs, chat, share files, collaborate with Google Jamboard members, change the background, change the display mode of participants, and enable subtitles that appear automatically. Google Meet is available for free, but you must subscribe to Google Workspace Business Plus or Enterprise to record meetings and create a conference for 250 participants [8].

In order to determine the level of awareness of teachers and applicants in the theory of distance education, they were offered a test with 25 questions, each of which had 3 possible answers (a, b, c). The questions contained information on understanding the essence of the concept of "distance education", forms, methods, and means of distance learning. Each correct answer was evaluated in one point, so the maximum number of points that could be scored by a respondent was 25. Depending on the number of points, the following levels of knowledge were determined: 1-7 – low, 8-15 – medium, 16-20 – sufficient, 21-25 – high.

The data obtained during the test showed that 15 % of teachers and 11 % of applicants (Table 1) have a low level of theoretical knowledge, 44 % of teachers and 41 % of applicants have an average level of theoretical knowledge, indicating low readiness to work remotely than fifty percent of applicants and teachers (Table 1). However, 48 % of applicants and 41 % of teachers have a sufficient and high level of theoretical knowledge (Table 1). As you can see, the students showed slightly better indicators of theoretical knowledge in distance education.

*Table 1*

**The results of testing teachers and applicants for the level of theoretical knowledge in distance education (by number of respondents)**

| | Teachers | Students | Total number of respondents |
|---|---|---|---|
| Low | 30 | 14 | 44 |
| Medium | 109 | 40 | 149 |
| Sufficient | 60 | 24 | 84 |
| High | 70 | 13 | 83 |
| | 269 | 91 | 360 |

In order to identify the main reasons that hinder the effective implementation of distance education, we conducted a survey in which teachers and applicants were asked to name these reasons. Respondents were the following:

– insufficient level of theoretical knowledge and practical skills in the application and use of distance learning (30 % of respondents);

– insufficient material and technical base, which would allow to fully implement and participate in distance learning (26 % of respondents);

– lack of time for self-development due to excessive workload (teachers) and studies (applicants) (22 % of respondents)

– psychological unwillingness to work remotely (11 % of respondents) and other reasons (11 % of respondents).

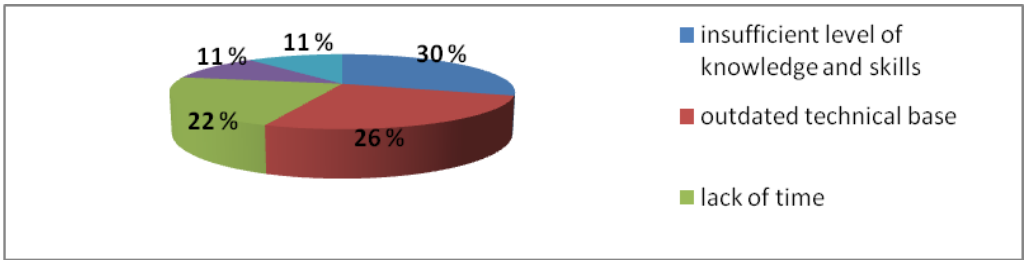


**Fig. 1.** Reasons hindering the effective implementation of distance education (as a percentage)

Other reasons cited by teachers and applicants included lack of network access in the region of residence, negative and stereotypical attitudes towards innovation in education. Thus, the main reason (Fig. 1.), which prevents teachers and applicants to work effectively in the distance learning mode is the lack of theoretical knowledge and practical skills. Other important reasons are insufficient time for self-development, outdated or missing material and technical base, psychological unwillingness to work remotely. These reasons account for 59 % of the total.

Since the main reason for the effective implementation of distance education, most teachers and applicants noted the lack of theoretical knowledge and practical skills, we decided to ask them where they can get knowledge and skills for effective work and learning in distance format. Respondents were asked to name several sources mentioning the most effective and favorable for them. Among 360 respondents, 209 respondents indicated methodological recommendations and trainings in higher education institutions at the place of work or study, 66 – methodical materials and educational videos on the Internet, 28 – online trainings and refresher courses, other sources – 57 respondents (Fig. 2).

Other sources of theoretical knowledge and skills for the implementation of distance education were: helping acquaintances and relatives to master the skills of working with distance platforms, self-education.

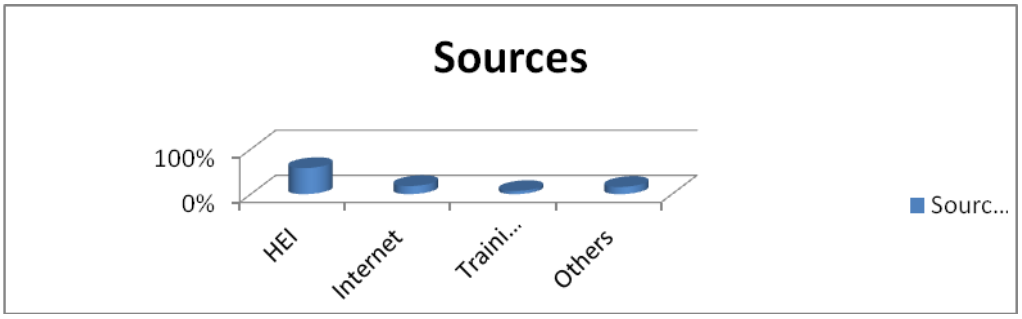


**Fig. 2.** Sources from which teachers and students received information on distance education (number of answers in %)

To understand how applicants themselves relate to distance education, we conducted a survey on the pros and cons of such education.

Among the advantages of distance learning mentioned by applicants were the following:

– the opportunity to study at home and spend more time in the family;

– the opportunity to study anywhere;

– no need to spend time on the road;

– on-line learning is new, non-standard, interesting;

– most of the work, tasks and tests are performed in electronic form, which reduces the amount of written workload;

– you can eat when you want;

– you can focus more on learning and avoid unnecessary communication with unwanted people;

– you can study in several educational institutions;

– you can combine study and work.

Applicants pointed out such disadvantages of distance education as:

– poor connection due to system congestion;

– lack of live communication;

– frequent problems with the Internet;

– it is not possible to work online;

– outdated technology that hinders quality learning;

– loss of interest and motivation to learn.

– lack of practical skills and abilities to work with remote platforms.

Thus, the main advantages of distance education include:

– the applicant has the opportunity to use their time more rationally and efficiently and is not tied to a specific place;

– the possibility of using in the educational process of new advances in information technology, that helps people to enter into the world information space;

– provides equal opportunities for education regardless of place and country of residence, health status and social status.

However, distance education also has certain disadvantages, among which the impact on the physical and mental health of both teachers and students is particularly dangerous, which is manifested in increased anxiety, depression, stress, fear.

Unfortunately, a survey conducted in the universities of the Netherlands found that distance learning causes students to have difficulty concentrating on learning, feeling lonely, and experiencing low mood [4].

According to research by a group of scientists, there are a number of factors that can have quite negative effects on the physical and mental health of participants in the distance learning process, among them:

– tension of the musculoskeletal system due to prolonged stay in a sitting position, which in turn can lead to such problems in the circulatory system as vegetative-vascular dystonia, hypotension, weakness of the heart muscle;

– deterioration of vision due to prolonged periods of intense attention and constant harmful radiation can cause myopia, conjunctivitis, retinal and corneal diseases, in addition, prolonged tension of the eye muscles leads to fatigue, irritation, constant headaches.

– intellectual and emotional load due to a sharp change in the nature of learning, limited

feedback between a teacher and a student, the need for the brain to process a huge flow of information can lead to fatigue, emotional instability, memory impairment, constant headaches [1]. In our opinion, modern distance education poses much greater challenges to teachers, as most of them belong to those who began to master information technology at a fairly mature age, i.e. they belong to the generation of digital emigrants, than to most students who met with modern technology at a fairly early age and belong to digital natives [12].

According to many researchers, the necessary conditions for distance education are not only access to computers and the Internet and the availability of appropriate technical support, but also the desire of applicants to learn, and teachers – to teach. This is very important for the effectiveness of the whole educational process.

**Conclusions.** The study allows us to conclude that the problem of introducing distance education in higher education institutions of Ukraine is not yet fully resolved. In order for distance learning to become a full-fledged form of learning for those who need it, it is necessary to solve many issues and problems: improving the legal and scientific-methodological framework, providing appropriate technical means and ensuring appropriate levels of computer skills on the Internet, the use of interactive learning technologies by both teachers and applicants.

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

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# ДИСТАНЦІЙНА ОСВІТА В ЗАКЛАДАХ ВИЩОЇ ОСВІТИ: ВИКЛИК СЬОГОДЕННЯ ЧИ РЕАЛЬНІСТЬ

**Анотація.** Незважаючи на те що дистанційна освіта з'явилася майже три століття тому, значного розповсюдження в закладах вищої вона почала набувати з 2019 року, тобто з початку пандемії. Статтю присвячено вивченню проблеми масового застосування дистанційної освіти в закладах вищої освіти та її впливу на процес навчання. Авторками робиться спроба уточнити сутність поняття «дистанційна освіта» в історичному розрізі. Було досліджено, що більшість сучасних науковців під дистанційною освітою розуміє нову організацію освіти, що ґрунтується на використанні як кращих традиційних методів отримання знань, так і нових інформаційних та телекомунікаційних технологій, а також на принципах самоосвіти. Виявлено, що основні технології дистанційної освіти можна розділити на три категорії: неінтерактивні (друковані матеріали, аудіо та відео-носії); засоби комп'ютерного навчання (електронні підручники, комп'ютерне тестування, новітні засоби мультимедіа); відео конференції (засоби телекомунікації по аудиоканалам, відеоканалам і комп'ютерним мережам).

В статті розглядають системи Moodle, Zoom та Google Meet як ті, що є найпопулярнішими інструментами дистанційної освіти завдяки відносній простоті у використанні та економічній ефективності. Проведе авторками тестування виявило, що лише 50 відсотків здобувачів та викладачів мають достатній рівень володіння теоретичними знаннями, пов'язаними з застосуванням дистанційних платформ. Крім того, опитування викладачів та студентів дозволило виявити основні причини, які перешкоджають ефективному впровадженню дистанційної освіти, а саме: недостатній рівень володіння теоретичними знаннями та практичними уміннями щодо застосування та використання дистанційної форми навчання, недостатня матеріально-технічна база, яка б дозволяла повноцінно здійснювати та брати участь в дистанційному навчанні, нестача часу на саморозвиток через надмірне навантаження роботою чи навчанням, психологічна неготовність до роботи в дистанційному форматі.

Проведене опитування та аналіз теоретичної літератури дозволив виокремити основні переваги та недоліки від впровадження дистанційної освіти. Основними плюсами дистанційної освіти є те, що вона дозволяє здобувачеві навчатися більш раціонально й ефективно, не прив'язуючись до конкретного місця; надає можливість використання в навчальному процесі нових досягнень інформаційних технологій та надає рівні можливості для одержання освіти незалежно від місця та країни проживання, стану здоров'я і соціального статусу. Проте дистанційна освіта має й певні недоліки, серед яких особливо небезпечним є вплив на фізичне та психічне здоров'я як викладачів так і здобувачів, що виявляється в підвищені тривожності, депресії, стресі, страху.

Перспективами подальших досліджень у даному напрямку є необхідність покращення нормативно-правої та науково-методичної бази, забезпечення відповідного рівня володіння комп'ютерною технікою, навичками роботи з інтерактивними технологіями як викладачами так і здобувачами.

***Ключові слова:*** *дистанційна освіта, заклади вищої освіти, Moodle, Zoom та Google Meet*.

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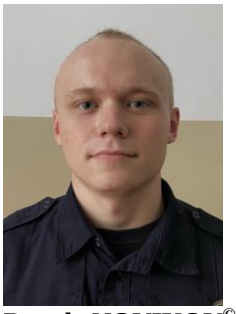

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# ADVANTAGES OF LEGAL EDUCATION FOR POLICE OFFICERS

**Abstract.** The article is devoted to topical issues of reforming legal education in Ukraine in terms of police training. It is argued that in order to successfully fight crime, police officers must receive legal education, which is especially important for investigators. Based on the analysis of foreign publications, the authors analyze the approach to training police officers in foreign countries, which is characterized by a tendency to increase the role of higher legal education in police training, and show some difficulties in training in police training.

***Keywords:*** *higher legal education, investigator, police officer, free economic education with specific training conditions, police training, police education, police.*

**Relevance of the study.** Police reform in Ukraine in 2015 was aimed at creating a new service body, the main purpose of which is to protect human rights and freedoms. Particular emphasis was placed on the desire to create a police force that would be legitimate in the eyes of ordinary citizens. Society places high demands on police officers, and only a true professional, a person with a high level of knowledge and able to apply them in practice, can live up to expectations. In this context, the question arises about the education that could create such a professional.

In recent years, there has been fierce debate over the best model of police education. The urgency of the scientific community to this issue testifies to the urgency, because, in addition to the publications of individual researchers, various scientific and practical events are devoted to this issue, which actively discuss controversial aspects of this issue. There are many issues that are discussed, but in this paper we will try to explore two of them: whether a police officer needs legal education and what are the benefits of obtaining legal education for law enforcement.

**Recent publications review.** The issue of legal education of police officers has always been the focus of scholars. Scientists A. Andreev, O. Bandurka, V. Beschastny, M. Budzynsky, S. Venediktov, V. Glukhoverya, O. Dzhafarov, N. Kolomoyets, A. Klochko, O. Koristin, V. Sokurenko. devoted their works to the problematic aspects of personnel training for policing. The problems of foreign language training of future police officers and its compliance

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with European requirements were studied by such modern scientists as T. Pakulova [1], N. Poberezhna [2].

Among the latest researches, the most fundamental works are I. Savelyeva's dissertation "Administrative and legal support of training of the National Police of Ukraine" and D. Shvets "Formation of the police officer's personality in terms of professional training and professional activity: legal and psychological aspects".

Researchers have studied various administrative, legal and psychological aspects of the training of future police officers, including the role of higher education institutions of the Ministry of Internal Affairs system in such training. In their publications the researchers revealed their views on the education of police officers, the place of higher education institutions with specific training conditions in this process, as well as other debatable issues regarding the training of future law enforcement officers. However, some aspects have been overlooked.

**The article's objective** is to determine the role of legal education in the training of police officers in Ukraine, as well as the place of higher education institutions with specific training conditions in this process.

**Discussion.** The most important component of the spiritual life is the education system, which is associated with the implementation of the process of dissemination of knowledge. It covers the activities of real social institutions that prepare young people for life on the basis of knowledge acquired in children's preschool institutions, secondary special, vocational and higher education institutions.

The importance of education in human life is growing, so it can not be limited to the period of study. The urgent need for a constant increase in the level of knowledge has led to the emergence of such an interesting phenomenon in public life as continuing education. This process is accompanied by the search for new forms and methods of teaching that contribute to the proper formation of the scientific worldview, a deeper understanding of economic and social change.

Education is one of the oldest social institutions, caused by the needs of society in the reproduction and transfer of knowledge, skills, abilities, and preparation of new generations for life, preparation of social actors to solve economic, social and cultural problems facing humanity. In the modern world, education is a complex and diverse social phenomenon, the sphere of transfer, assimilation and processing of knowledge and social experience. Education is a certain system of educational institutions that carry out various forms of drawing on their experience in the development of cultural wealth.

Education unites different types of educational and cultural activities, unites their content into a single social system, and orients them to the social order, to the social needs of mankind. Among the social institutions of society of modern civilization, education occupies one of the leading positions. After all, human well-being, the position of culture and spirituality in society, the pace of economic, scientific, technical, political and social progress depends on the quality and level of education.

Learning, skills, learning, and other concepts, terms are used to support the learning process. The foundations of a person's upbringing, his diligence and many other spiritual qualities are laid from an early age. The role of preschool institutions in this process is quite essential. However, their importance is underestimated. Quite often it falls out of sight that this is an extremely important level of education, which lays the foundation for personal qualities. And the point is not in the quantitative indicators of "coverage" of children and satisfaction of parental applications. Kindergartens, nurseries, factories are not considered only as a means of "supervision" of children, but they are regarded as centers for their physical, mental and spiritual development.

Legal education is a part of the system of specialized education, which provides training of future lawyers for work in the state apparatus, courts, and law enforcement agencies. Experts consider "legal education" as a component of more general legal education, as a branch of higher education, as a foundation of legal profession, as a guarantee of professional competence of a lawyer, as an environment for forming a new generation of lawyers, as one of the tools of social function of law, as a specific type of entrepreneurial activity, as a way to build a political career, as a way to realize personal ambitions, etc. Therefore, there are many opinions as to the purpose of legal education [3].

The development of higher legal education in Ukraine began at law faculties within universities, with the exception of the oldest Lviv University (1661), which appeared mainly in

the 19th century. These are the law faculties in Kharkiv (1805), Kyiv (1835), Odessa (1865), Chernivtsi (1875). The current state of higher legal education is characterized by contradictory characteristics: the number of higher education institutions that provide legal education in Ukraine now reaches almost 300, while before 1991 there were only 6 public ones. There are only 25 of them in Poland (10 of them are private), in Germany – 44 (1 of them is private), in France – about 80, in Great Britain – 97 and even in the United States – less than 200.

The structure of legal education includes: higher legal education, postgraduate legal education, postgraduate studies, doctoral studies, professional legal self-education. Educational and qualification levels are junior bachelor, bachelor, master.

The main subject of training of police officers is the Ministry of Internal Affairs of Ukraine. However, along with the Ministry, the Ministry of Education and Science of Ukraine plays an important role in providing educational services, which sets general standards for higher education, conditions and procedures for the operation of relevant institutions, the work of research and teaching staff, etc. [4]. In Ukraine, there is a network of seven educational institutions that train specialists with higher education for almost all police departments. The main areas of training for police officers are "Law" and "Law Enforcement".

Some researchers noted that the system of training police officers in the educational institutions of the Ministry of Internal Affairs is outdated and contributes to excessive waste of budget funds. Police reform provided for the liquidation of all higher education institutions of the Ministry of Internal Affairs and structural units. It was proposed to create a network of vocational training institutions (police schools) on the basis of liquidated departmental universities and institutes, which would not provide higher education, but would provide initial training (from six months to one year) only for authorized police officers. Applicants for management positions will have to study for three to six months at the Higher School of Police, which would be formed on the basis of the National Academy of Internal Affairs.

Critics of higher departmental education point out that quality higher legal education obtained in any educational institution is suitable for work in the police. They note that if the National Police of Ukraine has a special need to train a certain number of specialists with higher legal education, it can do so by including a quota in the state order for training in a certain educational institution. Candidates for police positions need to take a special intensive training course in a police training institution from six months to one year [6].

Currently, departmental institutions of higher education of the Ministry of Internal Affairs of Ukraine have accumulated considerable experience in training highly qualified police personnel. It is not necessary to abandon the development of educational institutions in which scientific schools have been formed over the centuries. An invaluable contribution has been made to the development of departmental education and science; so research and training have not escaped any area of law enforcement.

The situation in Ukraine with police education is quite ambiguous. The Law of Ukraine "On the National Police" [7] provides for several forms of police training, among which obtaining higher education in the higher education institution with specific training conditions is currently the main one. In the future, the role of such institutions may change. From the draft Concept for the Development of Legal Education [8], it is unclear what role freelancers with specific learning conditions play in legal education. Bill No.7147 of 28.09.2017 "On legal (law) education and general access to the legal profession" [9] generally excluded police officers from the list of legal professions, and therefore did not provide for them the possibility to receive legal education at all. The bill has now been withdrawn, but the issue remains open.

But, unfortunately, this cannot be done in six months or even a year on the basis of the primary training center and the Police Academy. Careful preparation is possible only in the presence of higher legal education [12, p. 162].

We are deeply convinced that an investigator, such as a lawyer (defense counsel) and a prosecutor, must have a legal education. Ultimately, all of these actors must be equal participants in order to adhere to the adversarial principle. Otherwise, what equivalent competition between the prosecution and the defense can we talk about in the case of superficial legal education of the investigator? Let's not forget that a lawyer who has professional legal training is allowed to participate in criminal proceedings as a defense attorney. Thus, given the procedural errors made by the pre-trial investigation authorities and superficial knowledge of the law, a lawyer will always be able to legally prove the innocence of his client, even if the latter actually committed a criminal offense. Under such conditions, the violated legal rights of individuals and legal entities will become even more

vulnerable [13].

People who can think critically should serve in the police. This is perhaps the most important competence that educators, especially investigators and coroners, should receive. Higher legal education is not just knowledge in the field of law. A lawyer is a person with a certain worldview, whose focus is on the protection of human rights. As noted in the scientific literature, the academy is a place created by liberal-democratic societies for reflection and critical thinking. The academy (meaning higher education) provides the police with an intellectual space to deal with policing. Academic policing programs can become laboratories in which policing practice will be subject to academic scrutiny.

If we turn to modern foreign experience, we can see a clear trend towards increasing the role of higher education in police training. Having studied the training systems in England and Wales, Sweden, New Zealand, Latin America, Norway, Germany, Australia and several other countries, foreign scholars see the need for police officers to receive higher education that meets modern challenges. The ever-increasing scale of crime, the significant revival of migration processes indicate that events in one country may have a significant impact on other states. It is in order to overcome these problems that most Western countries are trying to make their police more professional, so they are introducing a system of higher education for police officers [14, p. 44]. But this process does not always go smoothly. In countries that are just introducing or expanding access to such education for police officers, this is not always welcomed. For example, an empirical study of the impact of higher education as a police officer in England has shown that not in all cases has their leadership approved of such a move. These were already officers who decided to get a higher education or a scientific degree. According to the study, some officers even kept silent about the fact of training, because the leadership either accepted this fact without much enthusiasm, or even treated it with hostility.

After analyzing the working conditions of police officers, the researchers put forward an interesting version. According to them, one of the reasons for the negative attitude to the fact of obtaining higher education is that senior management may oppose the ability of subordinates to make important decisions. According to the study, junior and middle police officers represent a dilemma for the police: while they have the critical and analytical skills of a graduate (meaning a person with a higher education), in the police hierarchy they remain in a position that does not allow them to use the acquired skills. According to the level of acquired knowledge, such graduates are able to make legally significant decisions, but this remains the "privilege" of their leaders, who see this as an "encroachment" on their authority [15, p. 466].

Higher education creates a versatile person who not only has certain knowledge, but also is able to see the problem from different angles. The more extended knowledge a person has, the more factors he takes into account when making a decision. Such a person is able to anticipate possible difficulties and find a way out of a difficult situation. Isn't this the most important competence for a future investigator? And will an investigator who has received a minimum of knowledge in the field of law be able to look at the problem from different angles? But in that case, he will not even know that such parties exist. The broad outlook of the investigator, which can be formed during the higher legal education, is an unconditional demand for successful counteraction to crime.

Currently, among the cadets who study at the higher educational institutions with specific training conditions, only those who study at the faculties for the training of investigators receive legal education. Other applicants who are preparing to become future operatives, district police officers, juvenile prevention inspectors, receive knowledge in the specialty "Law Enforcement" in the field of knowledge "Civil Security". It is believed that only investigators should be a lawyer, it is enough for all other police officers to have any higher education, and for some positions such a requirement is not even specified [16, p. 57].

The Law of Ukraine "On the National Police" does not state any requirements to the education of a police officer. More specifically, the law requires a candidate for police service to have a complete general secondary education. Although in 2016 there was a legislative proposal to include as mandatory requirements for persons recruited to the police, the availability of higher legal education and military service, but after consideration by the relevant committees, the bill was rejected. Thus, modern legislation allows for maneuvering in matters of police education. This is quite appropriate, as excessive regulation at the level of laws of issues, which is characterized by a certain variability, may in the future create significant enforcement problems.

At the same time, when selecting for a specific position, certain requirements are set for

the education of a police officer. For example, the selection for the position of investigator requires higher education degree (educational qualification level) bachelor, specialist, master in "Jurisprudence" and "Law" [17, p. 334]. As for the district police officer and operative, higher education is required, but without specification, i.e. any, not even necessarily "Law Enforcement" activities. As for most other positions, in order to work as a police officer in the patrol police response sector, a police officer of a special police unit or a police officer of a security police, it is sufficient to have only a complete general secondary education. What does this situation indicate? Apparently, this is evidence that the lack of staff reduces the requirements for future police officers. It is no secret that many police departments are not fully staffed, so low requirements for candidates give hope that more people can apply for a position.

As we have already mentioned, currently only an investigator needs higher legal education, any higher education is required for service in other positions, or its absence is allowed at all. In our opinion, this is an extremely negative situation, which also has a sad tendency to worsen. We believe that legal education is needed not only by the investigator, but also by police officers in other positions, first of all, the operative officer, the district police officer, and the juvenile prevention inspector. Currently, the training of these specialists takes place in the specialty "Law Enforcement", which does not allow police officers to fully master the necessary knowledge and skills. In accordance with their job responsibilities, these individuals solve a wide range of legal tasks, so their education should be legal [18].

This issue is particularly acute in the light of amendments to criminal law on criminal offenses. Modern criminal procedure legislation provides for the participation of the investigator in the pre-trial investigation of criminal offenses, giving him the powers of the investigator during the inquiry. Obviously, such a person as an investigator must have a legal education. In addition, the Code of Criminal Procedure of Ukraine states that inquiries are carried out not only by inquiry departments, but also by authorized persons of other divisions of the National Police. The CCP does not contain a clear list of such bodies (this is especially justified in light of the frequent reforms of various units of the National Police).

If we turn to departmental regulations, it can be noted that the right to carry out within the competence of pre-trial investigation of criminal offenses in the form of inquiry is given to employees of juvenile prevention units, police officers. Thus, when conducting an inquiry within their powers, both the district police officer and the juvenile prevention inspector are endowed under criminal procedure law with the powers of an investigator, equivalent to the powers of an investigator [18]. Therefore, with this in mind, their education should also be legal! Investigation of persons who do not fully possess legal knowledge is not only ineffective, but also poses a threat of violation of the rights of persons involved in this process.

There is an opinion that even if the investigator needs legal education, it can be provided by any higher education institutions that have a license to study in the specialty 081 "Law". From the point of view of inclusion, this form of education can be allowed. Indeed, there is nothing to prevent you from getting a law degree in "civil" free education. But we can not say that this should be the only possible form of legal knowledge. Unfortunately, the police are characterized by a significant turnover of staff due to various subjective and objective factors. Difficult conditions of service, in particular overwork and emotional tension, lead to the fact that not everyone is able to withstand the difficulties of service. Even highly motivated young investigators do not always want to continue working after a year or two in office. Cadets who studied at the higher education institutions with specific training conditions are more "hardened" in this respect. From the first year of study, they receive not only theoretical legal knowledge, but also practical skills at various training grounds, which are available in any departmental institutions. Fire and tactical training of young police officers is given considerable attention, which is not available in "civil" educational institutions [19, p. 189].

An important component of training young police officers is their psychological support, which should not be underestimated. A person may have high-quality legal knowledge, practice the techniques in the gym well, but when faced with a real situation, get confused and not be psychologically ready for the practical application of the acquired knowledge and skills. Training over 4 years gradually forms a strong personality who is physically, legally and psychologically ready to fulfill their responsibilities to protect the rights and freedoms of citizens in their professional activities.

We fully support the statement of scientists that the practical component of education in higher education institutions with specific training conditions of the Ministry of Internal

Affairs of Ukraine is much more effective than in "civil" free educational institutions that provide legal training services involved in law enforcement activities. This axiom is also supported by other researchers, who argue that the training of specialists for pre-trial investigation and criminal police requires other approaches, which are possible only in the conditions of higher education institution, which combines theoretical knowledge, skills and practical skills [19, p. 194].

Often, the graduates of a higher education institution with specific training conditions return to work where they were sent to study. This is a positive trend, as it contributes to the staffing of local police units. The realities of life prove that not all graduates of higher education institutions, especially "civil" ones, will be interested in getting a job, for example, as a district police officer in a small town or village. In the same case, if a person comes from there, there is a high probability that he will return to work there. This probability increases even more due to the fact that cadets mostly practice and train at the place of residence, and therefore, even during their studies, they master the specifics of serving at the future place of work. Related to this is another positive point that a graduate of higher education institutions with specific study conditions is automatically employed. That is, departmental higher education institutions are guaranteed to train personnel for the police, which is extremely important in the conditions of staff turnover. A graduate of other educational institutions does not have a guaranteed job. Not the fact that he will go to work for the police after graduation. Therefore, for the most part, it is the "police" of the higher education institution who join the ranks of the police. We must not forget the fact that training in departmental education institutions is carried out at the expense of the budget, while civil higher education institution mostly offer such training under contract, which significantly limits access to training for persons who can not afford to study on a contract basis [19, p. 205; 20].

Thus, training at higher education institution with specific training conditions has much more advantages for the state in general and future police officers in particular than training in other higher education institutions. This is a completely predictable situation, as departmental higher education institutions are interested in replenishing the ranks of well-trained police officers and are working for the future. "Civil" higher education institutions are interested in providing only quality educational services and are not "accountable" to society, where their graduates will apply this knowledge. Giving the opportunity to train in the specialty 081 "Law" exclusively to "civil" freelancers, this may lead to a decrease in the number of people who can work as investigators, which in modern conditions can become critical.

**Conclusions.** It should be noted that we have given only some arguments in favor of our opinion, which are partially reflected in the scientific literature, trying not to repeat the facts contained in other scientific publications. Taking into account all the facts mentioned above, we can draw certain conclusions. Actually, the investigator must have a legal education to successfully fight crime. Only a person with the ability to think critically, a broad outlook, deep legal knowledge in various fields of law, practical skills of applying such knowledge, motivated to establish the rule of law in the state, is able to successfully combat crime. In addition to the investigator, higher legal education is required for investigators, operatives, district police officers, juvenile police inspectors, who, due to their responsibilities, need legal knowledge, especially in view of changes in the legislation on criminal offenses.

The best way to obtain higher legal education for these specializations is to study at the higher education institution with specific training conditions that will meet the needs for theoretical and practical mastery of the necessary competencies. Also, training in such institutions guarantees the constant replenishment of the police with well-trained employees and is a "forge" of police personnel. Therefore, the issue of revising the Concept for the Development of Legal Education in order to address issues of discussion, including the establishment of the appropriate status of higher education institutions with specific training conditions in the training of lawyers is relevant.

*Conflict of Interest and other Ethics Statements*

The authors declare no conflict of interest.

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**ПЕРЕВАГИ ОТРИМАННЯ ЮРИДИЧНОЇ ОСВІТИ ПОЛІЦЕЙСЬКИМИ**

**Анотація.** Стаття присвячена актуальним питанням реформування юридичної освіти в Україні з точки зору підготовки поліцейських. Стверджується, що для успішної боротьби зі злочинністю співробітники поліції повинні отримати юридичну освіту, що особливо актуально для слідчих. На основі аналізу зарубіжних публікацій автори аналізують підхід до навчання співробітників поліції в зарубіжних країнах, який характеризується тенденцією до підвищення ролі вищої юридичної освіти в процесі підготовки кадрів для поліції, а також показують деякі труднощі, які наявні в системі підготовки кадрів для служби в поліції.

На основі сучасних реалій розкриваються переваги вищої юридичної освіти для слідчих як передумови успішної боротьби зі злочинністю. Було заявлено, що саме правова освіта здатна

сформувати співробітника поліції, який володіє критичним мисленням, здатного орієнтуватися в різних галузях права та підходити до проблеми об'єктивно і з різних сторін, щоб успішно її вирішити. Аналізується, що тепер вимога про вищу юридичну освіту пред'являється тільки слідчому, а по ряду спеціальностей наявна вимога тільки про наявність вищої освіти або повної середньої освіти в цілому. З урахуванням змін у кримінально-процесуальному законодавстві, в рамках яких відповідно до своїх функціональних обов'язків представники окремих підрозділів поліції наділені повноваженнями проводити досудове розслідування кримінальних проступків, необхідність розширення переліку посад співробітників поліції, які потребують підвищеної зазначалося юридичну освіту. Автори також аналізують переваги ЗВО зі специфічними умовами навчання перед цивільними університетами з точки зору підготовки кадрів для поліції.

Відзначається, що кращі умови для формування юридичних знань в поєднанні з практичними навичками, які необхідні співробітникам поліції для виконання своїх обов'язків, створені в ЗВО зі специфічними умовами навчання.

***Ключові слова:*** *вища юридична освіта, слідчий, дізнавач, поліцейський, ЗВО зі специфічними умовами навчання, навчання поліцейських, освіта поліцейських, поліція.*

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## SPECIAL PHYSICAL TRAINING IN JUDOKA TRAINING

**Abstract.** Special physical training (SFP) is a process of development of physical qualities, which provides the predominant development of motor skills necessary for a particular sport (sport). In addition, special physical training is designed to develop these motor skills to the maximum extent possible. With the growth of sportsmanship, the amount of OFP funds decreases, and SFP – increases. Special physical training of a judoka is aimed at the development of physical qualities that a wrestler exhibits when performing specific judo actions. It is an integral part of the entire training process at all stages, including competitive. Special training tools include exercises in performing fragments of the struggle. These exercises help to increase the opportunities involved in the performance of certain special actions of the wrestler. the article presents generalized information on the organizational and legal foundations of firepower and physical training. The authors analyze the departmental normative legal acts regulating the training of personnel in the internal affairs bodies, including official and legal.

The issues of compulsory study not only by students, but also by employees of internal affairs bodies of both practical and theoretical parts of firepower training, and in the framework of physical training - compulsory study of injury prevention are considered. The authors conduct a comparative analysis on the organization of fire and physical training in the territorial bodies of internal affairs and in the educational organizations of the Ministry of Internal Affairs of Ukraine. Despite the fact that the normative regulation of physical and fire training classes is quite complete, there are certain issues in the organization of this process that do not contribute to the proper physical and fire training of employees.

As a result of the work done, the theoretical prerequisites for the relevance of the problem under study were revealed.

***Keywords:*** *judoka, rugby, training, special physical training, wrestler, exercise.*

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**Relevance of study.** The use of game methods allows more successfully achieving the goal and forming a reliable skill, is systematically used in competitive combat, improves the quality of training of wrestlers in various techniques, increases the effectiveness of competitive actions of athletes, provides a coherent influence on the formation of technical and tactical actions. For use in special physical training of judo wrestlers, experts are trying to select such games that would have a positive impact on both the development of physical qualities and the development of motor skills. One such game is rugby. However, there is no data on how appropriate the use of rugby is for judokas, as this is the attitude of judo coaches, which determines the relevance of our study.

**Recent publication review.** Actual problems of special physical training were researched by such scientists, as: V. Yudin, A. Karelin, V. Tsandikov, A. Alekseev, K. Ananchenko, N. Boychenko, V. Perebeinos, S. Yermakov, Yu. Tropin, N. Latishev, B. Korolev, Ye. Lyashenko, R. Stasyuk and others [1-10].

**The article's objective** is to investigate features of special physical training in process of judoka training.

**Discussion.** The basis of special physical training in judo traditionally consists of such exercises in the performance of techniques, fragments of struggle, which aimed at increasing the opportunities involved in carrying out selected technical actions. Analysis of research on the development of physical qualities in judo shows that recently the attention of experts is focused on the study and selection of the most effective means and methods of physical training search for new and original approaches that place increased demands on the functional systems of the athlete, which determine success in competitive activities.

Among other means of training, games have a special place in the training of wrestlers. Specialized games with elements of martial arts (for example, "Tear the opponent off the carpet and take him out of the circle", "Pull the opponent behind his line" and others) are offered before mastering the section "Wrestling" in physical education classes at school.

There is also an opinion that the inclusion of various games in the classroom provides a rapid motor adaptation of students to new motor actions for them and a more successful mastery of the technique of wrestling. Games are also used for warm-up, in order to restore the body and active recreation after intense training of wrestlers, to develop the mental characteristics of athletes and solve many other problems.

In the theory and practice of training wrestlers, use both moving and well-known sports games. In addition, the literature criticizes the traditional approach to the development of technical and tactical actions of young wrestlers, which based only on the study of certain techniques and their subsequent inclusion in the struggle. The criticism are explained by the fact that some coaches miss at the initial stage of training young wrestlers to study the basic elements of wrestling: capture the opponent, rack, movement, release from hobbies and others. Many people believe that the basic elements of wrestling will be formed in a natural way in the ability to systematically conduct training, training fights with young athletes, but experience shows that this practice becomes ineffective. It is necessary, on the one hand, to consistently and methodically all the basic elements before the training sessions and the first competitions begin, on the other hand, it is necessary to provide a wide range of motor abilities for beginners, based on the formation of athletes with a variety of motor skills and competence. The content of wrestlers' training should be more saturated with new means, as the qualification of wrestlers grows, their sports training should become integral [1].

Sports and moving games contribute to the solution of these problems, because the game plot itself allows in the game to create a great variety of motor actions, requires versatility in the response of each player to the situation and its rapid change [9]. Constant stress, concentration during the game require great physical and mental performance, which is also required in the fight. There is evidence that the use of game methods in the content of training has a positive effect on the performance of judo wrestlers, indicators of physical development and physical fitness of wrestlers of the classical style.

As for the game of rugby as a means of special physical training of judo wrestlers, it should be noted that it attracts the attention of wrestling experts, because it has movements similar to wrestling (for example, capture the opponent, repulsion, deceptive movements). In addition, this game develops the physical qualities needed in combat (strength, endurance, agility, general endurance, speed and strength). At the same time, the game is useful because it includes motor actions that are almost absent in wrestling (running, jumping, throwing), and therefore the active work includes muscle groups that do not participate in wrestling [2]. Thus,

playing rugby, young judokas can expand their motor abilities, develop adaptive reactions of the body and increase both the level of general and special physical fitness.

On this basis, the game of rugby is interesting as a new means of improving the special physical training of judo wrestlers, but currently there is virtually no scientific justification for the methodology of such training.

Analysis of the content of special physical training of judokas shows that at present there is a certain contradiction. On the one hand, the practice of physical training of judokas requires new approaches, means and methods of developing special physical qualities, based on the use of rugby and providing a high level of fitness in relation to rivals. On the other hand, the method of developing these qualities in judokas based on the use of rugby elements is insufficiently developed.

The study included interviews with trainers and pedagogical observation. At all, 45 coaches were interviewed. Among them are outstanding coaches and athletes, wrestling specialists, such as N. Solodukhin – Olympic champion, world champions among judo veterans I. Glivuk, N. Demkin and Honored Coach M. Creak. There were only eight questions in the questionnaire. The information was recorded by answers. The conversation clarified the opinion of coaches about what physical qualities are most important for judo, the need to improve the physical training of judokas, the means of physical culture for physical training of wrestlers, the feasibility of using sports games, their importance, including the feasibility of using rugby in training judokas.

Pedagogical observation was used to study the traditional methods of physical training of judokas. The object of observation was the educational and training process of judokas aged 16-17. The subject of observation were the means and methods of general and special physical training of judokas. Pedagogical observation was open and conducted in the natural conditions of the educational and training process. At total, 43 pedagogical observations were conducted because of the sports complex "Dynamo", OGOU DOD "Regional Specialized Children's and Youth School of the Olympic Reserve", "Children's and Youth Sports School named after M. Solodukhin", "Children's and Youth Sports School of Zheleznogorskaya". Interviews and observations were conducted during 2010-2011 [3].

Because of the survey, it was found that the most important physical qualities for judokas are strength, speed of reaction, strength endurance, agility, flexibility. However, 73% of respondents believe that the most important qualities of a judoka are speed of reaction, agility, endurance. More than 50% believe that the most important thing is the overall endurance, physical and mental performance of the athlete-wrestler. About 32% consider the most important quality of the fighter's coordination abilities. All respondents clearly stated the need for continuous improvement of physical training of judokas. At the same time, many respondents pointed out that in the current development of judo, new technologies, intensification of sports competition between athletes from different countries, the problem of improving the training of judokas will become more relevant.

About 43 % of respondents named traditional means of sports training the most necessary for athletes. The next one 25.9% indicated the need to include more strength training in the training of athletes, especially those performed on modern simulators. Other 30 % believe that it is necessary to use more means of physical culture in other sports, including various sports [4]. More than half of the respondents (56 %) are absolutely convinced that in sports training of judokas it is necessary to use not only sports games, but also other games - mobile, folk, didactic. They believe that the games have great potential for the physical training of judokas, but first you need to analyze each sports game, and then apply it in the training process.

Of particular interest was the question of the appropriateness of the use of rugby in the training of judokas. About 68% of respondents approved the possibility of using the game of rugby for the physical training of judokas. Half of the respondents decided that rugby could be useful for switching motor activity to a new type of movement, unusual in structure and activity (45%). They would use such a game during the recovery period or during the period of intensive training to change activities under heavy load. About 37 % of respondents indicated the need to use rugby during the period of general physical training at the beginning of the preparatory period of the annual training cycle. The others found another way to use the game - to practice elements of judo technique, which could be done directly while playing rugby [5]. In this case, in their opinion, the technique of movements should be mixed and it should contain elements of rugby in combination with elements (techniques) of judo [8].

As you can see from the results of the survey, coaches do not yet know exactly how best to use rugby in training judokas. Some of them even sometimes used this game in their training, but such examples were episodic, more spontaneous than well thought out and logically constructed. During the polls, it was noticed that coaches are not yet sufficiently aware of the importance of this game in training judokas. They are not ready to determine categorically, for example, whether to use this game in the competition period, what load can be given to young athletes during the game, how to combine the use of rugby and other means in training, what elements of judo can be practiced during the game. Others suggested the use of rugby for the purposeful development of such physical qualities as agility, strength endurance, speed and strength. In addition, a small number of respondents (only 12 % of the total number of respondents) saw rugby as an opportunity to train the tactical thinking of athletes when choosing options for the game and the nature of actions in the process of confrontation. During the observation, was found that in the training group of judokas aged 16-17 approximately 45-50 % of all training work in the preparatory period is devoted to general physical training. The rest of the time is spent on special training of athletes.

Approximately 65 % of technical and tactical actions and exercises are devoted to mastering protective actions. The rest of the time is spent on action in the attack, on the ground and the development of physical qualities [6].

According to pedagogical observation, the main methods of training are repeated, circular, game, competitive, interval. As for the game method, it is used more as an additional method. To do this, most often use sports games: football, basketball under the simplified rules or according to the rules that are currently accepted in these games [7].

Some mobile games are used much less often. It is very rare to include rugby in the preparatory period of a year of training. Other training games do not include. Thus, of a preliminary study, it was found that the physical training of judokas needs to improve, aimed at the most important physical qualities for judokas – agility, speed of reaction, general and strength endurance.

**Conclusions.** Traditional means and methods of building special physical training of judokas among specialists are beginning to be reasonably criticized primarily because there is an urgent need for new tools and training methods that could significantly increase the adaptive capacity of the athlete, his physical and psychological readiness to fight, functionally motor versatility. At the same time, the existing positive experience of using different games in the training of wrestlers and in general in various types of martial arts requires close attention and study as a promising direction in finding new tools, methods and approaches to sports improvement of wrestlers in competition, intensifying international sports arena.

The study found that one of the potential means of special physical training of judokas coaches consider rugby, which is similar in nature to judo, but the game is more diverse in terms of movement, universal in terms of physical qualities and generally important for many sports issues training of judo fighters. At the same time, coaches in practice still rarely use the game of rugby in the physical training of judokas and their opinions differ on how and with what direction this sport should be used in the training of young wrestlers [10].

Pedagogical observation has shown that the content of training judokas aged 16-17 remains traditional. The game method is used only as an additional component, as games are often used only football, basketball, moving games, which in the structure of motor actions are quite far from the structure of martial arts. Experts say that the use of rugby is appropriate in the training of young judokas, but requires thorough scientific development and the creation of special techniques, which is a prerequisite for further study of the use of rugby in the training of judokas.

*Conflict of Interest and other Ethics Statements*

The authors declare no conflict of interest.

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**СПЕЦІАЛЬНА ФІЗИЧНА ПІДГОТОВКА В ТРЕНУВАННІ ДЗЮДОЇСТІВ**

**Анотація.** Спеціальна фізична підготовка (СФП) – це процес розвитку фізичних якостей, який забезпечує переважний розвиток рухових здібностей, необхідних для конкретної спортивної дисципліни (виду спорту). Крім того, спеціальна фізична підготовка покликана розвивати ці рухові здібності до максимально можливій мірі. Із зростанням спортивної майстерності обсяг коштів ОФП зменшується, а СФП – збільшується. Спеціальна фізична підготовка дзюдоїста спрямована на розвиток фізичних якостей, які борець проявляє при виконанні специфічних для боротьби дзюдо дій. Вона є складовою частиною всього навчально-тренувального процесу на всіх його етапах, включаючи змагальний.

До засобів спеціальної підготовки відносять вправи у виконанні фрагментів боротьби. Ці вправи допомагають підвищити можливості займаються у виконанні окремих спеціальних дій борця. У статті на основі проведеного опитування тренерів та виявлено доцільність застосування гри в регбі як перспективного засобу фізичної підготовки дзюдоїстів, визначено її значення для розвитку фізичних якостей і формування рухових навичок борців.

***Ключові слова:*** *дзюдоїсти; регбі; тренування; спеціальна фізична підготовка; борець; вправ.*

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# THEORETICAL ASPECTS OF COMPETITIVE ACTIVITIES IN SPORTS GAMES

**Abstract.** The article presents the authors' theoretical views on the structure, features and definition of the basic concepts of competitive activity in sports games. Sports games are the most spectacular and popular sports. A high tempo of game actions, a quick change of situations, direct contact with the opponent in the fight for the ball, limiting the time of possession of the ball, high emotionality and unpredictability of the result require specific requirements for the motor, functional and psychological readiness of the players. The study of various aspects of the players' mastery allows to focus the attention of researchers on the leading characteristics – morphological indicators of players, the level of development of motor abilities and morpho–functional specialization of the body of athletes, technical readiness, tactical skill, moral and volitional qualities. The complex of these indicators determines the effectiveness of the competitive activity of athletes. Competitive activity in sports games is a competition organized according to certain criteria in order to identify the level and objectively compare the skill of players and teams.

***Keywords**: sports games, competitive activity, theoretical aspects.*

**Relevance of the study.** Relatively objective information about the effectiveness of competitive activity in sports games is provided by the results of competitions. However, the result of the competition does not always contain reliable information about the course of wrestling, the strengths and weaknesses of players and teams. For this, other indicators are used, which are obtained when registering data on competitive activity. The main directions of research of competitive activity in sports games are the following: determination of the total number and effectiveness of technical and tactical actions; determination of the efficiency and stability of sports equipment; control over sports tactics; measuring the physiological and biochemical reactions of the body of athletes during the competition and immediately after their end; control of mental states of athletes. This research is devoted to the definition of the basic concepts of competitive activity (theoretical aspects), the characteristics of the typology, structure and features of the players' game activity. The characteristic of competitive activity in sports games is the leading component of a number of scientific directions related both to the issues of improving the process of training athletes, increasing the effectiveness of playing competitive activity, and training future specialists in physical education and sports – physical culture teachers, coaches, judges, instructors, managers in branch.

The work is carried out in accordance with topic 1.4 "Theoretical and methodological foundations of sports development" of the Consolidated plan of research work in the field of physical culture and sports for 2011 – 2015 of the Ministry of Education and Science, Youth and Sports of Ukraine.

The subject of the research is the definition of the basic concepts and factors of competitive activity in sports games, the characteristic of the typology, structure and characteristics of sportsmen's playing activity. When studying this issue, the following methods were used: general scientific research methods – empirical and theoretical, as well as systemic,

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functional, specific sociological. As well as formal logical, comparative legal and other methods of scientific knowledge.

**Recent publications review.** Theoretical aspects of competitive activities in sports games were investigated by L. Hayrapetyants, V. Babushkina, V. Koryagina, E. Kudryashov, T. Akhmetzhanov, L. Matveev, V. Solomonko, I. Bodnar, N. Zavidovske, V. Davydov, T. Krucevich, N. Volovik, A. Zelentsov.

**The article's objective** is to study, generalize and theoretical analysis of competitive activity in sports games in the aspects of defining the basic concepts and factors that determine its result, characterizing the typology, structure and characteristics of the players' game activity.

**Discussion.** Competitive activity in sports games has repeatedly been the object and subject of extensive research by both individual specialists and research teams. Most teams of masters in football, volleyball, basketball, handball, futsal have in their staff specialists-scientists or complex scientific groups that monitor and evaluate the results of competitive activities of players, lines (defense, attack, goalkeeper, etc.), teams in general, determining a kind of "efficiency" of the player or team. General problems of competitive activity in sports games, questions of planning and control of competitive activity in aspects of pedagogical problems are considered in the dissertation on competition of a scientific degree of the doctor of pedagogical sciences L. Hayrapetyants [1]. The team of domestic authors – scientists and practitioners - prepared the publication "Tactics and Strategy in Football" [2, p. 3-4]. The study contains the views of the authors on the current state of competitive activity in football and ways to optimally assess it based on the widespread use of mathematical apparatus - methods of factor analysis, methods of multidimensional modeling and their combinations based on analytical and synthetic approaches. In 1996 he defended his dissertation for the degree of candidate of pedagogical sciences "competitive activity in tennis and methods of its evaluation" [3]. The author managed to organically combine theoretical and practical components of competitive activity in tennis, to develop a system for assessing the individual effectiveness of technical and tactical activities of tennis players on the basis of objective and subjective parameters.

Regarding basketball, the famous works of V. Koryagin [4, pp. 8-13] and V. Babushkin [5, pp. 17-19]. These researches are based on the pedagogical analysis of parameters of competitive activity of basketball players of different age and qualification on the basis of statistical processing of data of technical and tactical activity of players during official games. The analysis of these indicators allows the coach, team players to have up-to-date information on the success of competitive activities in a particular tournament or a separate official game, to respond quickly to game deficiencies and correct them both during training activities and during the official game.

Competitive activity in volleyball has significant features in comparison with other sports games, based on the principles of specific competitive activity (features of contact of the player with the ball, requirements for special physical training and tactical activity of players of individual roles – "libero", "connecting player"). analysis of the components of competitive activity in volleyball is contained in the studies of E. Kudryashov [6, pp. 286-295] and T. Akhmetzhanov [7].

The study of the well-known Russian scientist L. Matveev [8, pp. 70-113]. Quite a significant amount of work on the study, generalization and analysis of the components of competitive activity in sports games still leave a significant scientific space for unsolved and partially solved problems, the main of which are the following: 1) theoretical and methodological bases of the analysis of competitive activity in sports games as the leading factor of increase of its results; 2) competitive activities in sports games as a factor in optimizing the training process of players of all ages and specializations; 3) theoretical and methodological and pedagogical bases of competitive activity in sports games as a factor of professional training of future specialists in physical education and sports. topic "Optimization of training and competitive activities in sports games" (approved at a meeting of the Department of Sports Games, Minutes №7 from 05.02.2004; Scientific Council of the Faculty of Physical Education ZSU, Minutes № 11 from 23.02.2004, Scientific-Technical Council of ZSU, protocol № 7 from 19.02.2004).

By analogy with the general concept of "activity" in the theory of sports games it is accepted to note sports, including training and competitive activity of athletes. The semantic limits of the general term "activity" are rather vague (activity as occupation, work, activity in

general, etc.). "Competitive activity" in sports games is usually understood as a set of actions of an athlete (team) in the process of competition, united by a common goal and objective logic of implementation (technical and tactical actions, rules of competitions) during the game.

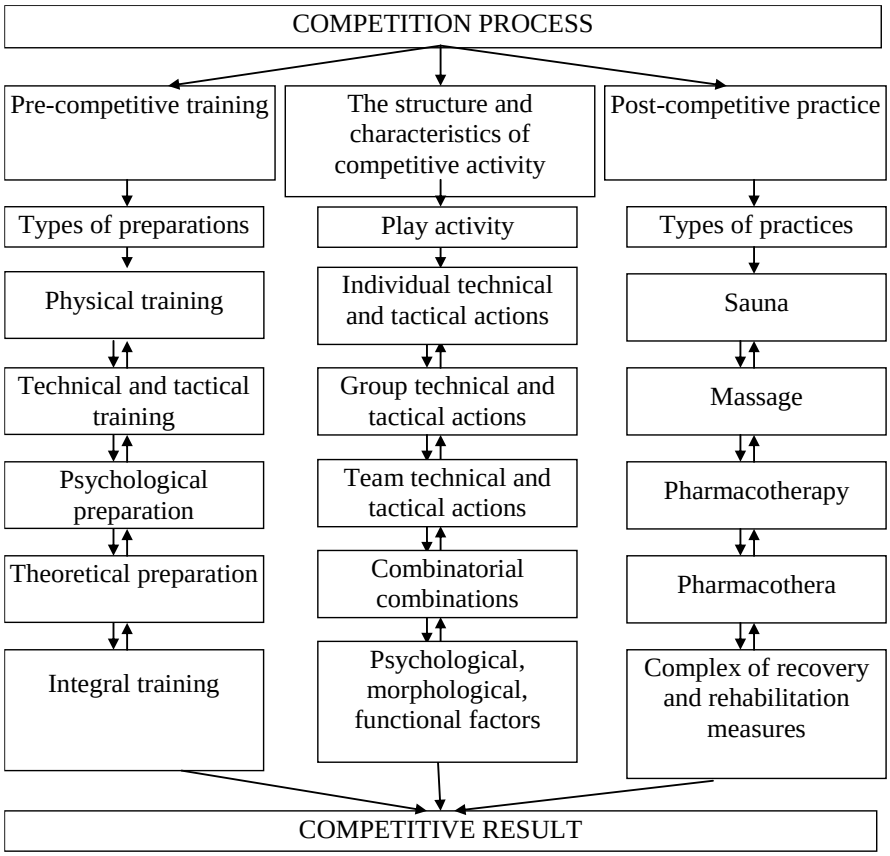


**Fig. 1.** The composition of competitve activities in sport games

As shown above (Fig. 1), the composition of competitive activities in sports games includes individual game actions (individual technical and tactical actions) and combining their complex forms (group and team interactions). Game actions are primarily integral complementary components of competitive activity, subject to its general logic. They have their own operational composition, i.e. consist of certain operations combined with a holistic game action (for example, moving to the optimal point of possession of the ball - carrying hands towards the ball - cushioning hand movements - catching the ball, and in general - the initial, basic and final elements actions, operations with a ball or other game object, when performing offensive and defensive actions in sports games. The term "operations", about competitive activities in sports games, has a complex interpretation.

More significant than individual game actions, the components of competitive activity are their combinatorial elements – combinations of tactics of a particular game and the level of performance of game techniques by specific players [9].

Reliability of competitive equipment in sports games is the sum of indicators. First, these are indicators of stability in relatively standard conditions of stability in relation to the factors that prevent the correct implementation of the technique of game techniques and their combinations. Secondly, indicators of a certain variability – in the conditions of constant change of a game situation the skill of game action during competitive activity has to remain rather steady, to provide a positive result in variable conditions of game [15], tactics of a particular game and the level of performance of game techniques by specific players [9].

In the process of competition to a large extent determine the composition of the structure and features of competitive activities in sports games [10]. They (structure and features) are caused both by the tactical plan of game and a direction of competitive activity as a whole, and by laws and concrete conditions of realization of the purpose in the course of the official game. It is clear that in itself the individual operations and game actions of the athlete

do not yet characterize his competitive activity as a whole – they become its components only when combined on the basis of the overall structure of a particular sports game. The phase nature of the changes it causes (in mental and biofunctional aspects). Before the start of the competition in the pre-competition phase (see Fig. 1) predictions, expectations and a kind of "tuning" for a successful performance is associated with a range of changes in mental and functional state of the player, subsequently expressed in the deployment of pre-start processes. There is the processes of forming a positive psychological status of the competition of the player, his motivation based on understanding the needs, interests and self-assessment of the player's real capabilities, modeling future competitive activities, designing its forms, content and results of the upcoming competition [11]. In the process of competitive activity, pre-made installations, the model of activity is specified, clarified and adjusted in relation to the game situations that actually develop on the site. Accordingly, there is a realization of the functional capabilities of the player, manifested in the complex of his game actions (individual group, team). Depending on the content of competitive activity, total volume and intensity of physical activity, after the end of competitive activity, in the phase of "post-competitive practice", processes of return to the initial level of functional state of body systems, reimbursement of spent bioenergy resources [12].

Competitive technique refers to relatively effective ways of performing game techniques, which are the initial forms of building the movements of players. Tactics of competitive activity are the general forms of realization of a certain way of achievement of result in game. In the practice of competitive activity in sports games, technique and tactics do not exist separately from each other. Sufficient conditional separation of these components is possible only with the use of methods of teaching game actions and studying competitive activities of an analytical nature. Indicators of reliability of competitive equipment is the sum of indicators of its stability, optimal variability.

**Conclusions** The above allows us to state the following:

– the study of theoretical aspects is one of the leading factors in improving the efficiency of competitive activities in sports games,

– the study, analysis and generalization of competitive activities ages and qualifications in sports games,

– theoretical, methodological and pedagogical foundations of the study of competitive activities in sports games is a leading factor in the training of future professionals in physical education and sports.

Prospects for further research are based on the principles of studying, systematizing and refining the theoretical aspects of competitive activities in certain types of sports – basketball, volleyball, handball, football and futsal.

*Conflict of Interest and other Ethics Statements*

The author declares no conflict of interest.

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## ТЕОРЕТИЧНІ АСПЕКТИ ЗМАГАЛЬНОЇ ДІЯЛЬНОСТІ У СПОРТИВНИХ ІГРАХ

**Анотація**. У статті викладені теоретичні погляди авторів на структуру, особливості та визначення основних понять змагальної діяльності в спортивних іграх. Спортивні ігри - найбільш видовищні і популярні види спорту. Високий темп ігрових дій, швидка зміна ситуацій, безпосередній контакт з противником в боротьбі за м'яч, обмеження часу володіння м'ячем, висока емоційність і непередбачуваність результату вимагають специфічних вимог до рухової, функціональної і психологічної підготовленості гравців. Вивчення різних аспектів майстерності гравців дозволяє акцентувати увагу дослідників на провідні характеристики - морфологічні показники гравців, рівень розвитку рухових здібностей і морфо-функціональної спеціалізації організму спортсменів, технічну підготовленість, тактична майстерність, морально-вольові якості. Комплекс цих показників обумовлює результативність змагальної діяльності спортсменів. Змагальна діяльність в спортивних іграх це - організоване за певними критеріями суперництво з метою виявлення рівня і об'єктивного порівняння майстерності гравців і команд.

***Ключові слова:*** *спортивні ігри, змагальна діяльність, теоретичні аспекти.*

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# COMMON AND DIVERGENT FEATURES OF MALE AND FEMALE SPEECH STYLES AND THEIR INTERPRETATION FROM THE CULTURAL ASPECT

**Abstract.** The problem of communication between men and women has long been of interest to various scholars, linguists in particular. This research paper considers the gender aspect in the communication between men and women. The social roles of men and women are constantly evolving and changing, so they are constantly in need of study and analysis. In addition, it is also due to the fact that gender linguistics emerged only in the second half of the twentieth century, so there is not much information on this issue. This study analyzes the differences in communication between men and women in terms of psychology, physiology, phonetics, syntax and grammar. The main problems that arise due to this and the main ways to solve them are also identified. It is worth noting that differences in language play an extremely important role in both social and cultural life. The object of the study was gender differences in communication between men and women. The subject of the research is grammatical, phonetic and lexical features of communication between opposite sexes.

***Keywords:*** *gender linguistics, gender features, communication between men and women, cultural aspect.*

**Relevance of the study.** Communication between male and female has always been somewhat complicated. It is a well-known fact that men and women typically use different strategies in communication.

Both men and women are equally able of using the same words, but the matter is that the linguistic analysis of the peculiarities of male and female communication can be of pure quantitative character, since the practical usage of particular speech units is resulting from the situation itself and serves to obtain the specific purpose of the speaker.

There are many stereotypes observed in society, which influence our perceptions and may lead to actual gender differences. Despite these assumptions, it was proven through a great deal of researches and investigations that men and women differ in their communicative competency in terms of language and conversational styles. The main focus of our scientific interest lies in the gender aspect of male and female communication and all its distinguishing features.

**Recent publications review.** The following issue became widely researched in the second half of the 20th century by such scholars as D. Tannen, J. Gray, W. O'Barr, D. Zimmerman, D. Jones and others. This article makes an air to determine and analyze the major features of male and female language from the perspectives of phonology, vocabulary, grammar, conversational topics and styles.

**The article's objective.** The aim of the research is to prove the existence of gender-marked speech, to show the differences between male and female way of using the language, to

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analyze the gender aspect in communication between males and females and its main peculiarities in phonology, grammar, vocabulary, conversational topics and styles. In accordance with the aim of the research, the following tasks were set:

– to define the notion of "gender" and "sex" in contemporary language research;

– to investigate differences of the cross-gender communication;

– to define the distinguishing lexical, phonetic and syntactical means of communication used by women and men;

– to show the main challenges in communication between male and female;

– to identify the essence of Politeness Principle and its usage in male and female communication.

**Discussion.** The general usage of the term "gender" began to appear in the professional literature of the social sciences in the late 1960s and 1970s. The term served as a useful purpose in distinguishing those aspects of life that were easily attributed or understood to be of social rather than biological origin.

It should be claimed category of gender is a lexical-grammatical category, which in most languages of the world divides the nominal lexicon into formally or semantically motivated groups, the number of classes varying just as the kind of criteria for the division. The interesting fact is that the category of gender can be studied not just by linguists but also by other researchers from other fields of science. Before the work of J. Money, where he introduced distinction between biological sex and gender, it was uncommon to use the word "gender" to refer to anything, but grammatical categories. The consequences become very influential in the world of science. The term "gender" found its usage in psychology, anthropology, sociobiology, literature and politics [5, p. 23]. According to the dictionary of sociology, gender is one of the universal dimensions on which status differences are based. Unlike sex, which is a biological concept, gender is a social construct specifying the socially and culturally prescribed roles that men and women are to follow [19, p. 271]. The psychology uses the term "gender" in order to describe those characteristics of women and men, which are socially constructed, while at the same time, sex refers to those, which are biologically determined. People are born female or male, but the twist is that they learn to be girls and boys who grow into women and men. This learned behavior makes up gender identity and determines gender roles [24, p. 132].

Nowadays in modern linguistics the most disputable problem connected with gender is the separation of grammatical and natural gender. There is a rough correspondence between grammatical gender and semantics: nouns denoting male animate beings are likely to be masculine, nouns denoting female animate beings are likely to be feminine and nouns denoting inanimate beings are likely to be neuter. By and large, if we take a few languages into consideration, we will see the slight difference between them. For instance, in German we can define gender with the help of the articles – "der", "die" and "das". "Der" refers to masculine, "die" – to feminine and "das" – to neuter. Nevertheless, some languages lost distinction between masculine and feminine genders and these two genders united into common gender. We can easily illustrate our words by an example. In Albanian, as well as in Pashto (the South Central Asian language of the Pashtuns) neuter has almost disappeared. In Arabic we distinguish masculine and feminine in the singular and the dual. In the plural we distinguish between male humans, female humans and non-human plurals, non-human plurals are treated as feminine singular regardless of their gender in the singular. In the Chinese language there are three characters – "他" serves for masculine, "它" – for neuter and "她" – for feminine. The interesting fact is that pronunciation of these three words is similar – "tā". But also there are some languages, which lost the category of gender at all. In Elamite (an extinct language spoken by the ancient Elamites) people distinguish neither feminine and neutral, nor masculine [10, p. 110].

According to David Crystal, gender is a grammatical category, which is used for the analysis of word-classes displaying such contrasts as masculine, feminine, and neuter. Discussion of this concept in linguistics has generally focused upon the need to distinguish natural gender, where items refer to the sex of real-world entities, and grammatical gender, which has nothing to do with sex, but which has an important role in signaling grammatical relationships between words in a sentence (adjectives agreeing with nouns, etc.) [3, p. 232].

It should also be emphasized that gender differences are not about sex, because according to the definition, sex is a physiological state of being based on physiological characteristics. What concerns gender, it is a social construct aimed at serving some social

goals. Sex just establishes the expectations for culturally acceptable gender behaviors. It begins from that exact moment, when a baby is born [7, p. 30].

Because of the fact that biology establishes the norms of behavior, it makes sense to take into consideration the science behind gender differences in order to gain insight and perspectives. Scientific investigations tell us that male and female brains function in a different way. For instance, researchers indicate that male brains are 10 % larger than female ones. When men perform a specific task, brain activity is registered only in that side of the brain, where that function resides. This actually enables men to be better at abstract reasoning and to possess stronger navigational abilities and motor skills. Women, on the other hand, have a larger area of the brain containing nerve endings, which connects its' both sides. It causes brain activity to occur on both sides of the brain simultaneously, allowing women to incorporate an emotion assessment with stated facts in a way men do not. This is how the notion of women's intuition is evolved [11, pp. 131-146.].

Of course, it should be mentioned that some questions are quite controversial. It is so, because the results can be claimed only in the case, when we are looking at large groups of men and women. In one on one comparison, the differences do not emerge. There is no established scientific consensus regarding gender differences, although anecdotal support is widely confirmed. This notion that physiological differences are relevant to explaining our ways of thinking, feeling, and the social roles we have historically played, does not mean that those roles continue to be desirable or adaptive under the present circumstances. Some of these roles are based on false beliefs about the nature and scope of the biological differences between the genders; for example, the view that women are not capable of leading because they are too emotional, or that hold men cannot be nurturers. The "facts" continue to be subject to revisions, reinterpretations and criticisms.

With so much conflicting information and inconsistent experiences, it is not surprising that gender communications are muddled. Perhaps the most profound biological difference is the impact childbearing has on women in the workplace. The world of work has developed in a linear fashion and is not designed to accommodate a women's biology. While practical adjustments can be made and policies can be developed to accommodate this reality, the significant impact of this is that the very notion of female authority is shaped by the concept of motherhood. This does not bode well in a world where leadership models are based on masculine traits of warriors and athletes. Science, for better or worse, has led to the creation of gender stereotypes. Stereotypes are not inherently "wrong" – it is how we choose to respond to them which create tensions in the workplace. Stereotypes can be useful if they serve as hypothesis which are tested and challenged before becoming established filters through which we view the world. While the scientific community continues to debate the merits of various studies, the casual observer can at least acknowledge that differences in approach between genders do exist. By exploring these differences nondefensively and in context, we can deconstruct and challenge some commonly held stereotypes about gender roles in the workplace and ultimately improve our ability to communicate across gender lines more effectively.

Stereotypes lead to the establishment of cultural norms, or a system of shared meanings based on collective life experiences. Cultural norms can be altered but such changes usually occur at a glacial pace. Many of the norms we see in today's workplace have their roots on the playground [18, p. 85]. In the childhood boys were usually rewarded when they competed, challenged and won. Girls were praised and rewarded when they acquiesced, accommodated and compromised. Girls got better results phrasing ideas as suggestions rather than orders, while boys stated opinions in the strongest possible terms and waited to be challenged. You rarely heard a little boy on the playground being told, "do not be so bossy!". Boys learnt early on to use conversation to inform or instruct while girls learned to use conversation to interact and connect.

Nowadays it is claimed that differences between the language of men and women arise from differences in anatomy and physiology, but actually it is also caused by differences in psychology. Starting from their childhood, males and females are different in many ways. A great deal of scholars claim that women, in comparison to men, have better memory, while man have better sense of direction. It is believed that women use language in order to achieve intimacy and develop relations, while men at the same time tend to use standard language. We should have our feet on firm ground and acknowledge that it is fully reflected in male and female communication.

The divergent features of male and female language exist in construction change features of language use like pronunciation, intonation, vocabulary, syntax, grammar and communication mode. First of all, men and women have different voice qualities. If we are listening to the speech of a person, we can easily guess whether man or woman is speaking. It can be explained by physiological factors – the pitch of the voice depends on vibration of the vocal cords in the larynx. As it is known, at the age of ten or twelve years, boys and girls find out to differentiate their voices. Due to the structure of speech apparatus, boys lower their voices and girls raise theirs. Of course, it is also caused by the size of the larynx – men, on average, have a larynx which is about 40 % taller and longer than women.

Males have not only larger vocal folds, but they also have longer vocal tracts (in this case, the word "vocal tract" refers to all of the organs involved in speech, between the lips and the vocal folds), due to the fact that men tend to be larger than women [13, pp. 45-61].

One more difference lays in the perception of intercommunication. Women use an abundance of non-verbal communication such as making eye contact, gesturing and animated facial expressions. Moreover, woman often prefers talking while sitting or standing in a cluster of people where everyone is face-to-face. A woman might gesticulate, raise her eyebrows, incline her head and shrug her shoulders during the conversation. She tends to make more encouraging gestures while speaking to keep the conversation going and tend to ask a great deal of questions. A man prefers talking shoulder-to-shoulder in an angled pattern where he and his friends can take in the room. The man often prefers relaxed, sprawled pose and keeps the body language and facial expressions more contained. Men tend to keep silence and shook the head. They do not use gestures at all.

Woman may punctuate the conversation with affirmative noises such as "OK" and "Uh huh" to let you know that she is listening. At the same time the man prefers to sit quietly, he focuses on what is being said. In many cases woman is confused by such a feedback, she shows in such a way that she is listening to man's speech very attentively, but he could interpret the woman's conversations noises as interruptions and become annoyed [23, p. 165].

With reference to the syntactic differences – woman's speech is characterized by frequent use of general and tag questions to structure talk, while man's speech is marked by less frequent use of the questions. For example, woman tends to say "This book is extremely interesting, isn't it?". Such structure of the sentence is not common for men's daily expressions. Man will say it directly – "This book is interesting".

General questions, as well as tag questions will make the speaker's tone more reserved, calm and modest. It can also help to avoid the conflicts between speakers while showing preferences, which may concern one or another topic [9, p. 290]. Tag questions usually reflect the uncertain views and wishes of the speaker to get others' affirmation. So, women will choose general question and special question in order to express their uncertain views and ask for others' opinions. However, men prefer to speak bluntly and due to the expression of their competitiveness, they will not give much speaking right to others. It is also strongly believed, that women talk too much, have private and small talks, while men mostly speak in public, men do not interrupt their interlocutors while speaking.

Women are also inclined to use more standard and exact syntactic structures. For instance, man will say "He walks too quick" or "I known that", and woman will say instead of that "He walks too quickly" or "I have known that". It can be explained by the fact that women want to show their status and good education in speech and pronunciation.

Vocabulary different are worth our attention too. It is claimed that some adjectives such as "great", "lucky", "happiest", "excellent" are more used by women. Women also use some positive degree of adverbs in such a way emphasizing good aspects like "really", "largely" and "so much" [22, pp. 217-231].

It proves that women tend to use euphemistic expressions and exclamations. Of course, it is common for many languages. In the English language women often use such words as "My dear", "Oh God", "Oops", "Yoo-hoo", "Wow". In Chinese they use almost similar phrases – "**套言** tàoyán" (it can not be translated into English properly, because the English language does not have correspondences, but it is a compliment, which is used by female in conversations in order to encourage the speaker to continue expressing his point of view), "唉 ài" (this word is used to express sadness, sorrow and emotional excitement), "亲爱**的** qīn'àide" (it can be translated as "my dear"), "**喔嘎** ōhuò" (it is the most common exclamation). In German women use such words as "mein Schatz" ("my dear"), "Meine Güte!" ("Oh my God"),

"Ach, nee!" ("Oh no, really?").

What is more, women avoid using slang and dirty words even in the situations when they are angry and furious, which is, by the way, not typical for men at all. These words will be used by men even in everyday speech. In the Chinese language they will use such words as "他妈的 tāmāde", "活见鬼 huójiànguǐ", "狗东西 gǒudōngxī", in German – "Fick die Henne! ", "fieser Kerl", "verdammte Scheiße!", which are equivalents for English "shit", "damn it" and "what the heck!".

Besides, there are greeting differences for women and men. Females add more emotional colors to salutations while men do not do that. Females also prefer to add endings"–ie" or "–er" to some nouns. For instance, they say "bookie" and "groupie", while men use such words as "bookmaker" and "musical group", without adding any suffixes.

The interesting aspect is that topics of male and female discussions also vary. When men talk to each other, they feel competition. Generally, men talk eloquently about different kinds of competitive topics like sports and hunting while women's topics of conversation are usually about individuals, family life and emotions. What is more, when man is talking with women, he tends to take the initiative in conversation. It means that he speaks not so competitively, and women do not limit their talk to family life only. As we can see, the dialogues showing directly one's inner lives are more appropriate for women, and men, on the contrary, are inclined to hide their feelings [1, p. 42].

Klein once made a research in an ordinary worker's family. He found what men normally talk about their working conditions, sports news and other related topics, while women mainly talk about family and family members. It deals with males' and females' mentalities: women prefer to harmonize and soften interpersonal relationship while men just think about showing their leading roles and assert their dignities [8, p. 131].

There are also cases when men and women speak the same languages, but some distinct linguistic features occur in their speech. In Japanese there are different words with have similar meanings, but should be used distinctively by men and women. If man and woman have a dinner and woman asks "Give me a glass of water, please", she will use the word "お冷や ohiya" for "water". But if man asks the same question, he will use the word "水 mizu".

Scientists state that women are inclined to use "superpolite" language, which is also fully reflected in their usage of grammar. Women make an air not to use contractions, while men do not draw attention to this aspect. While discussing some issues or important topics, speakers hope to earn respect from the interlocutor, that is why, they need to use appropriate strategies in order to express politeness and honor. Basically, Politeness Principle deals with this concept. According to Geoffrey Leech, Politeness Principle includes six maxims: Tact maxim, Agreement maxim, Generosity maxim, Modesty maxim, Sympathy maxim, Approbation maxim [14, p. 89]. With the help of these maxims, speakers try to shorten the distance between each other and consider the places of the counterparts in order to achieve the effect of praising the other partner and restraining oneself in the wording.

Men and women, due to the dissemblance in their psychology, behave in a different way in performing Politeness Principle. As it was mentioned, women perform better in applying Politeness Principle. This fact can be observed from four aspects – using humor, sympathy, slang, euphemism and expressing approbation [14, p. 115]. Slang includes vulgarism, swearing and jargon. While choosing a proper word, females are inclined to choose those without rhetoric. Men, vice versa, prefer not only neutral words, but also words with law rhetorical style, such as terminology, which concerns technology and politics [4, p. 122]. By and large, if we compare men with women, we will see that men have a larger scope in choosing words in order to express their ideas.

Jespersen lays an emphasis on the fact that women avoid using taboo register instinctively and "their expression is refined, reserved and indirect". Coats also states that women would rather choose "polite words". Men, on the contrary, use more swearing. The point that social gender identity takes into consideration impoliteness and does not stick to small points can be characterized as the features of macro image. That is this notion, which encourages men to use slang. The example of it is the fact that in many English speaking countries, men prefer to pronounce nonstandard phonemes [17, p. 34].

The next point is humor. According to Longman dictionary, humor is the special quality in something that makes it funny and makes people laugh. Another definition is that it is a kind of message whose verbal skill or incongruity has the power to evoke laughter. The interesting

fact is that investigations in psychology, as well as in sociology showed that actively produced humor was harder to combine with female role expectations than with male ones.

The humorous presentations experiences are conversationally structured, that is why people can laugh about them together. They contribute to entertainment and relaxation, but because of the fact that they want to amuse people, they can covertly introduce serious matters so that the group is enabled to assure itself of similar experiences, perspectives or values. Of course, negative experiences can be presented in such a way that real relations are reversed in the humorous anecdote. For instance, the powerful are exposed as fools and the true victors – as losers. As we can see, in the following way men can express that they despise others. Topics, which can be considered as partly taboo, such as envy or some physical problems, can be dealt with allusively.

Scholars claim that there are several reasons, which can explain, why in speech behavior, men practice humor more often than women. First of all, social standards consider the part that humor should be dominating in the conversation. Secondly, due to the fact that females have smaller scope in choosing words in speech behavior, it is really much more difficult for them to deconstruct the routine of language, which is exactly the essence of humor. Thirdly, in patriarchal gender norms, females' powerless behavior is favored instead of powerful. Since almost no female role is actually evaluated in society, women presumably develop greater role distance than men. This could affect their humor style [6, pp. 34-47].

What concerns approbation and sympathy, in communication, sympathizing other's plight and approbation other's achievements are effective ways to save both negative and positive face. But mainly we can find approbation and sympathy in women's speech.

**Conclusions**. Both men and women struggle when communicating with the opposite gender. If you want to make communication effective, you should bear in mind that it must be understood. One of the biggest barriers to effective communication is gender. The first step to the gender communication barrier is to identify male and female communication patterns. Only when a person can begin to understand the different strengths and styles of both genders, it will bring to the table. In spite of the fact that men and women are different in nature, but they share common social and communicative competence and dispose of the same repertoire of words, grammatical tools and stylistic awareness.

From a very early age, males and females are taught different linguistic styles. Communication behaviors that are acceptable for girls may not be acceptable for boys and vice versa. Parents and peers speak differently to children regarding social rewards and goals. Therefore, boys are taught to be solid and impassive. They tend to play outside in large structured groups with aggressiveness and competitiveness with a winner and a loser. Also, they want to be the center of attention and achieve higher status by telling stories and jokes or challenging other stories or jokes. On the other hand, females are trained to demonstrate greater feelings and cooperation. Girls play in small groups or pairs and tend to have a more intimate relationship with other girls. They play fair and take turns with no winners or losers. Another important aspect in communication for women is they sit and talk about concerns of seeking approval and popularity.

The interesting fact is that men tend to be leaders in conversation, they are used to suggest a topic, their speech is not characterized by vivid emotions or words expressing doubt and hesitation. Women are inclined to speak using a large number of questions and emotional words. They tend to accept topics that ate suggested by men. In speech behavior women tend to obey the Politeness Principle. In general, they express more approbation, sympathy and use more euphemisms than men. These phenomena can be explained by the fact that they live in respective communication subcultures. In their childhood, boys' and girls' language is shaped by games and friendship, but after becoming adults, men and women play different social roles, which are reflected in different conversational styles.

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**Тетяна ВАСИЛЕВСЬКА, Аліна ГОЛІНКО**

**СПІЛЬНІ ТА ВІДМІННІ РИСИ ЧОЛОВІЧОГО ТА ЖІНОЧОГО СТИЛЮ МОВЛЕННЯ, А ТАКОЖ ЇХНЯ ІНТЕРПРЕТАЦІЯ З ТОЧКИ ЗОРУ КУЛЬТУРНОГО АСПЕКТУ**

**Анотація.** Проблема спілкування між чоловіками та жінками вже довгий час с предметом зацікавленості різних учених, лінгвістів зокрема. У даній науковій роботі розглянуто гендерний аспект у спілкуванні чоловіків та жінок. Соціальні ролі чоловіків та жінок увесь час динамічно розвиваються та змінюються, тому постійно потребують вивчення та аналізу. Окрім того, це спричинено також тим, що гендерна лінгвістика виникла лише у другій половині двадцятого століття, тому інформації з приводу цього питання не так вже й багато.

Дане дослідження аналізує відмінності у спілкуванні чоловіків та жінок з точки зору психології, фізіології, фонетики, синтаксису та граматики. Також виявлені основні проблеми, які виникають за рахунок цього та основні шляхи їхнього вирішення. Варто зазначити, що відмінності у мові відіграють надзвичайно важливу роль як в соціальному, так і в культурному житті.

Об'єктом дослідження вибрано гендерні особливості у спілкуванні між чоловіками та жінками. За предмет дослідження взято граматичні, фонетичні та лексичні особливості спілкування між протилежними статями.

***Ключові слова:*** *гендерна лінгвістика, гендерні особливості, спілкування чоловіків та жінок, культурний аспект*

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# PROBLEMS OF PSYCHOLOGICAL READINESS OF STUDENTS OF HIGHER EDUCATIONAL INSTITUTIONS IN THE SYSTEM OF THE MINISTRY OF INTERNAL AFFAIRS DURING SHOOTING WITH FIREARMS

**Abstract.** Formation of skills of firing a pistol at the Ministry of Internal Affairs personnel occurs in the course of training at the school. The existing method of fire training in educational institutions does not take into account the state of high psychological stress of cadets of educational establishments in the Ministry of Internal Affairs system while performing high-speed firing exercises. The use of short-term intense physical activity in the process of firing cadets helps to reduce their psychological stress on the firing line, as well as forming the willingness of future law enforcement officers to fire a gun.

The current environment in which many professions work, including police officers, motorists, train drivers, nuclear power plant operators and some others, can be fully described as special and sometimes extreme. An analysis of the problems that arise in the work of these professions leads to the conclusion that they are often psychologically unprepared to work in difficult conditions, so there are "weapons" that can lead to tragic consequences.

Psychological preparation for special and extreme activities is a purposeful impact on the individual through psychological and psychophysiological methods aimed at forming her psychological readiness for adequate action in such situations. Psychological readiness, in turn, means a system of indicators of the subject, which ensure the success and effectiveness of certain processes and activities.

The use of modern scientifically sound methods and techniques of psychological training is an important factor that contributes to increasing the level of psychological readiness to work in these conditions. Therefore, if we consider psychological readiness exclusively from a psychological point of view, it will be about giving a person the opportunity to acquire important knowledge, train skills and form the necessary habits based on them.

***Keywords:*** *extreme situations, psychological readiness, psychological stress, physical activity, high-speed firing, teaching methods, firearms, firearms firing.*

**Relevance of the study.** Solving problems that arise in cadets of higher educational institutions in the system of the Ministry of Internal Affairs in extreme conditions related to their professional activities. Today, future police officers are not psychologically trained or taught to be emotionally resilient and prudent in stressful situations. Therefore, this article highlights the methods and recommendations for teachers with which it is possible to teach a

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cadet to reject emotions and work calmly with firearms.

**Recent publications review.** Many scientists analyze such a method of fire training of law enforcement officers as the use of physical activity during training. The fact that physical exercises help to increase the effectiveness of activities, as well as reduce psychological stress, this is noted in the works of the following scientists: V. Klimov, V. Kravchenko, I. Kryvolapchuk, E. Ivanov and others [1-11].

**The article's objective** is to analyze problems of psychological readiness of police students during shooting with firearms.

**Discussion.** Fire training is one of the main components of combat training and is aimed at training personnel in the proper handling of firearms, as well as effective and, most importantly, its lawful use. Ability to conduct aimed fire at a fast pace, after physical and psychological stress, to hit targets from the first shot, turn; to warn the enemy in opening fire; to fire from the shelter, quickly change the position and position for shooting; to maneuver fire effectively and to achieve the most successful use of weapons and special means depending on the situation and conditions of use of firearms is one of the priority areas of fire training.

In today's conditions, the issues of professional training of police officers in the conditions of official activity are of special importance. Effective training of highly qualified law enforcement officers for the system of the Ministry of Internal Affairs of Ukraine is a rather complex and multi-level educational process in which fire training teachers take part. At the same time it is necessary to take into account not only the accumulated theoretical knowledge and practical skills, but also the moral and psychological stability of cadets when firing a pistol. A police officer (cadet) must not only have special professional knowledge and skills, but also be psychologically stable and ready to act in extreme conditions. Professional psychological training is the main direction for successful service activity [1].

Shooting plays a positive role in the physical and moral-volitional formation of young people during the class developing the following qualities: psychological activity, attention, volitional effort, emotional stability, memory and thinking. Examining this question, we can say that moral and psychological training is one of the most important factors in the fire training of cadets, affecting the quality of shooting as it contributes to the disclosure of psychological characteristics associated with the process of learning to shoot, the role of mental processes. recommendations for the development of personal qualities of the shooter – cadet.

Effective training of highly qualified specialists for the system of the Ministry of Internal Affairs of Ukraine is a rather complex and highly qualified educational process in which teachers of fire training take part. At the same time, it is necessary to take into account not only the accumulated theoretical knowledge and practical skills, but also the moral and psychological stability of cadets when firing a pistol [1]. Therefore, in our opinion, it is necessary to develop certain methods of practical training in fire training, which will help cadets to fully promote the development of creative personality, applied thinking, the ability to integrate knowledge in various areas of training, which are mainly aimed at mastering the right actions. with weapons and accurate shooting equipment. This type of training will help to prepare the entire psychophysical apparatus arrow, bring it to the optimal state of function of nervous structures. Together, these methods and tools form a system of actions of teachers aimed at achieving the highest level of readiness, which determines its ability to maintain a fairly high level of functional activity and successfully perform the assigned tasks in accordance with the conditions of professional activity directly related to the use of combat weapons. The formation of firearms skills in law enforcement officers occurs in the process of training in an educational institution and their effectiveness significantly affects the further implementation of official activities. It should also be noted that how methodically competently constructed the training of shooting from a service weapon, it will largely depend on the correctness and effectiveness of the use of weapons in direct contact with the offender.

In situations where firearms are used by police officers, pistol shooting is usually used for a limited time. In this regard, the issue of improving the effectiveness of training in high-speed shooting with firearms is relevant and requires the development and implementation of new techniques in the process of training fire training of cadets [2].

We should not forget that the subjective factors that reduce the effectiveness of fire training of cadets include:

– underestimation by cadets of theoretical issues that determine the conscious use of weapons and understanding the conditions of its effectiveness in different conditions (issues of ballistics and shooting rules with a predominance of interest in the arrangement of weapons);

– underestimation by cadets of the role of simulators in the process of formation of primary skills and training of muscular memory in the process of fire training, especially in the first year of study;

– distribution of opinions of teachers and cadets on a number of issues of fire training, which can lead to a decrease in motivation of cadets, mutual misunderstanding between teachers and students;

– underestimation by teachers of methodological issues in improving the process of fire training with the predominance of criticism related to its material support [3].

The objective factors that reduce the effectiveness of fire training of cadets include:

– the level of logistical support of the process, which does not meet modern requirements for fire training of future police officers (in particular, the lack of training samples of weapons, including foreign, etc.);

– shortcomings of software and educational and methodological support, which must be improved in accordance with the introduction into the educational process of modern technical means of learning.

The existing method of fire training, according to many scientists, does not take into account the important points when teaching cadets the elements of high-speed shooting. However, the state of high psychological stress at the firing line, in which cadets perform a high-speed shooting exercise, is not taken into account. When analyzing the statistics, it can be noted that before performing the exercise on the firing line. 69 % – cadets feel emotional arousal, 16 % – anxiety, 10 % – feel insecure, 7 % – fear, 3 % – fear of responsibility, 17 % – fear that they will not get a good result [4].

It should be noted that during contact with firearms, the cadets have the following psychophysiological phenomena: hand tremors are felt – 35 %, heart rate – 56 %, respiratory rate – 7 %, sweating hands – 65 %, incoordination – 4 %, inhibition of the reaction – 5 %. Confident possession of a personal weapon and accurate shooting from it depend not only on the practical skills of the shot, formed during training, but also on the availability of appropriate theoretical knowledge about the device, how to handle it, compliance with safety measures, rules of keeping weapons in in good condition [5].

Shooting plays a positive role in the physical and moral development of young people. The cadets have such qualities as psychological activity, attention, emotional stability, memory, thinking during shooting. Moral and psychological training is one of the most important factors in the fire training of cadets, influencing the quality of shooting, as they contribute to the disclosure of psychological qualities associated with the process of learning to shoot, the role of mental processes through which to develop recommendations for personal qualities. arrow.

Given all the above, we can highlight the following recommendations:

– During the fire training class, the teacher should take care of a calm atmosphere, try to be restrained from mistakes, so that the cadets of the fire training class would be associated exclusively with positive emotions;

– Cadets in fire training classes must be provided with noise-canceling headphones;

– The cadet must get used to the smell of gunpowder gas;

– The teacher of fire training must be able to recognize the excitement of the shooter and not allow him to develop into a state of stress [6].

A good shooting result is achieved through inner peace and a desire to strengthen the already acquired skills in shooting, by practicing exercises alone. Also, one of the recommendations is that there should be no long breaks between fire training sessions. It is necessary to adhere to the continuity of the process. This is one of the most important pedagogical principles. An important condition for improving the quality of fire training of cadets of higher educational institutions of the Ministry of Internal Affairs of Ukraine is the development and implementation of a methodology that involves the use of modern training, corrective and control equipment.

Therefore, in our opinion, it is necessary to develop certain methods of practical training in fire training, which will help cadets to fully promote the development of creative personality, applied thinking, the ability to integrate knowledge in various areas of training, which are mainly aimed at mastering weapons and weapons. technique of accurate shooting. This type of training will help to prepare the entire psychophysical apparatus of the shooter, to bring it to the optimal state of the functions of nervous structures. Together, these methods and

tools form a system of actions of teachers aimed at achieving the highest level of readiness, which determines its ability to maintain a high level of functional activity and successfully perform assigned tasks in accordance with professional conditions directly related to the use of weapons [7]. E. Ivanov, who considered the effect of emotional stress on shooting in shooters, points to a change in a number of components of the psychological state of athletes that determine the reduction in the effectiveness of exercise. Also, the author notes that after short-term exercise, the effects of emotional factors are reduced [8].

The use of modern electronic teaching aids in the process of fire training, independent actions of cadets with simulators and computer equipment increase the role of the teacher, which purposefully forms the moral and legal, moral qualities of the future police officers.

It is advisable to consider the introduction of the latest technical means of education as a promising direction for the development of professional training of cadets and enshrine this provision in special regulations governing the activities of universities, which would allow fuller funding for the purchase of appropriate equipment.

In the educational process to assess the quality of employment in the conduct of educational and methodological control at the level of the department and the university, taking into account the use of modern technical means of education. Planned and systematic training in sports sections, participation of cadets and students in various championships in service – applied sports allow to use all variety of means and methods of physical and fire training for effective development of physical qualities, formation in them of professional-applied skills and education of psychological and moral qualities of a highly qualified specialist in the field of law enforcement [9].

Organize and conduct psychopedagogical research in universities of the Ministry of Internal Affairs of Ukraine, which would reveal the individual characteristics of cadets, help teachers to better understand the motivation and reasons for the lag of some cadets in compliance with standards and shooting, helped students understand the subjective difficulties in fire training.

In the structure of methodical employment of pedagogical skill of teachers at school to include subjects on formation of knowledge, abilities and skills of operation of a modern kind of instructive equipment. One of the promising areas of innovation in the teaching of shooting is the use of bullet-free shooting simulators [10]. Electronic and laser simulators are currently used. Such simulators allow you to accurately record the results of shooting and on this basis to analyze the errors. Such classes increase the interest and activity of cadets. Simulators should be used not only in the early stages of shooting, but also to further improve shooting skills in different situations

**Conclusions.** Analyzing the above material, we can conclude that the bodies of internal affairs and departments of fire training of universities of the Ministry of Internal Affairs of Ukraine should be equipped with shooting galleries for additional training in shooting with firearms. The cadet must get used to the smell of gunpowder gases, because it is part of the process. The teacher of fire training must be able to recognize the excitement of the shooter and not help him grow into a state of stress.

Plan the development and publication of educational and methodical literature for teachers and cadets, revealing the methods of using electronic teaching aids, including electronic simulators. Also, it is very important that the authorities financially support the universities of the Ministry of Internal Affairs in order to provide them with all the necessary resources that will be able to develop a cadet's thirst and confidence in shooting, as well as deprive many complexes.

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**Юрій ВОЛКОВ, Валерія ЛАКТІОНОВА, Діана ТУПОТІНА**

**ПРОБЛЕМИ ПСИХОЛОГІЧНОЇ ГОТОВОСТІ КУРСАНТІВ ВИЩИХ НАВЧАЛЬНИХ ЗАКЛАДІВ В СИСТЕМІ МВС ПІД ЧАС СТРІЛЬБИ З ВОГНЕПАЛЬНОЇ ЗБРОЇ**

**Анотація.** Формування навичок стрільби з бойового пістолета у співробітників МВС відбувається в процесі навчання у навчальному закладі. Існуюча в освітніх закладах методика вогневої підготовки не враховує стан високого психологічного напруження курсантів навчальних закладів в системі МВС під час виконання ними вправ зі швидкісної стрільби. Використання короткочасного інтенсивного фізичного навантаження в процесі вогневої підготовки курсантів сприяє зниженню їх психологічного напруження на вогневому рубежі, а також формування готовності майбутніх співробітників органів внутрішніх справ до виконання стрільби з пістолета.

Сучасні умови, в яких працюють представники багатьох професій, у тому числі працівники поліції, водії автотранспорту, машиністи поїздів, оператори атомних електростанцій та деякі інші, можна повною мірою назвати особливими, а іноді й екстремальними.

Аналіз проблем, що виникають у роботі представників згаданих професій, призводить до висновку, що часто вони є психологічно непідготовленими до діяльності у складних умовах, тому виникають «зброї», які можуть призвести до трагічних наслідків. Психологічна підготовка до особливих та екстремальних видів діяльності – це цілеспрямований вплив на особистість за допомогою психологічних та психофізіологічних методів, спрямованих на формування у неї психологічної готовності до адекватних дій у таких ситуаціях. Під психологічною готовністю, у свою чергу, розуміється система показників суб'єкта, які забезпечують успішність і результативність певних процесів і діяльності.

Застосування сучасних науково обґрунтованих методів та методик психологічної підготовки – важливий фактор, що сприяє підвищенню рівня психологічної готовності до роботи у зазначених умовах. Тому, якщо розглядати психологічну готовність виключно з психологічного погляду, то йтиметься саме про надання людині можливості отримати важливі знання, тренувати навички та формувати на їх основі необхідні звички.

***Ключові слова:*** *екстремальні ситуації, психологічна готовність, психологічне напруження, фізичне навантаження, швидкісна стрільба, методика навчання, вогнепальна зброя, стрільба з бойової зброї.*

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**З М І С Т**

ПИТАННЯ ТЕОРІЇ ТА ІСТОРІЇ ДЕРЖАВИ І ПРАВА.
КОНСТИТУЦІЙНЕ ПРАВО ТА ПУБЛІЧНЕ АДМІНІСТРУВАННЯ



АКТУАЛЬНІ ПИТАННЯ ПРАВООХОРОННОЇ
ДІЯЛЬНОСТІ ТА ЇЇ КАДРОВОГО ЗАБЕЗПЕЧЕННЯ

ПИТАННЯ ПРИВАТНО-ПРАВОВОГО РЕГУЛЮВАННЯ
СУСПІЛЬНИХ ВІДНОСИН



ПРОТИДІЯ ПРАВОПОРУШЕННЯМ: АДМІНІСТРАТИВНО-ПРАВОВИЙ,
КРИМІНАЛЬНО-ПРАВОВИЙ ТА КРИМІНОЛОГІЧНИЙ АСПЕКТИ

ПРОТИДІЯ ПРАВОПОРУШЕННЯМ: КРИМІНАЛЬНО-ПРОЦЕСУАЛЬНИЙ, КРИМІНАЛІСТИЧНИЙ, ОРГАНІЗАЦІЙНО-ТАКТИЧНИЙ АСПЕКТИ

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