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ІМ. АКАДЕМІКА Ф. Г. БУРЧАКА НАПрН УКРАЇНИ

ГЕЛЬВЕТИКА
ВИДАВНИЧИЙ ДІМ

На першій *сторінці обкладинки* – пам'ятник Магдебурзькому праву в м. Києві

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A CLOSER LOOK AT PRIVATE LAW METHODOLOGY

Abstract. The ***purpose*** of this article is to substantiate the influence of the methodology of private law on the processes of law-making and law enforcement. Pursuing the goal of presenting broad coverage of the issue, the authors tend towards a narrative style that favors simplicity over generality or rigor.

Research methods. The also applied mixed methods in identifying frameworks of private law and their relative visibility striving to allay bias inherent in a single method. Thus, it is distinguished two main branches of the research methods being used in this article: general scientific and special methods of scientific knowledge.

Results. The conclusion summarizes the article's main arguments by suggesting the new definition of term "methodology" through two key meanings: 1) a system of methods and techniques used in a particular field of activity and 2) the doctrine of such a system as general theory of method, theory in action. To put it another way, this article starts where most of previous studies have given up: it has been concluded such main features of the method of regulation of private law relations, as legal equality of participants, free will of the parties, their initiative, property independence, use of dispositive norms. It is noted that the methodology is also based on a system of principles, which are also enshrined in Article 3 of the Civil Code of Ukraine due to the implementation of the rules private international law in national law become, the rules formulated in the Principles, Definitions and Model Rules of Private European Law (DCFR), Principles of European Contract Law (PECL), Principles of European Law (PEL), Principles of European Insurance Law, Principles of Acquis, Principles of UNIDROIT.

Conclusions. The results of our empirical analysis provide strong evidence that the interaction between theory and practice in methodology should be the basis of the study, because it is the methodology which solves the problems posed by practice and vice versa, the problems of practice lead to the creation of rational legal constructions.

Key words: methodology, practice, principles, methods, norms, private law.

1. Introduction

The current state of development of society and the state, achievements of domestic legal thought – despite the large number of scientific papers on the problems of methodology – requires the search for new scientific approaches, principles and methods of scientific knowledge, deepening and specialization of the methodology of knowledge. Methodology as a field of scientific knowledge has an interdisciplinary nature; it has a special place in the system of sciences. Being a general scientific phenomenon, structural methodology covers a range of components, among which are a system of methods and doctrines about them, a certain worldview of the researcher and general theoretical principles.

The ***goal*** of this article is to substantiate the influence of the methodology of private law on the processes of law-making and law enforcement. Pursuing the goal of presenting broad coverage of the issue, the authors tend towards a narrative style that favors simplicity over generality or rigor. The also applied mixed ***methods*** in identifying frameworks of private law and their relative visibility striving to allay bias inherent in a single method. Thus, it is distinguished two main branches of the research

methods being used in this article: general scientific and special methods of scientific knowledge.

2. Underlying origins of private law methodology

The empirical evidence presented in this chapter proves that it is currently important to study the practical problems of private law, as well as the interpretation of the content of positive law. According to Andrew S. Gold et al., a thread that runs throughout New Private Law theory is an interest in the internal point of view that is combined with an interest in empirical research, functional analysis, or the practical effects of legal doctrine (Gold et al., 2019, p. 2-3). The European legal tradition prides the foundations of its laws were laid down by the ancients (de Bérier, 2015). With respect to the research field, the authors turn their attention to examining the way judicial review principles – developed over centuries to control dominant state-based power – can be adapted to regulate the contractual relations between powerful private organizations and ordinary citizens. This may have wide-ranging implications, including a growing irrelevance of judicial review procedure and contract law doctrines exerting at least an anchoring effect on the way judicial review principles evolve (Liang, 2020, p. 427-428). However, it should be noted that methodology is of great importance for the processes of lawmaking and law enforcement; it allows improving and making more effective practice. Legal practice in various forms of its manifestation is determined by some factors. Thus, the end result depends on one who acts (subject), on what it is focused (object), and how such a process is carried out (used methods, techniques, means).

There is the same dynamics during the construction of private legal schemes (Verstein, 2019, p. 557). Methodology has a multifaceted nature: it consists of philosophy, which in combination with dialectics, epistemology and logic, performs in the cognitive process an important task of subjective understanding of objective development. Methodology is multilevel, which makes it possible to use a variety of tools to comprehensively characterize the object of knowledge, from its analysis at the categorical level, using dialectical and metaphysical approaches and ending with the study of this object based on knowledge not only of law but also other sciences.

Some domestic scientists distinguish between general and branch methodology. General methodology is an in-depth approach to the study of all objects and phenomena of the world with using cognitive tools of philosophy. At the highest, second level – in branch methodology – there is a choice of general methodological arsenal of appropriate starting points for the implementation of specific cognitive tasks.

Foreign scholars note that methodology is a special branch of the theory of cognition, which is a logical justification of the historical path, means, methods of research in various fields. In the methodology of scientific knowledge, a pride of place belongs to the methodology of legal science. The methodology of private law quickly adapts to the regulation of modern relations and produces such mechanisms, which are characterized by a high degree of flexibility and they effectively meet the challenges of modern society. The current regulation does not add a comprehensive set of rules but contains various gaps in their substantive scope that make it necessary to rely on other sources of private law (Rühl & von Hein, 2015, p.703).

Although there are many issues for discussion, one key issue emerges: a new public-private law paradigm is developing with respect to the state's role in private contracts. The paradigm melds private law concepts, e.g., mala fides, good faith, and relevant handling with the general human rights principles of dignity and vulnerability (Barnes, 2020, p. 91). Common law represents an ongoing negotiation between past precedents and present-day principles and policies, if the basis of the common law and judicial review is the courts` duty to protect the individual from the effects of dominant power; thus, we must look to where that dominant power will increasingly reside (Liang, 2020, p. 427-428).

In turn, we should agree with R. Maidanyk, who believes that "the methodology of private law reflects the specifics of subjective civil rights and interests, their relations with public rights and interests, which determines the application or the presence of unknown public law methods, principles and legal constructions» (Maidanyk, 2019, p. 58). The concept of "methodology" has two main meanings: a system of methods and techniques used in a particular activity, and the doctrine of such a system, i.e., the general theory of the method, the theory in action. O. Yuldashev proposes to consider the methodology of private law as "a component of the system of methodology of state and law. This system should be three-level and cover: 1) the methodology of private law philosophy; 2) methodology of private law theory; 3) the methodology of private law, which must have methodological and methodi levels (Yuldashev, 2004, p. 63).

3. Contextualization of private law principles

Considering the issue of private law methodology, it is necessary to pay attention to

the method of private law, i.e., the way it affects public relations. However, these concepts can be identified in no way. Method (in Greek «*methodos*») means the way an entity operates in any form. Method is a subsystem of law methodology. The method combines methods of studying law. Methods are characterized by the following features: the presence of a set of methods, tools, techniques by which the subject of science is studied; it is carried out by a certain sequence of actions, using in the process of cognition, a specific object, the appropriate tools; this sequence is aimed at achieving the goal set by the researcher; these goals can vary: from gaining new knowledge to generalization, evaluation, systematization of existing knowledge; goals are classified into theoretical (cognitive) and practical.

Classifying the methods of legal science, P. M. Rabinovych distinguishes: general scientific methods, i.e., those used in all or most sciences (methods of structural, functional, convergence from abstract to specific; formally logical procedures – analysis, synthesis, etc.); group methods, i.e., those that are used only in a particular group of sciences. Special methods, i.e., adopted for the study of the subject of a single science: for example, in jurisprudence – clarification (interpretation) of legal norms, special methods of generalization of legal practice (Rabinovych, 2001, p. 618).

In private law, the method is dispositive, permissive, i.e., it allows participants in the relations to act freely within the statutory relations. However, according to V. V. Vasiliev "the presence in the rule of law of norms of conduct, at least variable, is not a manifestation of dispositiveness due to the lack of possibility of its concretization or the formation of an alternative model. Similarly, the possibility of refusing to exercise subjective civil right is not a manifestation of dispositiveness (Vasiliev, 2018, p. 13).

The specificity of the method of private law is that the state takes a minimal part in it, and therefore the subjects receive certain rights as a result of their purposeful actions, initiative, property independence, use of dispositive norms. It is worth agreeing with the position of O. D. Krupchan, who believes that "the objective basis of any scientifically verified legal methodology and the starting point of legal activity based on its principles is a certain system of principles. After all, the principles of law most emphatically reveal the goals of legal regulation, the desire for practical implementation of which leads to the design and implementation of various legal means (Krupchan, 2016, p. 13). The same considerations are shared by some foreign researchers of private law, who emphasize the crucial importance of studying the principles of law in the methodological context (Bar, Clive, & Schulte-Nölke, 2009, p. 542).

Such principles are enshrined in Art. 3 of the Civil Code of Ukraine: 1) inadmissibility of arbitrary interference in the sphere of personal life; 2) inadmissibility of deprivation of property rights, except in cases established by the Constitution of Ukraine and the law; 3) freedom of contract; 4) freedom of entrepreneurial activity, which is not prohibited by law; 5) judicial protection of civil rights and interests; 6) justice, good faith and reasonableness. The above general principles of civil law regulation apply to the entire private law. T. V. Bodnar notes that "the principles of civil law have a practical orientation, which is manifested in the fact that they are: norms of direct action; are taken into account when developing new or replacing old regulations; they should be guided in case of need to apply the analogy of law; they must be taken into account when interpreting the rule of law or the content of the contract; serve as an aid to overcoming contradictions between legal norms (Bodnar, 2007, p. 110).

The principles of law determine the general direction, high quality, and the effectiveness of law-making and practical activity in any civilized society. A. S. Dovgert identifies "norms-principles of natural private law, which belong to the uniform norms of law. These include bona fides (good faith, justice, reasonableness), the human right to honor and dignity, property rights, principles of freedom of contract, compensation for damage, etc. (Dovgert, 2012, p. 249).

Given the implementation of private international law in national law, the principles formulated in the "Principles, Definitions and Model Rules of European Private Law" - the scientific "Draft General Reference Scheme" – Principles, Definitions and Model Rules of European Private Law - Draft Common Frame of Reference (Principles, Definitions and Model Rules of European Private Law, 2009). The Model Rules consist of 10 books, each article of which is accompanied by a commentary explaining the content of its provisions, as well as notes that contain an overview of the legal regulation of certain issues under EU law, national law of EU member states and international unified documents. Worth noting are the documents that preceded them: Principles of European Contract Law (PECL), Principles of European Law (PEL), Principles of European Insurance Law, Principles of Acquis, Principles of UNIDROIT. An analysis of the case law of the Court of Justice shows that in cases of competition or conflict between a rule of EU law and a principle of law, the latter will be preferred. As a body of law, it is not restricted to specific rules that

are only relevant for certain legal relationships (such as rules on the law applicable to contracts, torts or divorce). It rather contains a general part consisting of legal principles that effect the determination of the law applicable to various legal relationships (Rühl & von Hein, 2015, p. 703).

4. Conclusions

The interaction between theory and practice in methodology should be the basis of the study. Methodology solves the problems posed by practice and vice versa, the problems of practice lead to the construction of rational legal constructions. Thus, we can easily summarize the article's main arguments by suggesting the new definition of term "methodology" through two key meanings: 1) a system of methods and techniques used in a particular field of activity and 2) the doctrine of such a system as general theory of method, theory in action. Methodology is also based on a system of principles, which are enshrined, including in Article 3 of the Civil Code of Ukraine, and, in connection with the implementation of private international law in national law, become the rules formulated in the Principles, Definitions and Model Rules Private European Law, Principles of European Contract Law (PECL), Principles of European Law (PEL), Principles of European Insurance Law, Principles of Acquis, Principles of UNIDROIT. The results of our empirical analysis provide strong evidence that the interaction between theory and practice in methodology should be the basis of the study, because it is methodology which solves the problems posed by practice and vice versa, the problems of practice lead to the creation of rational legal constructions.

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ДО ПИТАННЯ МЕТОДОЛОГІЇ ПРИВАТНОГО ПРАВА

Анотація. ***Метою*** статті є обґрунтування впливу методології приватного права на процеси законотворчості та правозастосування.

Методи дослідження. Роботу виконано на підставі загальнонаукових і спеціальних методів наукового пізнання.

Результати. Проаналізовано взаємозв'язок теорії та практики в методології приватного права. Зокрема, визначено, що поняття «методологія» має два основні значення: по-перше, система способів і прийомів, які застосовуються в певній сфері діяльності, а по-друге, учення про таку систему, загальна теорія методу, теорія в дії. Автори виділяють основні ознаки методу регулювання приватноправових відносин: юридичну рівність учасників, вільне волевиявлення сторін, їх ініціативність, майнову самостійність, використання диспозитивних норм. У зв'язку із цим для приватного права традиційно характерний диспозитивний метод, який дає змогу учасникам відносин вільно діяти в межах урегульованих законом правовідносин. Зазначається, що основою методології є також система принципів, які закріплені, зокрема, у статті 3 Цивільного кодексу України та у зв'язку з імплементацією норм міжнародного приватного права в національне законодавство набувають значення правил. Ці принципи сформульовані у Принципах, дефініціях і модельних правилах європейського приватного права (DCFR), Принципах європейського договірного права (PECL), Принципах європейського права (PEL), Принципах європейського страхового права, Принципах acquis, Принципах УНІДРУА. У правозастосовній практиці спостерігається зростання інтересу до використання цих принципів.

Висновки. Встановлено, що зв'язок теорії та практики в методології має бути основою дослідження. Методологія вирішує проблеми, які поставлені практикою, і навпаки, проблеми практики приводять до побудови раціональних правових конструкцій.

Ключові слова: методологія, практика, принципи, методи, норми, приватне право.

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ECOLOGICAL COMPONENT IN THE ECONOMIC AND LEGAL POLICY OF THE STATE

Abstract. ***Purpose***. In the modern era of society, which is already called digital due to the widespread use of digital technologies, the environmental impact of the latter is ambiguous: in addition to the positive effect (an opportunity to address hyper-complex tasks), digitalization is also associated with significant risks. The article studies a range of digitalization-driven problems (from the perspective of its effect on the economy and ecology) with the purpose of developing legal means to mitigate the relevant risks.

Research methods. The use of scientific methods (dialectical, formal logic, systems approach, synthesis, synergetic approach, predictive method, etc.) allowed concluding about the need to make adjustments to the economic and legal policy of the state with a mandatory consideration of an ecological component.

Results. The conclusion about the need for legislative consideration of both positive and negative effects of digitalization relies on the analysis of the actual state of economic and environmental affairs, theoretical contributions of domestic and foreign authors, and the status of the statutory regulation of the mentioned relations. The study reveals the ambiguity of effects caused by digital technologies, the use of which may be sufficiently favorable for society but associated with significant risks. It refers to the use of digital technologies without paying attention to the ecological component (the so-called carbon footprint, which accelerates negative climate change), irrespective of other adverse effects.

Conclusions. The research outcome involves eliciting a complex of challenges related to the impact of digitalization on the economy and ecology, as well as their interrelation; the poor status of dealing with the challenges through legal means; proposals for improving the legal groundwork for guaranteeing the solution of the problems of a risk-laden impact of digitalization on the economy and ecology, namely, encompassing provisions on the state's social orientation of digitalization, which embraces the stimulation of the positive use of digital technologies and reduction of digitalization-driven risks by fundamental statutory acts, governing the relevant relations (the Constitution of Ukraine, Commercial Code of Ukraine, and the Law of Ukraine "On Environmental Protection").

Key words: economy, ecology, digitalization, risks of digitalization, improvement of legislation.

1. Introduction.

In today's highly troublesome society, which is called a threat / danger/ risk society (Beck Ulrich, 1992), there are high hopes for digitalization with its potential to solve major problems. The coronavirus pandemic and related quarantine restrictions have proven the benefits of digitalization: the ability to act remotely by addressing both household and business issues, use a set of health services (namely, the "Dii vdoma" app, online pharmacies and shopping, artificial intelligence, chatbots, robots, digital platforms, etc.) to fight against the disease and ensure economic performance in the context of restrictive quarantine measures (for patient care, the development of effective drugs and vaccines, remote ordering of goods/ works/services, conducting various events online, environmental monitoring, etc.). These are some examples of the positive effects of digitalization. However, like any other phenomenon in public life, the use of digital technologies has a downside, which is often not taken into account. At the initial stages of digitalization, it was proclaimed freedom and independence (primarily from state control) of cyberspace (A Declaration of the Independence of Cyberspace, 1996). The issue concerns the use of digital opportunities either for the benefit of society, economic and environmental spheres, etc. or vivid anti-social goals (cybercrime, e.g., massive cyber-attacks against government and business

institutions or entire economic systems), or pursuing a thoughtless goal (without regard to the consequences, e.g., the online dissemination of fake information about the extreme harmfulness of COVID-19 vaccines), or for ignoring the impact on the environment, society, its economic sphere (cryptocurrency mining that requires a significant amount of electricity (Oberhaus D., 2018), which is mainly produced from non-renewable sources along with the aggravation of the so-called carbon footprint (Markevych Kateryna, 2021), and the generation of thermal energy, which often harms the environment, although there are technologies for its use for the public good).

The study is based on the contributions of Ukrainian and foreign scientists who brought up issues of digitalization in terms of the economy and environmental protection: the Center for Innovations Development studied the environmental realm (Analitychnyy zvit. 2021), K. Markevych – the carbon footprint of digitalization (Markevych Kateryna. 2021), M. Kinakh – the green course of Ukraine (Kinakh Marharyta. 2020), S. Romanko – the role of digitalization in the environmental policy of Ukraine in terms of climate change (Romanko S. 2019). The impact of digitalization on economy and ecology was elucidated by the Razumkov Center developments (Razumkov Center, 2020), cybersecurity in space activities – Malysheva N.R. (Malysheva N.R. 2021), the digitalization of the economic sphere – a group of authors (Oksana M. Vinnyk, Olga V. Shapovalova, Nino B. Patsuriia, Olena M. Honcharenko, Kateryna V. Yefremova. 2020; Oksana M. Vinnyk, Dmytro V. Zadykhaylo, Olena M. Honcharenko, Olga V. Shapovalova, Nino B. Patsuriia. 2021), and the legal regulation of relations on the Internet – a collective work (Hetman A. P., Atamanova Yu. Ye., Milash V. S., et al., 2016.). The issues of the ambiguous impact of digitalization on the environmental and economic domains are raised by many foreign scientists: Lluís Torrent deals with the use of the positive potential of digitalization to improve the environmental situation on Earth (Lluís Torrent. 2020); Flurina Wäspi – the double (positive and risky) impact of digitalization on the environment (Flurina Wäspi. 2021); Sarah Lenz – the scope of digital technologies in solving socio-environmental problems (Sarah Lenz. 2021), and others. At the same time, the mentioned researchers have discussed individual issues of digitalization amidst the economy or ecology without emphasizing the role of legal means in addressing the problems at the national level.

The purpose of the article is to determine the primary effects of digitalization on the ecological and economic spheres of public life (both positive, requiring government incentives, and negative, associated with significant risks to the economy and the environment); to analyze research findings on the relevant problems in the contributions of Ukrainian and foreign researchers and the state of legal regulation of public relations in the mentioned areas; to identify problems that need to be addressed to reduce the adverse impact of digitalization risks on the environment and the economy; to develop proposals for solving the identified problems using legal means.

This study relies on general and special *methods of scientific cognition*, namely: *the dialectical method* helped expand the essence and purpose of digitalization and trace its economic and environmental impact; *formal logic* allowed identifying those areas of environmental and economic relations that are characterized by digitalization risks; *analysis* was used in examining research findings of both domestic and foreign authors, the state of legal regulation of digitalization in the mentioned areas; *synthesis* made it possible to conclude about common tasks of the state environmental and economic policy; *prognostics* was applied to determine the potential consequences of uncontrolled digitalization in the relevant areas and develop proposals for the introduction of legal mechanisms to prevent/mitigate its negative effects.

***2.* The dual impact of digitalization on the environment and the economy**

Digital technologies are universal – it is confirmed by the option of applying them in all fields of public life (including environmental protection and the economy). It allows the introduction of more cost-effective and green technologies in production (industrial, construction, agricultural, etc.), solving problems of a search for the most optimal ways of sustainable development of the country and regions to find effective means of addressing current challenges (including the reduction of environmental pollution and increase in the share of environmentally friendly industries). However, the consequences of the use of digital technologies are different: both socially useful/positive and very challenging. These technologies are neither good nor bad (Tepskott Don, Tepskott Aleks. 2019, p. 30), and the impact (positive or negative) depends on the purpose of their use, good faith and competence of users, and the level of knowledge of the consequences of the use of technologies.

Being very important to society, the economic and environmental spheres have many critical issues to be addressed, including climate change caused by environmental pollution and the need to reduce the negative implica-

tions of this already irreversible process (OON. 2021) through appropriate measures, which require large-scale investments, reorientation of production to be eco-friendly along with the use of the capacity of digital technologies, incl. artificial intelligence.

Although scientists have discussed the complex impact of digitalization on the environment and the economy, they usually cover each area separately. As a rule, statutory regulation concerns relations in environmental protection and economic management separately. However, there are exceptions: the connection of all these areas and processes can be noticed in the provisions of one of the new laws adopted in recent years – "On the Basic Principles (Strategy) of State Environmental Policy of Ukraine until 2030" (The Law of Ukraine dated 28.02.2019). Among the root causes of environmental problems in Ukraine, it recognizes the functioning of the economic realm with its focus on profitability, often ignoring environmental issues (subordination of environmental priorities to economic feasibility), and disregard for environmental effects of economic activity (including electronic communications) in legislation and statutory acts, weak efficiency of administration in environmental protection and regulation of the use of natural resources, a low level of understanding of environmental priorities and benefits of balanced (sustainable) development in society, imperfection and thus, unsatisfactory level of compliance with environmental legislation and environmental rights and responsibilities of citizens. According to the Law, key objectives of environmental protection embrace the need to ensure the integration of environmental policy in the decision-making process on socio-economic development, including the introduction of e-government technologies in the environmental sphere and automated information systems of environmental data, which will double down on transparency, efficiency and quality of management decisions, observance of environmental rights of citizens.

3. Carbon footprint and other adverse effects of digitalization

Kateryna Markevych in her article "The Carbon Footprint of Digitalization" makes a thorough analysis of the effects of digitalization on the environment, drawing attention to their impact on the economy and the environment – both positive and challenging enough (Markevych K. 2021). K. Markevych attributes the following to the former (advantages of digitalization): effectively designed and managed digital infrastructure that can ***promote*** environmental sustainability and reduction of greenhouse gas emissions (thanks to *IoT* technology and artificial intelligence); water saving and the detection of its contamination; optimization of waste disposal; optimization of energy distribution and consumption in the energy sector and reduction of energy consumption in the manufacturing sector, and CO_2 reduction in industrial systems, as well as the improvement of the quality of manufactured products. "Today, as K. Markevych states, there is a lot of practical evidence of the effectiveness of digital technologies, incl. in terms of the transition to sustainable development ... The world can accelerate the transition to a low-carbon economy using digital technologies through standardization, monitoring, and increasing accountability for energy consumption".

However, the impact of digitalization is ambiguous: "digital technologies can both neutralize carbon footprint and generate a particular volume of emissions" because the energy intensity of the digital industry is growing every year, as well as the share of digital technologies in global CO emissions $_2$; the digitalization of the transport sector (increasing energy consumption and global emissions) has the same effect. Thus, digitalization leads to a considerable increase in energy consumption, taking into account not only the use but also the production of digital devices. By driving up global electricity demand, digitalization concurrently generates CO_2 (Markevych K. 2021). Another example of the adverse impact of digitalization is the effects of cryptocurrency mining (not only significant consumption of electricity, which increases the carbon footprint and poses a potential threat of electricity shortages to other – domestic, industrial, transport, etc. – needs, and generates a sizeable portion of the heat, which negatively affects the environment (Oberhaus D. 2018).

Summing up the findings of her research, K. Markevych notes that "without decisive political actions, the digital revolution can rise energy consumption and accelerate environmental damage. Therefore, the maintenance of digitalization sustainably is a political priority, which should go hand in hand with the development of levers of control over the digital environmental impact, tools for assessing digital technologies and the consequences of their operation" (Markevych K. 2021).

4. The degree of the legislator's consideration of the adverse effects of digitalization

Valid conclusions of the abovementioned author about ways of reducing the environmental threats of digitalization require the analysis of the relevant current regulations, the consequences of which are as follows:

recognition in some statutory acts (in particular, in the Law "On Basic Principles (Strategy) of State Environmental Policy of Ukraine

until 2030") of environmental risks of digitalization, as well as of the business activity aimed at increasing profitability through avoiding the costs of green production technologies and, accordingly, ignoring the need to consider the environmental component when deciding on socio-economic development of the country/regions and taking environmental measures in the process of economic activity;

key statutory acts governing relations in relevant areas (the Commercial Code of Ukraine in the economy, and the Law "On Environmental Protection" dated June 25, 1991 in ecology) lack provisions on state policy aimed at ensuring the social focus of digitalization with appropriate promotion of its socially positive results and prevention / minimization of digitalization-related risks;

a lack of legal mechanisms which can prevent and/or compensate for the adverse impact of digitalization on the environment, i.e., technical regulation, tax policy, enhancement of socially responsible digital entrepreneurship.

5. Regulation of digital relations

State intervention in the digitalization domain no longer raises objections, but the calls for the freedom of cyberspace (A Declaration of the Independence of Cyberspace. 1996) and exclusive self-regulation are a thing of the past. The above was driven by the conduct of key players in digitalized markets with their unprecedented incomes amidst the analog economy, stellar ambitions, abuse of digital opportunities, and neglect of environmental and economic issues. The striving of digital, including cryptocurrency, billionaires to explore space using digital technologies, fleeing from environmental problems on Earth (Cockburn H. 2021) is hardly evidence of concern for the welfare of Earth's civilization, because vast sums of money are not applied to the salvation of the Earth, its ecology, but the salvation of the elite (not so much intellectual as monetary). In this context, the issue of using digitalization to solve environmental and economic problems on Earth, not in space, has become crucial. It requires the participation of the entire international community and each state to determine at the legislative level and ensure the practical implementation of measures for orienting all branches of industry on green technologies, outreach, and promotion of socially responsible (in part the environment and mitigation of the risks of digital technologies) business. In digitalization, domestic environmental and economic policy, which is unfortunately ignored by the Commercial Code of Ukraine, holds pride of place in addressing the quite serious problem. In fact, under present-day conditions of society's development, the problems of all its spheres are intertwined and need a comprehensive solution. Thus, the fight against Covid-19 is a challenge to the medical sector and the economy (production of drugs, vaccines, medical equipment and facilities, online provision of various services, financial losses caused by quarantine lockdown because of tight restrictions for running a business), and environmental protection (mass use of personal protective equipment against Covid-19 without proper measures for their disposal causes environmental pollution). This also concerns digitalization which is still accompanied by euphoria about its enormous potential despite the presence of significant risks. As it always has been, today's economic benefits come to the fore, and the problem of threats remains secondary.

6. Conclusions

The impact of a market economy and digitalization on the environment is ambiguous. One of the primary causes of environmental pollution is a focus on marginal benefits from business activities, incl. through neglecting green production technologies to reduce production costs. At the same time, digital technologies developed in the process of innovation activity allow controlling the environmental condition, preventing, and reducing its pollution. However, digitalization, despite its great potential for solving complex problems, is associated with considerable risks that can adversely affect the economy and the environment.

The duality of the impact of economic activity (industrial, agricultural, construction) and digitalization on the environment is a problem that must be addressed by a set of measures, especially legal ones. This task should become one of the priority areas of state legal policy (at the national level) with the relevant reflection in the Constitution of Ukraine (in terms of the state's social and environmentally safe focus of digitalization in the economy and other spheres of social life; specification of fundamental digital rights and obligations of citizens), Commercial and other codes/laws (in terms of the consolidation of the specifics of the legal regulation of digital relations in relevant areas of the economy, environmental protection, etc.). In the Commercial Code of Ukraine, it is expedient to define features of the state economic and legal policy in the context of growing threats to public welfare (first of all, in view of climate change caused by pollution) and digitalization that advantages of the latter will not be crossed by its risks, and a socially responsible digital enterprise will be encouraged in a country with a developed digital economy (Ukrayins'kyy instytut maybutn'oho. 2020).

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ЕКОЛОГІЧНИЙ СКЛАДНИК В ЕКОНОМІКО-ПРАВОВІЙ ПОЛІТИЦІ ДЕРЖАВИ

Анотація. ***Мета.*** У сучасну епоху розвитку суспільства, яку вже називають цифровою з огляду на широке використання цифрових технологій, вплив останніх на екологію є неоднозначним: крім позитивного ефекту (наприклад, можливість вирішення надскладних завдань), цифровізація пов'язана зі значними ризиками. У статті досліджується низка проблем цифровізації (з позиції її впливу на сфери економіки й екології) з метою напрацювання правових засобів зменшення пов'язаних із цим процесом ризиків.

Методи дослідження. Використання наукових методів дослідження (діалектичного, формально-логічного, системного аналізу, синтезу, синергетичного, прогностичного та інших методів) дало змогу зробити висновок про необхідність коригування економіко-правової політики держави в сучасних умовах цифровізації з обов'язковим урахуванням екологічного складника.

Результати. Висновок про необхідність урахування на рівні законодавства не лише позитивних, а й негативних наслідків впливу цифровізації ґрунтується на аналізі фактичного стану справ в економічній та екологічних сферах, теоретичних праць українських і зарубіжних авторів, а також стану нормативно-правового регулювання зазначених відносин. У результаті проведеного дослідження виявлено неоднозначність наслідків застосування цифрових технологій, використання яких може бути досить сприятливим для суспільства, проте пов'язується з істотними ризиками. Ідеться, зокрема, про застосування цифрових технологій без урахування екологічного складника (так званого вуглецевого сліду, що прискорює негативні зміни клімату) безвідносно до ймовірності настання інших негативних наслідків.

Висновки. Підсумком проведеного дослідження є виявлення комплексу проблем, пов'язаних із впливом цифровізації на економіку та екологію, встановлення взаємозв'язку цих проблем, а також незадовільного стану їх вирішення за допомогою правових засобів; надання пропозицій щодо вдосконалення правового забезпечення розв'язання проблем ризикового впливу цифровізації на економіку й екологію, а саме включення в основні акти законодавства, що регулюють відносини в зазначених сферах (Конституцію України, Господарський кодекс України та Закон України «Про охорону навколишнього природного середовища»), положень щодо забезпечення державою соціального спрямування цифровізації, що включає стимулювання позитивного використання цифрових технологій і мінімізацію пов'язаних із цифровізацією ризиків.

Ключові слова: економіка, екологія, цифровізація, ризики цифровізації, удосконалення законодавства.

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THE ROLE OF INTERNATIONAL LABOUR ORGANIZATION CONVENTIONS IN THE SYSTEM OF SOURCES OF LABOUR LAW OF UKRAINE

Abstract. ***Purpose.*** The aim of the article is to study the meaning and role of International Labour Organization Conventions in the system of sources of labour law in Ukraine.

Results. In the article, the author comprehensively studies the main International Labour Organization regulations and describes their individual provisions. The basic principles of labour law enshrined in the Declaration of the International Labour Organization are analysed as the basis of Ukraine's labour relations in the State. Acts of the International Labour Organization that contain provisions regulating important sectors of labour relations and require ratification by Ukrainian legislation are defined. The importance of implementing the provisions of selected International Labour Organization Conventions and Recommendations into domestic labour legislation is underlined. The author argues that, despite the advisory and non-binding nature of the Recommendations of the International Labour Organization, they contained important provisions and clarifications to the Conventions of the International Labour Organization and can also be an effective tool in adjudicating labour disputes or conflicts. It is noted that the acts of the International Labour Organization are of importance in the system of sources of labour law in Ukraine, thereby require its full harmonization with their provisions.

Conclusions. The author makes a conclusion that, in the context of European integration, modern and effective labour legislation is required in Ukraine. Accordingly, in order to accomplish this task, our State must actively introduce international experience, on the basis of law-making of the International Labour Organization. The acts of the International Labour Organization can be considered a full-fledged source of labour law in Ukraine, their provisions should be binding and have a positive impact on the protection of labour rights. An analysis of the Conventions and Recommendations of the International Labour Organization enables to state that their provisions are aimed at protecting the labour rights of employees, are incumbent not only on the State but also on employers. The use of international labour standards requires a well-thought-out and stable labour-law policy and the fulfilment of all the international obligations entered into.

Key words: sources of law, labour law, labour legislation, International Labour Organization, International Labour Organization conventions, international standards.

1. Introduction

International labour standards are important for regulating labour relations and are developed on the basis of the study and compilation of the practical experience of many countries in this field. Moreover, a market economy in Ukraine and Ukraine's further accession to international institutions require the development of new approaches to the legal regulatory mechanism for labour relations and the broadening of its sources.

The legal basis for the establishment of sources of labour law is provided for by the Constitution, which defines the legal regime for legal regulations adopted by the various State authorities, as well as the principles of the legal regulatory mechanism for labour relations. International legal instruments play a leading role in the system of sources of labour law in Ukraine.

The significance of the ratified international legal regulations is the fact that, even though they are generally binding and take precedence over instruments of Ukrainian labour legislation, further incorporation of this type of source into domestic labour legislation is an important condition for Ukraine's integration into the international community. Moreover, not

only the process of ratifying international legislation and bringing domestic legislation into line with international standards, but also its practical implementation in modern labour relations, is of great importance.

Furthermore, the central role of the Conventions of the International Labour Organization as a world organization established to regulate international cooperation in the field of labour with a view to promoting peace and social protection for workers should be underlined. Therefore, the place and role of International Labour Organization Conventions in the system of sources of labour law in Ukraine require specifying.

The aim of the article is to study the meaning and role of International Labour Organization Conventions in the system of sources of labour law in Ukraine.

The issues of the legal regulatory mechanism for labour relations in international law are studied by leading domestic and foreign scholars: N.B. Bolovina, S.V. Venedictov, S.V. Vyshnovetska, L.V. Vakariuk, O.O. Vostretsova, L.P. Harashchenko, N.D. Hetmantseva, O.S. Herasimova, W. Jencks, S.O. Ivanov, M.I. Inshin, J.-C. Javillier, V.V. Zhernakov, I.Ya. Kiselev, V. Leri, K.Yu. Melnyk, Zh. Potobski, S.M. Prylypko, L. Svepston, K.L. Tomashevskyi, H.I. Chanysheva, D.V. Cherniaieva, Yu.V. Chyzhmar, M. Shumylo, V.M. Shcherbyna, O.M. Yaroshenko, et al.

2. International labour agreements

The international regulatory framework for employment regulates, through international agreements between States, issues relating to the use of labour, the improvement of its conditions, labour protection and the protection of the individual and collective interests of employees. Formally, such regulatory framework is the labour norms (standards) embodied in instruments adopted by the United Nations, ILO, regional groupings of States in Europe, America, Africa and the Middle East, as well as in bilateral treaties between States (Chornous, 2012, p. 250).

The International Labour Organization was the only attempt to grant universal rights to workers. The development of the labour movement in certain countries of the world coincided with other objective processes, which significantly influenced international labour law, the growth of the division of labour in the international arena, increase in economic interdependence of States and development of global economic relations.

The main objectives of the ILO are to promote economic and social progress, achieve peace and social justice, improve working and living conditions, and protect human rights. These objectives are pursued primarily through law-making by the ILO, as well as all its organizational and practical work, research and publication activities.

With regard to the sources of international labour law, the focus should be on the International Labour Organization Conventions. According to the Constitution, the ILO is a specific international governmental organization aimed at regulating labour relations in the countries, parties to its Convention in accordance with the principles of equality and justice. It is this organization that has adopted most of the special international labour standards. ILO Conventions regulate a wide range of issues that are almost nowhere covered at this level and often exceed the content of Ukraine's national legislation (Constitution of the International Labour Organization, 1919).

The basic ILO instruments are sources of universally accepted international standards and norms of labour law. Universal instruments include the ILO Declaration on Fundamental Principles and Rights at Work (1998) (Declaration of the International Labour Organization on Fundamental Principles and Rights at Work, 1998).

According to I.Ya. Kiselev, the content of these standards is a concentrated expression of the experience of many countries, the produce of a careful selection of valuable and universally relevant norms and provisions of national systems of labour law, their transformation into international provisions (Kiselev, 1997, p. 468).

ILO Conventions and Recommendations constitute the International Labour Code (over 180 Conventions and over 190 Recommendations). The main ILO Conventions are: Night Work (Women) Convention (No. 4, 1919), Night Work of Yang Persons (Industry) Convention (No. 6, 1919), Workmen's Compensation (Accidents) Convention (No. 17, 1925), etc.

Recent Recommendations adopted by the ILO include HIV and AIDS Recommendation, 2010 (No. 200) on, Domestic Workers Recommendation, 2011 (No. 201), Social Protection Floors Recommendation, 2012 (No. 202), Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203). However, the ILO has not been able to adopt relevant Conventions on all of these issues (Bilous, 2017, p. 156).

The ILO Declaration on Fundamental Principles and Rights at Work (1998) lists the priority areas of the ILO standard-setting in this field and the fundamental principles to be followed by Member States, regardless of whether or not they have ratified an ILO Convention, but only by virtue of their accession to the Consti-

tution of the Organization and the ILO Declaration of Philadelphia (1944), which is annexed thereto. The principles of international labour law are: a) freedom of association and recognition of the right to collective bargaining, b) elimination of all forms of forced or compulsory labour, c) effective abolition of child labour and d) prohibition of discrimination in employment and occupation (Declaration of the International Labour Organization of basic principles and rights in the world of Labour, 1948).

The Declaration states that all Member States of the ILO, in accordance with its Constitution, are bound by the principles relating to fundamental rights and have to promote and implement them in good faith. These are: a) freedom of association and the effective recognition of the right to collective bargaining, b) elimination of all forms of forced or compulsory labour, c) effective abolition of child labour, d) elimination of discrimination in respect of work and employment (Kiselev, 1999, p. 461).

In view of the fact that not all ILO Member States have ratified the fundamental Conventions, the Declaration proclaims the principle that all ILO member States, even if they have not ratified the Conventions in question, have obligation arising from the very fact of their membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions (Batrymenko, 2012, p. 207).

For our State, the Conventions and Recommendations of the ILO are very important because, in addition to the fundamental principles at work, they contain provisions governing all sectors of labour, helping to resolve disputes, and, above all, the obligation to respect labour human rights.

3. Ratification of International Conventions by Ukraine

Ukraine, as a member of the Organization since 1954, has ratified more than sixty ILO Conventions, of which about two dozen since independence. Among these 20 Conventions there are fundamental ones, such as Worst Forms of Child Labour Convention No. 182, Abolition of Forced Labour Convention No. 105, Conventions No. 87 and No. 98, related to freedom of association and right to organise and collective bargaining. During independence, about 30 ILO projects totalling over $10 million were implemented in Ukraine. The ILO standard-setting activities are mainly in the form of Conventions and Recommendations. The total number is now over 370, and only one third has been ratified by Ukraine (Volokhov, 2012).

For example, ILO Forced Labour Convention No. 29 of 1930 defines forced or compulsory labour as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily. This document contains definitions of the time limit for the use of forced labour and also specifies what work is not considered forced labour. Ukraine ratified the Convention on 10 August 1956.

With regard to regulating holidays, ILO Holidays with Pay Convention No. 132 of 1970, ratified by Ukraine on 29 May 2001, applies. The Convention applies to all employed persons, with the exception of seafarers. Under Art. 3 of this Convention, every person to whom this Convention applies shall be entitled to an annual paid holiday of a specified minimum length. In no case may leave be less than three working weeks for one year of service. The holiday shall in no case be less than three working weeks for one year of service. The Convention sets time limits for the use of leave. In particular, Part 1 of Art. 9 provides for that the uninterrupted part of the annual holiday with pay referred to in Article 8, paragraph 2, of this Convention shall be granted and taken no later than one year, and the remainder of the annual holiday with pay no later than eighteen months, from the end of the year in respect of which the holiday entitlement has arisen (International Labour Organization Holidays with Pay Convention, 1970).

ILO Protection of Wages Convention No. 95 of 1949, ratified on August 4, 1961, defines the concept of "wage," determines the procedure for payment of wages, the conditions for payment of wages in the form of allowances in kind. Article 14 of the Convention provides that, where necessary, effective measures shall be taken to ensure that workers are informed, in an appropriate and easily understandable manner: a) before they enter employment and when any changes take place, of the conditions in respect of wages under which they are employed; b) at the time of each payment of wages, of the particulars of their wages for the pay period concerned, in so far as such particulars may be subject to change (International Labour Organization Protection of Wages Convention, 1949).

Moreover, an advantageous geopolitical position and the liberalization of visa procedures contribute to Ukraine's status as one of the leading countries supplying workforce abroad. In addition, within the country itself, there had recently been an increase in the flow of migrants from other countries. Issues of the legal status of migrant workers are generally determined by international organizations, primarily the International Labour Organization and the United Nations.

For example, ILO Conventions 97 and 143 provide for the following rules: States are given the right to restrict access to limited categories of employment where this is necessary in the interests of the State; the public authority shall require a copy of the contract of employment to be delivered to the migrant before his or her departure or be issued to him or her at the reception centre at the time of his or her arrival in the territory of the receiving country and that the migrant should inform in writing before his or her departure of the general conditions of life and work, enjoyed in the country of migration; the migrant may make the free choice of employment, subject to the conditions that he or she has resided lawfully in the territory for of this State for a prescribed period not exceeding two years; in countries where the employment of migrant workers is subject to certain restrictions, where possible, the latter should not apply to migrant workers residing in the country of migration for a certain period, usually longer than 5 years; on condition that he or she has resided legally in the country of migration, the mere fact of the loss of employment by the migrant worker shall not imply the withdrawal of his authorisation of residence or work permit; a migrant for employment shall not be returned to their country of origin because the migrant is unable to follow his occupation by reason of illness or injury sustained subsequent to entry (International Labour Organization Migrant Workers Convention, 1949; International Labour Organization Convention on the Abuse of Migration and on Equal Opportunities and Equality of Treatment for Migrant Workers, 1975).

However, Ukraine has not yet ratified these Conventions. In Ukraine, the legal status of migrants and other issues related to the regulatory mechanism for their work are regulated by the European Convention on the Legal Status of Migrant Workers. Taking into account the provisions of the Law of Ukraine "On Foreign Labour Migration," according to which the rights of migrant workers are regulated by the legislation of the State of residence and international treaties of Ukraine, to which the Verkhovna Rada of Ukraine consented to be bound, public policy on migration should start the ratification and accession of Ukraine to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and ILO Conventions on migration that declare the fundamental rights of migrants and guarantee the protection of the rights of migrants, including illegal workers.

In modern context, ILO Home Work Convention No. 177 (1996) and ILO Recommendation No. 184 establish ILO standards on home work, which, in accordance with Art. 1 of the Convention means work, carried out by a person, to be referred to as a homeworker: a) in his or her home or in other premises of his or her choice, other than the workplace of the employer; b) for remuneration; c) which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used, unless this person has the degree of autonomy and of economic independence necessary to be considered an independent worker under national laws, regulations or court decisions (International Labour Organization Convention on Home Work, 1996).

The Convention has not yet been ratified by Ukraine. The work of persons working at home is regulated by the Regulation on Working Conditions for Home Workers, approved by the Resolution 275/17-99 of the State Labour Committee of the USSR and the Secretariat of the All-Union Central Soviet of Trade Unions of 29 September 1998, considering that its provisions contrary to the legislation of Ukraine are not valid, as well as collective and labour contracts. They are subject to the provisions of the Labour Code. Considering that this legal regulation is clearly outdated and does not meet the new requirements and standards applicable to home workers, Ukraine needs to ratify ILO Home Work Convention No. 177, and to harmonize domestic legislation with its main provisions.

To protect the rights and interests of part-time workers, ILO Part-Time Work Convention No. 175 (1994) obliges Member States to ensure that part-time workers enjoy conditions equivalent to those of comparable full-time workers (International Labour Organization Part-Time Work Convention, 1994).

For example, Art. 7 of the Convention contains provisions on the need to provide part-time workers with conditions equivalent to those enjoyed by part-time workers in comparable situations in the fields of: a) maternity protection; b) termination of employment; c) paid annual leave and paid public holidays; d) sick leave; e) it being understood that pecuniary entitlements may be determined in proportion to hours of work or earnings (International Labour Organization Part-Time Work Convention, 1994).

The Convention has not yet been ratified by Ukraine, and the procedure for establishing or modifying part-time work is governed by the provisions of the Labour Code. However, the legislation does not clearly define whether part-time work is permitted because of the reduction of both working hours

and working weeks. The law does not regulate the number of days or hours of work that may be set as part-time. In addition, there are other contradictions and gaps that make it necessary to ratify Part-Time Work Convention No. 175.

Recommendation No. 130 of the ILO contains rules on the handling of employees' individual grievances arising from individual legal disputes. The procedure established in this instrument is a kind of complicated arbitration. Under this procedure, an attempt should initially be made to settle grievances directly between the worker affected and his immediate supervisor. Where such attempt at settlement has failed or where the grievance is of such a nature that a discussion in this manner would be inappropriate, the worker should be entitled to have his case considered at one or more higher steps, in accordance with the rules set out in the collective agreements. Where all efforts have failed, the dispute may be settled through conciliation, recourse to a judicial authority or other procedures provided for in a collective agreement, as well as through voluntary arbitration (Recommendation of the International Labour Organization on the consideration of complaints at enterprises in order to resolve them, 1967)

Therefore, ILO Recommendation No. 92 calls upon States to establish voluntary conciliation bodies to assist in the prevention and settlement of industrial of labour disputes. Such bodies should include equal representation of employers and workers. The conciliation procedure should be free of charge and expeditious; such time limits for the proceedings should be kept to a minimum. The Recommendation provides for that its procedures may not be interpreted as limiting the right to strike (International Labour Organization Voluntary Conciliation and Arbitration Recommendation, 1951).

It should be noted that ILO Recommendations contain advisory provisions for States to harmonize national legislation with ILO Conventions and are not binding. At the same time, they should not be underestimated.

ILO Recommendations often accompany particular Conventions, clarifying their provisions, offering more rights and extending their scope. However, unlike Conventions, which are intended to create legal obligations for States that ratify them, Recommendations are needed to ensure that, without obliging the State to do so, they serve as a model for the preparation of national labour standards.

4. Conclusions

Therefore, in the context of European integration, modern and effective labour legislation is required in Ukraine. Accordingly, in order to accomplish this task, our State should actively introduce international experience, on the basis of law-making of the International Labour Organization. The ILO acts can be considered as a full-fledged source of labour law in Ukraine, their provisions should be binding and have a positive impact on the protection of labour rights

An analysis of the Conventions and Recommendations of the International Labour Organization enables to state that their provisions are aimed at protecting the labour rights of employees, are incumbent not only on the State but also on employers. The use of international labour standards requires a well-thought-out and stable labour-law policy and the fulfilment of all the international obligations entered into.

Ukraine's labour legislation has not yet been fully brought into line with international standards and therefore needs to be reviewed and amended in accordance with the provisions of international legal instruments, including ILO instruments.

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РОЛЬ КОНВЕНЦІЙ МІЖНАРОДНОЇ ОРГАНІЗАЦІЇ ПРАЦІ В СИСТЕМІ ДЖЕРЕЛА ТРУДОВОГО ПРАВА УКРАЇНИ

Анотація. ***Метою статті*** є дослідження значення та ролі конвенцій Міжнародної організації праці в системі джерел трудового права України.

Результати. У статті автором проведено комплексне дослідження основоположних нормативно-правових актів Міжнародної організації праці, охарактеризовано окремі їх положення. Проаналізовано основні засади трудового права, які закріплені в Декларації Міжнародної організації праці та на які повинна спиратися Україна під час регулювання трудових відносин у державі. Визначе-

но акти Міжнародної організації праці, які містять положення, що регламентують важливі сфери трудових відносин, та потребують ратифікації відповідно до законодавства України. Вказано на важливість імплементації положень окремих конвенцій та рекомендацій Міжнародної організації праці у вітчизняне трудове законодавство. Автором зауважено, що, незважаючи на рекомендаційний і необов'язковий характер рекомендацій Міжнародної організації праці, вони містять важливі положення й уточнення до конвенцій Міжнародної організації праці, можуть слугувати ефективним інструментом у вирішенні трудових спорів чи конфліктів. Зазначено, що акти Міжнародної організації праці посідають вагоме місце в системі джерел трудового права України та вимагають повного узгодження його норм із їхніми положеннями.

Висновки. Констатовано, що в умовах євроінтеграції виникла необхідність створення сучасного й ефективного трудового законодавства України. Відповідно, для виконання цього завдання наша держава повинна активно впроваджувати у трудове законодавство міжнародний досвід з огляду на нормотворчу практику Міжнародної організації праці. Акти Міжнародної організації праці можна вважати повноцінним джерелом трудового права України, положення якого повинні мати обов'язковий характер і позитивно впливати на захист трудових прав. Унаслідок аналізу конвенцій та рекомендацій Міжнародної організації праці можна зазначити, що їхні норми спрямовані на захист трудових прав працівників, забезпечення яких покладається не лише на державу, а й на роботодавців. Використання міжнародних стандартів праці потребує від держави ведення продуманої та стабільної трудоправової політики, виконання всіх прийнятих на себе міжнародних зобов'язань.

Ключові слова: джерела права, трудове право, трудове законодавство, Міжнародна організація праці, конвенції Міжнародної організації праці, міжнародні стандарти.

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CURRENT ISSUES OF LAND TAXATION MECHANISM IN UKRAINE IN THE CONTEXT OF AGRICULTURAL LAND MARKET

Abstract. ***The purpose*** of the article is to analyze the current land, civil, tax legislation and doctrinal sources to clarify the essence and legal nature of land fees in the context of the agricultural land market, identify and analyze the main problems and shortcomings of pricing and collecting land fees, and the place and role of this tax in the structure of revenues of local budgets of Ukraine. To define the concept of "land fee" and "land market" in the taxation system of Ukraine, the authors analyze the framework of categories and concepts of the study, specify land fees in terms of the land market and chief shortcomings of pricing and the mechanism of collecting land fees. General theoretical proposals for the enhancement of the relevant institution are formulated.

Research methods. The work is based on general scientific and special methods of scientific knowledge.

Results. The authors draw attention to the fact that the legislation of Ukraine needs to be reformed in terms of the systematization of mandatory payments for land owners and users through enshrining in the Tax Code of Ukraine a single mandatory payment for the relevant taxpayers – land fees. In the case of implementation of this proposal at the legislative level, the land fee can be understood as a mandatory fee paid by landowners and users (physical and legal entities) to local budget for an efficient and rational use of land as the main national wealth of Ukraine. The article highlights the major shortcomings of the current mechanism for pricing and collecting land tax. It is noted that the improvement of the efficiency of land tax is associated with the implementation of the rental concept of taxation aimed at collecting land rent driven by the advantages of location, fertility, and quality of the land. The authors outline principal directions for the improvement of the system of pricing and collecting land fees.

Conclusions. It is determined that land tax is one of the most important ways to increase the economic efficiency of agricultural producers. The authors conclude that the establishment of land tax should take place as follows: first, in proportion to income, economically and environmentally sound; secondly, it should not burden a payer with a high rate, or a complicated payment procedure or its inconvenient terms; third, tax rates should be in regression dependence on the dynamics of the quality of agricultural land; fourth, it is necessary to include it in a single system of financial circulation that its deduction and further use result in, at least, an indirect return to taxpayers through its targeted focus on environmental needs.

Key words: land payment, land tax, taxation mechanism, state policy, investment policy.

1. Introduction

An essential component of effective land relations is a balanced fiscal policy of public authorities in land use. The fundamental basis of the organization of land management in almost all civilized countries is the taxation system. The selection of the strategy for developing the land market and forms of its state regulation in Ukraine should rest upon the national particularities of land relations, taking into account the existing factors of socio-economic development. Given the unique importance of the natural factor in the formation of national income and the lifting of the moratorium on the sale of agricultural land, the current task is to make adequate changes in the tax system.

In the course of unfolding financial turmoil, and thus, the volatile macroeconomic environment and escalating problems with pumping up budgets, the consideration of the effectiveness of the land tax mechanism in Ukraine becomes particularly relevant. Unfortunately, the benefits of collecting land tax in domestic practice are not fully attained due to many problems, key one of which is the inconsistency of the mechanisms of collecting land fees with modern market processes.

Moreover, with the development of Ukraine's market economy and state environmental policy, it is essential to revise the essence and social role of the land fee as a type of tax amidst the agricultural land market, which is deducted to use the land as the main national wealth of Ukraine effectively and rationally, through analyzing its financial and legal regulation, identifying shortcomings of the specified regulatory impact, and formulating proposals for their elimination.

Analysis of recent researches and publications. A set of statutory acts of Ukraine conducted legislative regulation of land relations and their taxation. Many scientific contributions are devoted to land use taxation and the market of agricultural lands. In particular, the legal aspects of land fees were studied by such scientists as Maksymchuk O.O., Pavlenko E.B., Horyn V.P., Bulavynets V.M., Bohatyrov Ye.M, et al. Some aspects of the agricultural land market were elucidated in the works by Korobska A.O., Stupen N.H., Ryzhok Z.R., Taratula R.B., Salnykova T.V., Kolesnik Ye.O., Silina I.S., et al. The mechanism of land taxation is covered by Babii K., Pavlii A.S., Myshchyshyn I.R., Sydorovych O.Iu., Rudnytska Yu.V., et al. However, despite a bulk of scientific papers, the issue of creating an appropriate mechanism for collecting land fees in the context of the agricultural land market as a result of constant changes in society is still poorly studied.

The purpose of the research is the analysis of current land, civil, tax legislation, and doctrinal sources to clarify the essence and legal nature of land fees in terms of the agricultural land market, identification and analysis of major challenges and shortcomings in pricing and collecting land fees, as well as determination of the place and role of the relevant tax in the structure of revenues of local budgets of Ukraine. The main tasks are: to clarify the content of land fees in the context of the agricultural land market; to determine the place of land fees in the structure of revenues of local budgets of Ukraine; to identify the fundamental shortcomings of the mechanism of collecting land fees in the context of the agricultural land market; to suggest ways to address them.

2. Theoretical-legal approaches to the content and nature of land fees in the context of the agricultural land market

The principal root of the existing difficulties in the legal regulation of land fees in general and in the context of the agricultural land market, in particular, is the lack of a common interpretation of the concepts of "land fee" and "land market". Although the legislator actively uses the above terms, including in the fundamental act – the Land Code of Ukraine, neither the Code or any other statutory legal act contain their official interpretation. Most experts agree that the lack of a legal definition of "land fee" and "agricultural land market" is a significant gap in Ukrainian legislation, which creates difficulties in the practical application of land law.

Considering the term "land fee", it is worth noting that the very term is not yet a legal category. From a syntactic point of view, it is a substantive phrase with the main word "land" and its subordinate "fee" (Plotnikova, 2015, p. 44). It should be stated that the legal definition of a land fee indicates that it consists of two other taxes: rent for state or communal land plots and land tax, which in their legal definitions are separated from other taxes and fees by specifying a list of tax payers: 1) landholders; 2) owners of land shares; 3) permanent land users; 4) tenants of land plots of state and communal ownership.

V.I. Fedorovich's opinion, who interprets a land fee as a common name for all types of mandatory payments paid in terms of the exercise of a private right to property and other real rights in land, generates interest (Shulha, 2019, p. 446). However, it is essential to mark that this definition demonstrates exclusively private law nature of the land fee without considering its essential features, in particular, the fact that under para. 3 of art. 78 of the Land Code of Ukraine (LCU), land in Ukraine may be not only in private but also communal and state ownership. Land fees are also paid for the use

of communal and state-owned lands by payers, which are not only individuals and legal entities as subjects of private law but also territorial communities and the state, including as subjects of public law.

The authors of the textbook "Tax Law of Ukraine" edited by O. P. Hetmanets and O. M. Shumila define the land fee by dividing it into two components: land tax and rent for the land of state and communal ownership. At the same time, they argue that the social significance of land fees involves both increasing the relevant budgets or realizing the economic interests of the owner and stimulating efficient and rational land use (Hetmanets, Shumila, Pokotaieva, 2013, p. 232).

In reviewing and analyzing the scientific literature regarding the scope of the concept "land fee" in the context of the agricultural land market, it is necessary to clarify the essence of the agricultural land market. It should be noted that the concept of the land market does not have an unambiguous interpretation, as it is often identified with land turnover. For example, E. N. Krylatykh defines the land market as part of land turnover under which establishment, change of prices, and termination of land rights occurs as a result of a legally executed contract and is intermediated by cash or in-kind payment. The land market encompasses such types of transactions as the purchase and sale of land (land shares), land lease, pledge of the land plot to obtain credit (Krylatykh, 1997, p. 35). I. A. Ikonytska has a different view pointing out that the land market covers more deals on land plots, which are free of charge, including transactions for the transfer of land ownership based on an annuity and lifetime maintenance agreement (Ikonitskaya, 2005, p. 241).

V. I. Nazarenko and H. I. Shmelov interpret the land market even broader. Thus, according to the authors, the land market should be understood not as the very fact (or the right) of land transfer from one owner to another by purchase and sale, but as the whole complex of relations on the movement of lands from one user to another. This means that the land market includes all transactions for its sale, lease, exchange, inheritance, sublease, temporary use, as well as certain forms of transfer of relevant legal rights (Nazarenko, Shmelev, 2005, p. 112). Moreover, V.I. Nazarenko and H.I. Shmelev highlight that the land market should rely on well-defined legislation, bylaws, the availability of corresponding market infrastructure.

Judging from the current economic climate and the level of development of land relations, a broad understanding of the land market seems correct. Given the concept of marketing, it is the most relevant, in our opinion, to define the land market as a system of economic relations for the alienation of land plots and rights to them, which includes the following elements: goods, demand, offer, price, infrastructure, mechanisms of state regulation of land transactions.

Based on the above, one can generally conclude that the legislation of Ukraine needs to be reformed in terms of the systematization of mandatory payments for land owners and users through enshrining a single mandatory payment – land fees, at the Tax Code of Ukraine. In the case of statutory implementation of this proposal, epy land fee can be understood as a mandatory payment made by landowners and users to local budgets, payers of which are both physical and legal entities, for efficient and rational use of land as the basic national wealth of Ukraine.

3. Topical issues of the mechanism of collecting land fees in the context of the agricultural land market: the identification of fundamental problems and solutions

The analysis of the current mechanism of land use taxation grounded on regulatory and monetary value shows an equalizing system that does not take into account the rental income of land fees. As a result, the amount of tax does not depend on the intended purpose, usage pattern, and, most importantly, the outcome of the economic activity of a taxpayer. In the long run, it leads to violations of the principle of fair taxation of land use.

It should also be noted that the current mechanism of collecting land tax does not ensure the completeness, fairness, and generality of land taxation since it is related to the problem of registration and cadastral registration of land. In addition, according to the tax authorities, the information array they received often does not contain land title deeds (tax identification number (TIN), land address, cadastral number, etc.) and has many errors and inaccuracies: the same plots are duplicated under different cadastral numbers, the area of land plots is incorrect, most of them do not contain data on location and their owners; thus, it is impossible to identify landholders and guarantee appropriate tax administration. Consequently, the number of taxpayers registered with the tax authority at the location of the land does not match the number of taxpayers (Borzenkova, 2015, p. 42).

There remains a set of serious challenges that do not secure the complete formation of the tax base for land tax in the state. In particular, a serious challenge is the taxation of land use without title documents and proper registration of changes in the type of permitted land use. Ukrainian tax legis-

lation does not allow the taxation of areas, which causes the loss of local budget revenues due to the non-calculation of the tax and its understatement (Dema, Sus, Trokoz, 2011, p. 370). Agricultural lands are sometimes used as land taxed at the maximum rate, and tax authorities have no reason to collect maximum tax as land tax calculation is based exclusively on title documents and the type of permitted land use. Moreover, tax authorities do not have information on tax benefits that leads to incorrect determination of the tax base and the amount of accrued tax. Due to the above challenges upon identifying the substantial base for land tax, there appear to be differences in tax potential and the formation of budget revenues.

According to the authors, the current mechanism for collecting land fees contains shortcomings that do not ensure fair taxation. It is poorly differentiated in terms of property status, profits of economic activity of agricultural production. Differentiation rooted in the regulatory-monetary value rather characterizes the purpose of land plots than their intended use that does not stimulate the efficiency of land use and does not consider the socio-economic situation of an individual landowner – it is of critical importance amidst the high social inequality of the population of our state – especially of one who lives in rural areas and has small land plots as subsistence. Some researchers contend that the current mechanism of land taxation in general and in the context of the land market is not an effective tool for collecting and redistributing land rent (Yatsukh, 2018, p. 130). Thus, the analysis of the current system of land use taxation allows stressing that the improvement of the effectiveness of land tax is associated with the implementation of the rental concept of taxation aimed at deducting land rent conditioned by advantages of location, fertility, and quality of the land.

It should be stated that for the moment, Ukraine has developed a regulatory framework focused on advancing the efficiency of the agricultural land market and the use of land resources following their intended purpose and taxation principles. Pursuant to Arts. 271 and 286 of the Tax Code of Ukraine, a tax base comprises the statutory monetary valuation of land, taking into account the indexation coefficient, the area of land, the statutory monetary valuation of which is not carried out, and the data of the state land cadaster. The Order of the State Committee of Ukraine on Land Resources "On approval of Guidelines for expert monetary valuation of land plots" No. 118 as of 12.11.1998 approved Guidelines for expert monetary valuation of land plots which contains the fundamental methodological principles, as follows: - the use of indicators of standard crop capacity(based on soil properties) and standard costs calculated on the ground of planning sheet; - the determination of the best and most efficient use of a land plot under the current type of land use; - the calculation of profit indicators of an entrepreneur and capitalization ratio for land plots.

At the same time, in the development of Guidelines, an array of key aspects which directly set the amount of the regulatory-monetary value of the land has not been addressed: 1. the procedure for performing calculations for plots the information on borders of which the state real estate cadaster lacks; 2. it is not possible to compile explications of land areas by soil varieties without vectorization (digitization of soil maps); this type of work causes an increase in the cost of state cadastral valuation of agricultural land, but it is required because the obtained materials will have a various functional application; 3. the guidelines do not contain unambiguous requirements for the procedure for fixing market (forecast) prices of marketing crops, the calculation of profit of a businessman and capitalization ratio. Such requirements must be clearly and unambiguously defined.

Nowadays, most authors propose to improve tax benefits and increase land tax rates for some categories of land as an alternative for the improvement of the mechanism of calculation and payment of land tax in Ukraine in the context of the agricultural land market (Sydorovych, Rudnytska, 2011, p. 115). According to the contributors, the advancement of the system of establishing and collecting land fees in the context of the land market is possible in two realms: a more detailed differentiation of the tax rate; the clarification of indicators of a regulatory-monetary value of land plots.

In the former case, it is essential to maintain at the state level for a reduction in the tax rate for agricultural land, from 0.3% to zero – if agricultural producers, who manufacture the most important products and food, are free of land fees in full. The advancement of the relevant system in the latter case should include timely updating of land valuation data and differentiation of cadastral and regulatory value of land plots depending on the purpose and permitted use. The cadastral value should be minimal for agricultural land; maximum – for industrial lands. The introduction of differentiated indicators of the regulatory-monetary value of lands should also be carried out at the level of specific public authority. More-

over, in the authors' opinion, when setting payments for agricultural land, it is crucial to consider their quality, location, and economic significance.

In general, several areas prevent the use of land tax in the context of the land market as a regulator of efficient land use:

1. Low investment activity. The investment attractiveness of land resources largely depends on the stability, certainty, and predictability of territory development, which can take place only if available approved documents of territorial planning of state entities. In addition, the slow involvement in the economic turnover of land plots of state or communal ownership also has a negative impact on the investment attractiveness of lands.

2. A lack of control over land use. According to the authors, the solution to this problem requires the following: - the analysis of principles and patterns of determining the market and cadastral value of land plots, comparability of results; - study of the legal regime of a land plot, i.e., permitted use of the land plot, prospects of urban development of the territory it is located on; - the study of characteristics of the land plot to find possible options for its use; - assessment and analysis of current land use.

3. A lack of coordinated activities of state authorities and local self-government to control the collection of land tax. The solution to this problem embraces: - active involvement of specialists who deal with professional evaluation and have expertise in establishing the regulatory-monetary value, commissioning of economic expert analysis; - the enhancement of interaction between public authorities and local government bodies which take part in land management and disposal; - additional administration and transfer of services related to accounting, monitoring, and analysis of land plots to specialized organizations in terms of the development of the public-private partnership.

One of the activity areas of local governments should be the involvement of unclaimed agricultural land plots in circulation; - the conversion of unclaimed land plots and agricultural land plots into state and local ownership; - the creation of conditions for legal registration of rights to land plots from agricultural lands, which are used by agricultural organizations and farm (agricultural) enterprises; - setting increased land tax rates in case of their non-use for the intended purpose; - the registration of ownership of land plots that were legally allotted from the lands of former collective farms (kolkoz) based on shared ownership; - identification of unaccounted land plots occupied by country houses, homestead buildings.

Thus, the implementation of a unified policy in the field of land relations, arrangement of the boundaries of land users, identification of irrational land use, involvement of unaccounted lands in taxation and civil turnover will contribute to land tax revenues, create a favorable investment climate that promotes the flow of additional financial resources to state and local budgets.

In general, the realization of the above proposals requires the development of legal rules regulating the serviceability of land tenure, land use; resumption of the practice of conducting special surveys and studies (including soil surveys); improvement of the theory and practice of land valuation; creation of an appropriate mechanism of the agricultural land market. These measures are aimed at improving economic instruments for regulating land use, organizing the rational use, and protecting land resources of the country and its regions.

4. Conclusions

When considering the land tax in the context of the land market as one of the main ways to advance the economic efficiency of agricultural producers, the authors hold it necessary to emphasize that it should be introduced: first, in proportion to income, economically and environmentally sound; secondly, it should not burden a payer with a high rate, or a complicated payment procedure or its inconvenient terms; third, tax rates should be in regression dependence on the dynamics of the quality of agricultural land; fourth, it is necessary to include it in a single system of financial circulation that its deduction and further use result in, at least, an indirect return to taxpayers through its targeted focus on environmental needs. Foreign experience confirms that tax regulation becomes effective when the land tax in the land market acquires an objective environmental focus, i.e., it returns to the level of rent-forming factors through the mechanism of the financial cycle, ensuring their sustainable reproduction.

Moreover, the land tax system must primarily encourage the owner and user to use, care for and maintain land efficiently. Secondly, the taxation system of agricultural producers must consider the peculiarities of this economic sector, the level of production potential, the outcomes of financial and economic activities of enterprises and their efficiency. Hence, the implementation of the principle of fair taxation of land use tax is achieved. Third, land taxation should overcome the landowners' visions of the system of free land and promote their careful treatment of it.

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АКТУАЛЬНІ ПИТАННЯ МЕХАНІЗМУ ЗЕМЕЛЬНОГО ОПОДАТКУВАННЯ В УКРАЇНІ В КОНТЕКСТІ РИНКУ ЗЕМЕЛЬ СІЛЬСЬКОГОСПОДАРСЬКОГО ПРИЗНАЧЕННЯ

Анотація. ***Метою статті*** є аналіз чинного земельного, цивільного й податкового законодавства та доктринальних джерел для з'ясування сутності і правової природи плати за землю в контексті ринку земель сільськогосподарського призначення, ідентифікація та аналіз основних проблем і недоліків визначення ціни та справляння плати за землю, а також визначення місця й ролі цього податку у структурі доходів місцевих бюджетів України. Для визначення понять «плата за землю» та «ринок землі» в системі оподаткування України проаналізовано компоненти понятійно-категоріального апарату дослідження, встановлено зміст плати за землю в контексті ринку землі, виокремлено основні недоліки визначення ціни й механізму справлян-

ня плати за землю, сформовано загальнотеоретичні пропозиції щодо оптимізації функціонування цього інституту.

Методи дослідження. Роботу виконано на підставі загальнонаукових і спеціальних методів наукового пізнання.

Результати. Звернено увагу на те, що законодавство України потребує реформування в напрямі систематизації обов'язкових платежів для власників і користувачів землі шляхом закріплення на рівні Податкового кодексу України єдиного обов'язкового платежу для зазначених платників податків – плати за землю. У разі реалізації цієї пропозиції на рівні законодавства під платою за землю можна буде розуміти обов'язковий платіж, який справляється з власників і користувачів землі до місцевих бюджетів із метою ефективного й раціонального використання земель як основного національного багатства України, а його платниками є як фізичні, так і юридичні особи. У статті виокремлено основні недоліки чинного механізму визначення ціни та справляння земельного податку. Зазначено, що підвищення ефективності земельного податку пов'язане з реалізацією рентної концепції оподаткування, спрямованого на вилучення земельної ренти, зумовленої перевагами розташування, родючості та якості земельних угідь. Запропоновано основні напрями вдосконалення системи встановлення та справляння плати за землю.

Висновки. Визначено, що земельний податок є одним із найголовніших способів підвищення економічної ефективності сільськогосподарських товаровиробників. Зроблено висновок про те, що встановлення земельного податку має відбуватися з огляду на такі умови: по-перше, він має бути пропорційним доходу, економічно й екологічно обґрунтованим; по-друге, він не повинен обтяжувати свого платника ні високою ставкою, ні складною процедурою сплати або незручними її термінами; по-третє, ставки податку мають перебувати в регресійній залежності від динаміки якості сільськогосподарських угідь; по-четверте, необхідно включити цей податок у єдину систему фінансового кругообігу, щоб від його вилучення та подальшого використання була хоча б непряма віддача платникам податків через його цільове спрямування на екологічні потреби.

Ключові слова: плата за землю, земельний податок, механізм оподаткування, державна політика, інвестиційна політика.

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THE LEGAL INSTITUTE OF PUBLIC PROCUREMENT IN THE SYSTEM OF SPECIAL ADMINISTRATIVE LAW

Abstract. ***Purpose.*** The article deals with the study of the legal institute of public procurement, which is newish but actively developing in Ukraine. The express purpose of the research is to understand and arrange the adopted legislation on public procurement, separate the relevant legal institute, and substantiate its branch attribution.

Research methods. Research methodology is conditioned by the article's purpose; thus, it is used both general scientific and special methods of scientific cognition. Research logic involves processing and studying the application scope of the law: the procedure of procurement and administrative appeal, and the mechanism of control and legal protection to achieve the purpose and tasks set by the authors.

Results. The conducted study of the legal institute of public procurement has made it possible to conclude that the institute of administrative law comprises a set of rules regulating decision making about the need for procurement, preparation for procurement, appeal, and control. In particular, the entities entering into legal relations (customers) are subjects which are established by the state or a territorial community to meet public needs. The procurement procedure and grounds for a refusal to participate in the procurement procedure are compulsorily regulated by the law, and the method of determining the expected value of the procurement item and the rules for setting the procurement item by the customer are regulated by the act of the Ministry. Moreover, appeals against actions and decisions in public procurement procedures can be carried out both in administrative and court proceedings, in which the Antimonopoly Committee of Ukraine is the body of administrative appeal, and the administrative court – the body of judicial appeal.

Conclusions. Everything mentioned in the article as a whole allows asserting the formation and becoming of a new institution of special administrative law – the institute of legal regulation of public procurement.

Key words: public procurement, public procurement procedure, institute of administrative law, PROZORRO.

1. Introduction

The current stage of the development of laws on public procurement is characterized by rapid growth. On the one hand, this is stipulated by the general purpose of public procurement – the introduction of efficient and transparent procurement (Arrowsmith, 2010, 150; Muñoz, 2016, 13-37), the creation of a competitive environment in public procurement, and the reduction of corruption risks as part of the implementation of public procurement. Thus, the evidence of procurement efficiency is the full meeting of public needs and the rational use of budget funds because of the implementation of such orders (Yaremenko, Shatkovs'kyy, 2014).

On the other hand, the development of the legal institute of public procurement is

determined by the signing of the Association Agreement, the provisions of which provide for the consistent approximation of Ukrainian legislation on public procurement to the EU Public Procurement Law acquis[1]. That kind of approximation is supported by institutional reform and the introduction of an effective system of public procurement based on the principles governing the European Union's public procurement, as well as the concepts and definitions set out in Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts and Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors.

Therefore, science faces the task of understanding and arranging the adopted legislation on public procurement, the separation of the relevant legal institute, and the justification of its branch affiliation. The authors of this article pursue the same goal.

Research methodology is conditioned by the article's purpose and thus, both general and special methods of scientific cognition are used. The logic of the research involves processing and studying the scope of the legislation, the very procurement and administrative appeal procedures, as well as the mechanism of control and legal protection to achieve the goals and objectives set by the authors.

2. Scope of public procurement laws

The scope of public procurement laws is specified by two factors: entities entering into the relevant legal relations and the subject of such relations.

Special procedures for public procurement are applied in case when legally identified customers carry out the procurement of goods, works and services. By relying on the provisions of the Law of Ukraine "On Public Procurement" No 922-VIII as of 25.12.2015, it follows that they are entities that are created by the state or amalgamated community (hromada) to meet public needs, including taxpayers, which must be provided by the state and which spend public finances for purchase. In the practical application of procurement legislation, customers are conventionally divided into "ordinary" (public administration entities) and those who carry out activities in individual areas of management.

An important focus of public procurement reform is professionalization, i.e., the establishment of a rule according to which persons, who have sufficient expertise in public procurement, carry out organization and conduct of procurement. It will improve the quality and manageability of the procurement procedure, save budget funds, enhance customer accountability, and allow the integrating of the function of public procurement into a comprehensive system of public finance management. In fact, the above is prescribed by the Strategy for reforming the system of public procurement ("route map") approved by the Decree of the Cabinet of Ministers of Ukraine dated February 24, 2016, No. 175-p. Starting from January 1, 2022, exclusively authorized persons, who are employees of the customer and put in charge of conducting procurement procedures, will be responsible for procurement.

The cost of the item or service of procurement and the category of goods or services specify the application scope of public procurement laws. Customers may at sole discretion use or determine their methods of calculation of the expected value of the procurement item, but the approximate method of identifying the expected value of the procurement item was approved by the Order of the Ministry of Economic Development as of 18.02.2020, No. 275.

The rules for defining the procurement item by the customer are regulated by the Procedure for determining the procurement item approved by the Order of the Ministry of Economy No. 708 as of 15.04.2020.

The procurement of goods, works and services, the value of which does not exceed 50 thousand hryvnias, requires compliance with the principles of public procurement and publication of the report on the procurement contract in the e-procurement system. At the same time, the use of the e-procurement system is also practicable in the case of procurement, the cost of which is less than 50 thousand hryvnias, conducted by a business entity, which is not a customer in the eye of the law "On Public Procurement", for any amount. Such procurements are called "pre-threshold procurements"; they are used at the customer's request as an alternative to the report on the procurement contract concluded without using the electronic system. The procedure for "pre-threshold procurement" is regulated by the Order of SE "Prozorro" No. 11 dated 20.03.2019.

3. Procurement procedure

The public procurement procedure is carried out under the following principles: 1) a fair com-

1 Prior to the adoption of the Law "On Public Procurement" No. 922-VIII as of 25.12.2015, the legal and economic principles of procurement of goods, works and services to meet the needs of the state and an amalgamated community (hromada) were regulated by the Law "On Government Procurement" No. 1197-VII as of April 10, 2014. Accordingly, the Agreement uses the term "public procurement" to refer to what is currently understood as government procurement.

petition among participants; 2) maximum economy, efficiency, and proportionality; 3) openness and transparency at all procurement stages; 4) non-discrimination of participants and equal treatment of them; 5) objective and impartial identification of the tender winner; 6) prevention of corruption and abuse. The practical significance of the above principles is growing, as they are relevant not only to a proper interpretation of the rules but are also applied by the courts when rendering decisions in cases (Case No. 902/347/20).

Study and analysis of the principles have already been subjected to scientific discussion (Karabin, 2021, 222-227), but some issues should also be covered in this article. Thus, the principle of openness and transparency of public procurement envisages openness and transparency of data on procurement, free and unrestricted access, as well as the completeness and accuracy of relevant information (Bondarenko, Pustova, 2016, 154). Customers provide all participants with free access to procurement data. In Ukraine, there is a web portal of the Authorized Procurement Agency (the Ministry of Economic Development, Trade and Agriculture of Ukraine), which is an online service for creating, storing, publishing full information about procurement, electronic auction, automatic exchange of information and documents, and use of services with automatic exchange of information, that is accessed via the Internet. The information and telecommunication system "PROZORRO" available at www.prozorro.gov.ua (Order of the Ministry of Economy, Trade and Agriculture "On the Web Portal of the Authorized Body for Procurement" dated 07.04.2020, No. 648) is the web-portal for public procurement. Requirements for the functioning of the electronic procurement system are regulated by the Procedure for the functioning of the electronic procurement system and authorization of electronic platforms approved by the Resolution of the Cabinet of Ministers of Ukraine No. 166 as of 24.02.2016.

The principle for preventing corruption and abuse is essential for many countries (Gnoffo, 2021, 75-96). In Ukraine, the public procurement procedure is also not without corruption risks (Typovi koruptsiyni ryzyky u publichnykh zakupivlyakh). In particular, some discretionary powers in procurement planning, preparation of tender documents, consideration of bid proposals can create conditions for corrupt practices, as the very customer can adequately determine the need for particular goods, specify technical, qualitative, and quantitative characteristics of the procurement item, set requirements for suppliers and terms of the contract.

Procurement activities can be exercised through one of the following procedures:

1) open bidding (it is the basic procurement procedure and is conducted for procurement exceeding 200 thousand hryvnias for goods and services and 1.5 million hryvnias for works);

2) selective tendering (a new procurement procedure, which has been commenced on 19.10.2020, is applied when the customer needs to pre-qualify participants, and the expected purchase value exceeds the amount equivalent to 133 thousand euros – for goods and services, 5150 thousand euros – for works);

3) competitive dialogue (applied when it is impossible to identify the required technical or qualitative characteristics of goods or services, as well as when the item of procurement is counselling, legal services, development of information systems, software products, use of new innovative technologies, etc.);

4) simplified procurement (it is used while procuring goods, works and services, the value of which is equal to or exceeds 50.000 hryvnias per procurement item per year and does not exceed 200.000 hryvnias for goods and services and 1.5 million hryvnias for works).

Article 17 of the Law "On Public Procurement" outlines the grounds for refusing to participate in the procurement procedure. Thus, the law includes two types of grounds for the refusal: some lead to the participant's refusal to participate in the procurement procedure, and others result in a decisive ban on participation.

4. Appeal

An appeal is an important stage of the public procurement procedure, which is focused on protecting the participants' rights and improving the quality of the customers' procurement procedure. The appeal procedure is regulated by Article 18 of the Law "On Public Procurement" and the Decree of the Cabinet of Ministers of Ukraine "On establishing the fee for filing a complaint and approving the Procedure for making a fee for filing a complaint with the appellate body through the electronic procurement system and returning it to the subject of the appeal" No. 292 dated April 22, 2020. However, the law explicitly prohibits the abuse of rights, including the right to appeal against decisions, actions, or omissions of the customer.

The Antimonopoly Committee of Ukraine acts as the appeal body in these categories of cases; its participation in protecting rights is so significant that it is also called a "kind of judicial body" (Fayizov, 2018, 31) for bidding. The complaint is submitted in the form of an electronic document via the e-procurement system; the complaint is also charged via the e-procurement system. The fee for filing a complaint varies

depending on the expected value of the procurement item and the ground being challenged, in particular, conditions of the procurement procedure or the customer's decision or action.

Following the complaint's consideration, the appeal body is entitled to render the following decisions:

1) on the establishment or absence of violations of the procurement procedure;

2) on measures which the customer is obliged to take to eliminate the violations. Such measures include full or partial cancellation of the customer's decisions, the provision of required documents, explanations, the elimination of any discriminatory conditions, bringing the tender documents in line with the law, or the cancelation of the procurement procedure in the case of impossibility to correct the violations. It is worth mentioning that the Antimonopoly Committee is not authorized to determine the winner – only the procuring entity has such authority.

The decision on the complaint's consideration is disclosed in the Prozorro system and sent to the complainant and the customer. It takes effect from the date of adoption and is binding on all persons concerned. The total number of appeals against procurement procedures is relatively small: according to official statistics of the Antimonopoly Committee, the number of appeals against decisions in judicial authorities does not exceed 5% of the total number of decisions, and courts often refuse to satisfy claims on procedural grounds without referring to the point in discussion (delay beyond deadlines, a lawsuit filed with the unauthorized court, etc.) (Hadzaman, Overko, 2020, 59).

As for judicial appeals against decisions, actions or omissions of executive authorities or local governments in the procurement procedure, the well-established case law states that "... the executive body or local government acts as a power entity in terms of the organization and procedure of bidding (tender), and disputes about the appeal of decisions or inaction of these bodies fall within the jurisdiction of administrative courts before the emergence of contractual relations between the tendering authority and the tender winner. However, after concluding an agreement between the tendering authority and the tender winner, the dispute over the legality of the tender committee's decision is subject to civil (commercial) proceedings, as it affects the property interests of the winning bidder" (Case № 918/843/17 of 14.05.2019). In other words, all legal relations before the emergence of contractual ones between the tendering authority and the tender winner of the competition based on their essence are public and fall under the jurisdiction of administrative courts.

5. Control

Control in the field of public procurement is carried out at all stages of the procedure to prevent violations of the law and bring violators to justice. The entities of control activities comprise the Ministry of Economic Development, Trade and Agriculture of Ukraine, the State Audit Office of Ukraine, the State Treasury Service of Ukraine, the Accounting Chamber, the Antimonopoly Committee of Ukraine, banks, citizens, public organizations and their unions. Statistics of procurement activities are highlighted and analyzed (Rusin, 2020).

Procurement control can take the following forms: monitoring, procurement verification, inspection (revision), and audit. Article 8 of the Law "On Public Procurement" regulates the monitoring procedure. Control and inspection are conducted under the provisions of the Law "On Basic Principles of Public Financial Control in Ukraine" and the Procedure for Conducting Procurement Checks by the State Audit Service of Ukraine and Its Interregional Territorial Bodies (Decree of the Cabinet of Ministers of Ukraine No. 631 as of 1.08.2013), and the Procedure for Inspections by the State Audit Office of Ukraine and Its Interregional Territorial Bodies (Decree of the Cabinet of Ministers of Ukraine No. 550 as of April 20, 2006).

The central executive body implementing the state policy on state financial control (State Audit Office of Ukraine) monitors the procurement procedures (analysis of the customer's compliance with the legislation during the procurement procedure, conclusion of the procurement contract and its effect to prevent violations of laws on public procurement) and supervision of the observance of procurement legislation.

The state financial control body shall publish a notice about the decision to start monitoring the procurement procedure in the e-procurement system within two working days from the date of such decision. The term of monitoring the procurement procedure shall not exceed 15 working days from the next working date from the day of publication of the notice of commencement of monitoring of the procurement procedure in the e-procurement system. The report of the controlling body shall specify what measures the customer must take and identify ways to eliminate the violations found during the monitoring (Case No. 640/467/19 as of 5 March, 2020).

The legislation entitles the customer – not the participant of the procurement procedure, or its winner, or the contractual counterparty– to appeal the monitoring report. This is the position of the court (Case No. 540/686/19).

As it stands, the Antimonopoly Committee of Ukraine is the appeal body. According to the law, it establishes Commissions for Complaints of Violations of Public Procurement Legislation, which make decisions on behalf of the Antimonopoly Committee of Ukraine. At present, Commissions for Complaints of Violations of Public Procurement Legislation have not been established, and procedures for appointing complaints commissioners take place.

In addition to state control in public procurement, public control is exercised. It is ensured through free access to the entire data on public procurement, which is subject to disclosure, or informing controlling bodies about violations of the procurements laws via the e-procurement system or in writing. Public control is also carried out via the DOZORRO system (https://dozorro.org/). It is a platform where each participant of the system (supplier, customer, controlling body, citizen) can get feedback from the state customer or supplier, discuss and evaluate the conditions of a particular item to be procured, analyze the procurement items of a particular government agency or institution, prepare and submit a formal application to regulatory authorities, and other issues.

6. Conclusions

Consequently, the institute of administrative law comprises a set of rules governing the decision on the need for procurement, preparation for procurement, as well as the procedure for procurement, appeal and control. During these stages, "the administrative method of legal regulation" is manifested (Tsybulnyk, 2018, 196), the implementation and protection of the public interest are realized.

In particular, entities entering into the relevant legal relations (customers) are entities that are created by the state or an amalgamated community to meet public needs, including taxpayers, which must be provided by the state and public finances which are spent to purchase. The Law "On Public Procurement" obligatorily regulates the procurement procedure and grounds for a refusal to participate in the procurement procedure. The Order of the Ministry of Economic Development adopted the method of determining the expected value of the procurement item, and rules for determining the procurement item by the customer are regulated by the Procedure for determining the procurement item approved by the order of the Ministry of Economy.

Appeals against actions and decisions in public procurement procedures can be made in administrative and court proceedings. The procedure for administrative appeal is regulated by the Decree of the Cabinet of Ministers of Ukraine "On establishing the fee for filing a complaint and approving the Procedure for making a fee for filing a complaint with the appellate body through the electronic procurement system and returning it to the subject of the appeal". The Antimonopoly Committee of Ukraine is the administrative body of appeal in the relevant cases, and the administrative court – the body of judicial appeal.

All the above give ground to assert the formation and becoming of a new institute of special administrative law – the institute of legal regulation of public procurement.

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ПРАВОВИЙ ІНСТИТУТ ПУБЛІЧНИХ ЗАКУПІВЕЛЬ У СИСТЕМІ ОСОБЛИВОГО АДМІНІСТРАТИВНОГО ПРАВА

Анотація. Статтю присвячено дослідженню питань правового інституту публічних закупівель, який є відносно новим, проте таким, що останнім часом стрімко розвивається в Україні. Безпосередньою ***метою*** дослідження є осмислення та систематизація прийнятого законодавства щодо публічних закупівель, виокремлення відповідного правового інституту законодавства, а також обґрунтування його галузевої приналежності.

Методи дослідження. Методологія дослідження зумовлена метою роботи, тому використовуються як загальнонаукові, так і спеціальні методи наукового пізнання. Логіка дослідження полягає в опрацюванні та вивченні сфери застосування законодавства, власне процедури закупівель та адміністративного оскарження, а також механізму контролю і правового захисту для досягнення мети й завдань, що поставлені авторами.

Результати. Проведене дослідження щодо правового інституту публічних закупівель дало змогу дійти висновку, що сукупність норм, які регулюють прийняття рішення про необхідність закупівлі, підготовку до проведення закупівлі, а також процедуру проведення закупівлі, її оскарження й контроль, є інститутом адміністративного права. Зокрема, суб'єктами, які вступають у відповідні правовідносини (замовниками), є суб'єкти, що створені державою або територіальною громадою для забезпечення потреб суспільства. Процедура закупівель та підстави для відмови в участі у процедурі закупівлі імперативно регламентовані законом, методику визначення очікуваної вартості предмета закупівлі та правила визначення замовником предмета закупівлі врегульовано актом

міністерства. Крім того, оскарження дій і рішень у процедурах публічних закупівель може здійснюватися як в адміністративному, так і в судовому порядку, при цьому органом адміністративного оскарження в зазначених категоріях справ є Антимонопольний комітет України, а органом судового оскарження – адміністративний суд.

Висновки. Усе викладене у статті в комплексі дає підстави говорити про формування та становлення нового інституту особливого адміністративного права – інституту правового регулювання публічних закупівель.

Ключові слова: публічні закупівлі, процедура публічних закупівель, інститут адміністративного права, PROZORRO.

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LEGAL CULTURE AS DETERMINING FACTOR FOR LEGAL SOCIALIZATION OF MODERN PERSONALITY

Abstract. *Purpose*. The aim of this article is to consider legal culture as an important factor in the legal socialization of modern youth and to define its role and significance in the life of young people.

Results. In the current context of the development of an independent State governed by the rule of law and of civil society in Ukraine, it is necessary to raise the level of legal culture of the people, especially the younger generation. The article considers legal socialization as a two-way process (the person is both the object and the actor of socialization) of active acquisition of legal values and norms by the individual with a view to forming a personality with an appropriate level of legal culture. The study identifies the content of the legal socialization of the personality, which is determined by the main factors, such as: the law as a system of socially binding norms; legal awareness as a form of public awareness that reflects the attitude of the parties to legal relations to the law; legal culture as a system of spiritual and pecuniary values in the functioning of the law. The study identifies specific features of the legal socialization of young people in modern Ukrainian society, related to the weakening of the social and legal activity of the personality and the diminishing role of traditional institutions and means of legal socialization, while the inclusion of the individual in social and legal environment is predominantly of a spontaneous nature, which often gives rise to legal nihilism and antisocial behaviour among modern youth. It is proven that legal culture and awareness of the younger generation should be increased through various measures and mechanisms.

***Conclusions*.** The authors make a conclusion that the formation of a personality's legal culture is a complex and long-term process in which both legal knowledge, legal experience and genuine legal practice and, without a doubt, the whole legal reality matter. Legal culture cannot be an independent element of social life, part of the general structure of legal awareness, nor can it function independently of the legal awareness of the whole society and of individuals. The development of legal culture is an important factor in the legal socialization of young people and the first step towards building a highly developed civil society in a State governed by the rule of law.

Key words: law, legal socialization, legal culture, legal consciousness, personality, society.

1. Introduction

The development of the personality in modern society, defined by scholars as a post-industrial, information, mass, consumer and knowledge society, is characterized by significant attitudinal transformations based on changes in values, perceptions of norms and patterns of behaviour and the like. Such changes are a natural reflection of transformational processes in society, based on the resolution of contradictions between elements of the old social order and the creation of new goals of social development and the means to achieve them. They are also characterized by a rethinking of the current state of affairs in society, an assessment of the content and scope of the crisis, and the elimination of inconsistencies with the level and trends of modern civilizational

development in the political and economic and legal systems, as well as by new channels for the socialization of the personality. The high dynamism of all processes of social activities, the qualitatively new levels of its existence and development, related to the processes of intensive technology and informatization of society in general and the existence of a personality in particular, require the development of an appropriate level of legal culture and awareness of the personality and entire society. Law, legal culture and legal awareness are interdependent components of the process of legal socialization, the functioning and action of which directly influence the specificities of the legal socialisation and certainly the very result of socialization.

In the course of socialization, an individual learns not only norms and laws, but also all elements of the legal system, including legal concepts. Therefore, the legal socialization of young people is based on: the acquisition of legal norms and a certain attitude to those norms; the evaluation of the direct implementation of those norms in legal practice; attitudes toward legal concepts and institutions; assimilation of legal ideology as a systematic and scientific reflection of legal reality in ideas, concepts and principles.

In the course of legal socialization, a young individual gradually integrates into a broad social context and moves towards full participation in the functioning of civil society and the State. However, there may be distortions that lead to subsequent criminal tendencies in the individual and a legal nihilism. That is why, in the current context of the development of an independent State governed by the rule of law and of civil society in Ukraine, it is necessary to raise the level of legal culture of the population, especially the younger generation.

Therefore, the aim of this article is to consider legal culture as an important factor in the legal socialization of modern youth and to define its role and significance in the life of young people.

It should be noted that fundamental works by domestic and foreign authors have played an important role in the development of the concept of legal socialization, considering issues of the essence, value and elements of legal socialization as a factor in the development of legal culture of society, the role of legal education in the process of legal socialization, its form and methods, as well as the importance of legal socialization in the formation of legal activity and lawful behaviour of a person. These include the works by H. Andreieva, I. Zharovska, I. Kon, A. Mudryk, A. Bandura, M. Kravets, V. Shvachka and others. These studies consider general issues of socialization, legal awareness, lawful behaviour and other aspects of the problem.

In our opinion, the above-mentioned studies have not paid sufficient attention to the issues of defining the content of the process of legal socialization of young people, in particular under the current development of the Ukrainian State and the formation of civil society.

2. Specificities of the definition of legal culture

As is well known, an important component of the general culture is legal culture, that is, a set of values, legal concepts and processes that function as a socio-legal guide for people in a given society. It has the following attributes: decisive human and civil rights and freedoms in the legal organization of societal and public life; affirmation of respect for the law and the legal order, the ideas and values of the rule of law in the mass legal consciousness; practical implementation of the principles of constitutionalism and the rule of law; legal activism of citizens and their associations in the exercise of their rights and in the proper discharge of their legal obligations; active legislative, human rights and law enforcement activities at all levels of the State machinery (Kutovyi, 2021, p. 8).

According to Ye. Pidlisnyi, the definition of legal culture of the personality should be based on a number of general theoretical provisions, which emphasize the most essential values of both the phenomenon of legal culture of society and the culture of the personality in general. A number of fundamental points need to be taken into account: first, legal culture of the personality can be seen as the sum of two components, such as creative and personal; secondly, as part of legal culture of society, which is both dependent on legal culture of the society and one's creativity; and thirdly, legal culture of the personality can be seen as the degree and nature of its legal development; fourth, legal culture of the personality is based on positive legal consciousness and is realized in effective activity (Pidlisnyi, 2018, p. 242). Another scientist M. Fabrikov defines legal culture of the personality as the ability to apply legal knowledge in life, as well as the level of development of legal consciousness. It combines concepts such as law, legal awareness, legal relations, legality and the rule of law, lawful conduct, legal institutions, level of acceptance by society of the full diversity of legal values (Fabrikov, 2017, p. 17).

This is advocated by G. Baliuk, who includes in the concept of legal culture of the personality knowledge of the law, understanding of its essence and principles, values and qualities, as well as respect for the law, confidence

in the fairness of the law and the humanity of justice, habit of observing legal regulations, law in general. In other words, legal culture of the personality implies not only knowledge and understanding of the law, but also legal judgments (Baliuk, 1984, p. 9), that is, legal culture of the personality is his/her positive legal consciousness in activities. Legal culture is confined to activities that correspond to the progressive achievement of society in the legal field, and that constantly bring about the legal enrichment of the personality. M. Keizerov includes in the concept of legal culture the political evaluation of law and legal behaviour, law making and legal science (Keizerov, 1983, p. 17). B. Salnikov adds to the concept of legal culture of the personality progressive activity, which includes all values related in one way or another to the functioning of the law, its system of rules and principles (Salnikov, 1989, p. 23).

Therefore, when studying legal culture, researchers emphasize its subjective factor, in which the personal, psychological, purposeful and behavioural characteristics of the personality are prominent.

In such definition, the indicator of legal culture of the personality is an extent of the activity of the actor of the law in the legal field, of the voluntary implementation of legal norms and the reality of citizens' rights and freedoms. The level of legal culture has an impact on the efficiency of legal regulatory machinery, the nature of legislation, forms and means of guaranteeing citizens' rights, and the degree to which universal human values and the norms of international law are defined. In this context, I. Zharovska describes legal culture as a level of legal awareness, including the degree of knowledge of the law, on which the executive branch and officials rely. It is also characterized by the intensity of beliefs about the value of law (Zharovska, 2016).

The study of the structure of legal culture of the personality is an important area for understanding its essence and for emphasizing its role and place in the legal life of society. It would be wrong to limit the structure of legal culture to a mere enumeration of its elements, so that the structure is either the construction of the object, or the sum of its elements and the relations between them, or the system of all or only the permanent links of elements forming the whole, or finally, the principle, the method, the law of the bonds of the elements of the whole. It is necessary to understand not only the relationship between these elements (legal knowledge, skills, emotions, feelings, beliefs, legal practices, etc.) but also their unity and system.

The authors of the entry "Legal Culture" in the legal encyclopaedia edited by Yu.S. Shemshuchenko argue that it is expressed in three main dimensions: legal cultural orientations, activities for their implementation, results of realization of these orientations (Shemshuchenko, 2003, p. 537). In the first dimension, the individual is expected to acquire the knowledge, skills and ability to exercise the right. The second is characterized by human creativity in the legal field, which implies acquiring or developing his/her rights, knowledge and skills. The third dimension expresses the internal potential of legal culture (Shemshuchenko, 2003, p. 537).

B. Selivanov extends the list of elements of legal culture of the personality by adding to this system such elements as: awareness of the essence of the law, its social and personal value as an expression of justice and a guarantor of the inalienable rights and freedoms, honour and dignity of every human being; awareness of the necessary primacy of the law over the State; knowledge of the Constitution and the law, their assessment in terms of the essence of the law and legal ideals; knowledge of one's rights, freedoms and duties; respect for the rights and freedoms of every individual, a conscious desire to translate the principles of law into practice, a habit of lawful behaviour, an awareness of oneself as a free person and as the actor of real rights and freedoms, and the ability to exercise them; civil and legal activism in the exercise of their political, other civil rights, freedoms and duties; intolerance to any breach of the rule of law, terror of man by the State (Selivanov, 1999, p. 76).

Therefore, the analysis of the theoretical basis for determining the structure of legal culture enables to argue that legal culture of young people includes: 1) legal education; 2) legal awareness; 3) understanding of the principles of law; 4) confidence in the fairness of law, legal rights and duties.

In terms of legal activity, legal culture of young people can be grouped into: 1) theoretical and practical, i.e. professional; 2) productive and reproductive.

In terms of the content of legal culture, it should be grouped into: 1) legal awareness and legal thinking as a system of reflaction of legal reality by the actor; 2) lawful behaviour as a system of legal thinking translated into a specific life situation; 3) results of lawful behaviour and legal thinking. This is what we think the structure of legal culture of young people should look like.

The young person's attitude to his/her rights and duties, which also reflects his/her attitude to law, lawfulness and justice, is exercised through certain functions of legal culture.

The formation of an appropriate level of legal culture among young people depends on traditional attitudes towards the law, legality, the state of affairs in the legal framework, the institutional form of law-making and law-enforcement practices, legal order, professional competence of lawyers. The legal socialization of young people is particularly affected by the competence of legislators, lawyers and all law-enforcement bodies.

An integral part of legal culture are the rights, freedoms and duties of citizens, prescribed by law. They are a normative way for young people to interact with each other and with society.

Thus, legal culture is an essential factor in the legal socialization of young people. The role of culture in the legal socialization of young people is realized through a number of its functions.

3. Functions of legal culture

Indisputably, the functioning of legal culture of society is ensured by the system of economic relations. Through the development of legal knowledge, habits and principles in people, the reflection function of legal culture is realized. The content of this function varies according to the stage of the development of society. On the other hand, the evaluation function causes a certain emotional response of the personality to various parties and phenomena of legal life on the basis of legal practice.

The cognitive and educational function of legal culture is linked to legal and moral guarantees of such universal values as honesty and decency, kindness and mercy, moral self-control and decency, honour, dignity and freedom of choice. The cognitive function regulates the intellectual activity of the personality, depending on his/her level of intellectual development.

The regulatory function of legal culture ensures that basic legal requirements become daily behaviour. The degree of assimilation of the law can be gauged by the behaviour of citizens in various legal situations. The regulatory function is a regulator of human behaviour in accordance with the existing legal system and general legal culture. Human behaviour is a conscious manifestation of will, thus it differs from other actions, such as those of an instinctive or reflex nature. The law cannot operate without the active creative role of legal awareness and culture. Therefore, this function enables to regulate human behaviour in the legal field.

The legal socialisation function of legal culture is to shape the legal qualities of the personality. His /her legal beliefs should be stable. Legal qualities are formed in the process of legal education and include elements of a regulatory function, because the process of law-making is nothing more than consolidation of the need for legal regulatory machinery for social relations through legal awareness. The ultimate goal of law-making is to regulate human behaviour.

The regulatory function of legal culture is aimed at ensuring the stable, orderly, dynamic and efficient functioning of all elements of the legal system. Legal culture is not only a reflection of public life, but also an active factor in influencing the functioning of law in society.

The axiological and normative function of legal culture encompasses a variety of phenomena. This is a reflection of the State's attitude to possible future facts, actions, rules to follow. Non-compliance entails the consequences of possible negative events.

The prognostic function of legal culture simultaneously covers law-making and the exercise of the right, includes the analysis of trends in the legal system. The result of the function of legal modelling is the establishment of certain models (rules) of conduct, which are evaluated by legal awareness as proper, socially necessary for the successful development of public relations in the State.

The communicative function of legal culture acts separately, enabling evaluation of legal communication as a phenomenon of legal culture and contributing to the legal development of the personality.

4. Conclusions

Therefore, the formation of a personality's legal culture is a complex and long-term process in which both legal knowledge, legal experience and genuine legal practice and, without a doubt, the whole legal reality matter. Legal culture cannot be an independent element of social life, part of the general structure of legal awareness, nor can it function independently of the legal awareness of the whole society and of individuals.

An analysis of modern Ukrainian society, which is in the process of developing a democratic political and legal system, enables to highlight specific features of the legal socialization of young people in modern Ukrainian society, related to the weakening of the social and legal activity of the personality and the diminishing role of traditional institutions and means of legal socialization, while the inclusion of the individual in social and legal environment is predominantly of a spontaneous nature, which often gives rise to legal nihilism and antisocial behaviour among modern youth. Therefore, the issue of raising legal culture and legal awareness of the younger generation through various measures and mechanisms is being updated. These measures are as follows:

1) With regard to State strategy: public policy aimed at protecting the interests of young people and complying with the Constitution and laws by all State bodies;

2) With regard to law-making: making legislative activity more professional, granting to the population the right to initiate legislation, broadening public coverage of legislative activity, involving more youth organizations in the drafting and preparation of legal regulations; strengthening legal liability for violations of citizens' rights and freedoms;

3) With regard to law application: licensing of legal professions, reform of the judicial system, holding of practical seminars, establishment of advisory councils in legal departments with stable involvement of members of youth organizations;

4) With regard to legal education: raising the general morality of citizens, popularizing legal knowledge (including through the mass media), arousing interest in legal knowledge and making it more accessible, and developing family legal education;

5) With regard to legal science and legal education: further development of scientific research in the field of legal culture, increasing the efficiency of higher legal education;

6) With regard to civil society and personal initiative: resolution of problems of local self-government, development of the system of public organizations, active defending the person's rights, combating any manifestation of lawlessness and arbitrariness.

Therefore, the development of legal culture is an important factor in the legal socialization of young people and the first step towards building a highly developed civil society in a State governed by the rule of law.

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ПРАВОВА КУЛЬТУРА ЯК ВИЗНАЧАЛЬНИЙ ЧИННИК ПРАВОВОЇ СОЦІАЛІЗАЦІЇ СУЧАСНОЇ ОСОБИСТОСТІ

Анотація. ***Метою статті*** є розгляд правової культури як важливого чинника правової соціалізації сучасної молоді, визначення її ролі та значення в життєдіяльності молодої особистості.

Результати. У сучасних умовах розбудови незалежної правової держави та громадського суспільства в Україні, безумовно, необхідно підняти на більш високий рівень правову культуру населення, а особливо молодого покоління. У статті розглянуто правову соціалізацію як двосторонній процес (особа є одночасно об'єктом і суб'єктом соціалізації) активного засвоєння індивідом правових цінностей та норм із метою формування особистості з відповідним рівнем правової культури. Уточнено зміст правової соціалізації особи, який визначається основними чинниками, зокрема: правом як системою соціальних загальнообов'язкових норм; правосвідомістю як формою суспільної свідомості, що відображає ставлення суб'єктів правовідносин до права; правовою культурою як системою духовних і матеріальних цінностей у сфері функціонування права. Визначено особливості правової соціалізації молоді в сучасному українському суспільстві, що пов'язані з ослабленням соціально-правової активності особистості та зменшенням ролі традиційних інститутів і засобів правової соціалізації. При цьому включення індивіда в соціально-правовий простір має переважно стихійний характер, що нерідко породжує виникнення правового нігілізму та асоціальних проявів у поведінці сучасної молоді. Доведено необхідність підвищення правової культури та правосвідомості молодого покоління за допомогою різних заходів і механізмів.

Висновки. Констатовано, що формування правової культури особистості – це складний та тривалий процес, у якому мають значення і правові знання, і правовий досвід, і реальна практика юридичної діяльності, і, без сумніву, уся правова реальність. Правова культура не може бути самостійним елементом суспільного життя, складовою частиною загальної структури правосвідомості, вона не може функціонувати окремо від правосвідомості всього суспільства та індивідів. Розвиненість правової культури є важливим чинником правової соціалізації молоді та першим кроком до побудови високорозвиненого громадянського суспільства у правовій державі.

Ключові слова: право, правова соціалізація, правова культура, правова свідомість, особистість, суспільство.

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PLACE OF ADMINISTRATIVE LAW PROVISIONS IN LEGAL FRAMEWORK FOR IMPLEMENTING PUBLIC POLICY ON ECONOMIC SECURITY OF THE STATE

Abstract. ***The aim of the article*** is to clarify the place of administrative law provisions in the legal framework for implementing public policy on economic security of the State.

***Results*.** The focus is on the complexity of the classification of legal provisions governing economic security in Ukraine due to the involvement of elements such as financial security, macroeconomic security, industrial security, energy security, foreign economic security, investment-innovation security. In this context, the body of legal regulations that form the framework for implementing public policy on economic security is analysed according to their legal force: the Constitution of Ukraine, international legal acts and treaties ratified by Ukraine in accordance with the established procedure, legal regulations (laws, codes) and by-laws (acts of the Government, central and local executive authorities). Certain shortcomings in the legal regulatory mechanism for making public policy on economic security of the State are underlined and ways of eliminating them are proposed.

Conclusions. It is proved that the specificity of the provisions of administrative law in the legal framework for implementing public policy on economic security is that they have clearly defined limits of their powers (scope of legal regulation), that is, the subject matter of the activities of the bodies of public administration and the public relations of an administrative nature that arise as a result of the exercise of managerial powers by them. Considering this, it is concluded that the provisions of the administrative legislation are aimed at regulating social relations of a managerial nature, arising between the State and economic entities or other legal and natural persons in the field of ensuring national economic security and its constituent branches. It is emphasized that the specificity of this relationship is that one of the parties is the State, represented by an authority, such as a public administration body vested with real powers, which has the right to require certain legal conduct from other participants.

Key words: economic security, national security, public policy, administrative and legal framework, actors, administrative legislation, optimization.

1. Introduction

Effective implementation of public policy on economic security requires the existence of a certain legal framework, which has several similar names "legal framework," "legal basis," "legal and regulatory framework" etc. However, literature review reveals no uniform definition of the content of these terms. Moreover, it can be argued that contemporary threats to Ukraine's national security and economic security, as part of that strategy, require careful analysis and improvement of legal provisions, regulating the relevant public relations and policies of the State in this field. Moreover, the focus should be on the importance of analysing the administrative and legal regulatory mechanism for implementing public policy on economic security, as that is, in our view, the key element: which ensures the implementation of power prescriptions in the daily activities of social actors in the field of economic security.

The complexity of the classification of legal provisions governing economic security in Ukraine is due to the involvement of elements such as financial security, macroeconomic security, industrial security, energy security, foreign economic security, investment-innovation security, etc. Therefore, we argue that the study

of the legal framework for arranging the system of economic security and implementing public policy in this field should be carried out on the basis of the generally accepted classification of the content of legal regulations.

2. The Constitution of Ukraine

For example, the Basic Law stipulates that human rights and freedoms, and their guarantees determine the content and direction of the State's activities, that is, public policy in any field shall comply with the Constitution.

The State shall ensure protection of rights of all property rights holders and economic operators, and the social orientation of the economy. All the property rights holders shall be equal before the law (article 13). According to article 41, citizens may use the objects of State or communal property in order to satisfy their needs, no one shall be unlawfully deprived of the right to property, while the right to private property shall be inviolable. Article 42 provides for that everyone has the right to engage in business activities not prohibited by law, and the State protects competition in business activities. In the event of a violation of someone's rights, the Constitution guarantees everyone the right to appeal in court against the decisions, acts or omissions of State authorities or local self-government bodies, public officials. The Constitution also establishes the right of the Verkhovna Rada of Ukraine to approve State-wide programmes for economic, scientific, technical and social development, and also provides for the rule that exclusively the laws of Ukraine shall determine the legal framework for property, competition rules of antimonopoly regulation and principles of external relations and foreign economic activities (Article 92).

In turn, the Cabinet of Ministers is responsible for ensuring the economic independence of Ukraine and for implementing the State's domestic and foreign policy. This higher executive authority formulates and implements State-wide programmes for economic, scientific, technical, social and cultural development (Article 116) (Constitution of Ukraine, 1996).

3. Legal regulations

These are, first of all, the provisions of the codes of Ukraine and the laws of Ukraine. Among the first relevant documents are Tax Code of Ukraine 2755-VI as of 02 December 2010, Customs Code of Ukraine 4495-VI as of 13 March 2012, Budget Code of Ukraine 2456-VI as of 08 July 2010, Bankruptcy Procedure Code of Ukraine 2597-VIII as of 18 October 2018, Economic Code of Ukraine 436-IV as of 16 January 2003.

For example, the Economic Code establishes the basic principles of economic activity in Ukraine and regulates economic relations arising in the process of organizing and carrying out economic activities between economic entities, as well as between these entities and other participants in the economic field (Economic Code of Ukraine, 2003). The Budget Code regulates relations arising in the process of making, examining, approving, implementing budgets, reporting on and monitoring compliance with budgetary legislation, and issues of liability for violations of budgetary legislation, as well as defines the legal framework for generating and reimbursing the State and local debt (Budget Code of Ukraine, 2020). The Customs Code of Ukraine establishes the procedure and conditions for the movement of goods across the customs border of Ukraine, their customs control and customs clearance, State control, in accordance with the law, of non-food products when they enter the customs territory of Ukraine, preventing and counteracting smuggling, combating violations of customs rules, organizing and ensuring the activities of customs bodies (Customs Code of Ukraine, 2012).

Next, the focus should be on laws that define foreign and domestic policy of the State, including in the field of economic security: "On the fundamentals of public regional policy" 156-VIII as of 05 February 2015, "On the fundamentals of domestic and foreign policy" 2411-VI as of 01 July 2010, "On the national security of Ukraine" 2469-VIII as of 21 June 2018, "On the State regulation of the securities market in Ukraine" 448/96-VR as of 30 October 1996, "On protection from unfair competition" 236/96-VR as of 07 June 1996, "On investment activity" 1560-XII as of 18 September 1991.

The basic principles of domestic economic policy are: to ensure the competitiveness of the national economy, to achieve a high rate of its growth, to ensure macroeconomic stability and a low level of inflation; to maintain a stable, rational and fair tax policies; to improve protection of the rights of depositors; to ensure economic balance in the development of the regions, harmonizing the vectors of their development with the national needs; anti-shadowing of the economy, an enabling environment for the activity of economic agents in a lawful manner. In turn, the basic principles for foreign policy are the use of international potential for the establishment and development of Ukraine as a sovereign, independent, democratic, social and legal State and for its sustainable economic development; an enabling environment for foreign policy in order to develop the Ukrainian nation and its economic potential; support for the development of trade and economic, scientific and technical, and investment cooperation between Ukraine and foreign States on the basis

of mutual benefit; ensuring the integration of the Ukrainian economy into the world economic system, with a view to achieving full economic development and enhancing the well-being of the people (Law of Ukraine On Principles of Domestic and Foreign Policy, 2010).

It is necessary to single out the provisions of laws establishing the legal status of some actors of economic security of the State, namely: "On the Cabinet of Ministers of Ukraine" 794-VII as of 27 February 2014, "On the National Bank of Ukraine" 679-XIV as of 20 May 1999, "On the National Commission, implementing the state regulation in the field of energy and public services» from 22 September 2016-VIII, "On the Antimonopoly Committee of Ukraine" 3659-XII as of 26 November 1993, "On the Accounting Chamber" 576-VIII as of 02 July 2015. These laws provide for the rights and obligations of the relevant State bodies in the field of economic security, as well as their territorial and subject-matter competences.

4. By-laws

It should be noted that these provisions are provided for by Resolutions and Orders of the Cabinet of Ministers, departmental regulations of central executive authorities and local self-government. With regard to the regulations of the Government, the focus should be on instruments such as Resolution 571 "Some Issues of Public Investment Management" as of 22 July 2015, Resolution 83 "On the approval of the list of State property objects of strategic importance for the economy and State security" as of 04 March 2015, Resolution 838 "Issues of the Ministry of Economic Development, Trade and Agriculture" as of September 2019, Resolution 236 "On the State Fiscal Service of Ukraine" as of 21 May 2014, Order 569-r "On approval of the Concept of national security in the financial sector" as of 15 August 2012, Order 605-p "On the approval of the Energy Strategy of Ukraine up to 2035 'Safety, energy efficiency, competitiveness' as of 18 August 2017.

Therefore, the Cabinet of Ministers of Ukraine adopts national economic security programmes and plans aimed at their implementation. At the same time, the Government of Ukraine has the authority to approve provisions on central executive bodies responsible for making public policy on the State's national economic security.

The emphasis should be on the role of the President of Ukraine, who is the guarantor of the rights and freedoms of citizens and the guarantor of social stability and is responsible for national security, of which economic security is an integral part. The President of Ukraine, in exercise of the powers conferred on him by the Constitution of Ukraine, issues legal regulations aimed at making the basic provisions of economic security, such as, Decree 453/2019 Issues of the National Anti-Corruption Policy Council as of 25 June 2019, Decree 206/2020 "On the Energy Security Council" as of 29 May 2020.

In the context of the subject matter of this study, the role of the Head of State in directing and implementing the decisions of the National Security and Defence Council of Ukraine is important. According to the Constitution of Ukraine, the National Security and Defence Council is the coordinating body for national security and defence under the President of Ukraine. The Chairman of the National Security and Defence Council of Ukraine is the President of Ukraine, who forms its personal staff. Among the NSDC's decisions, enforced by presidential decrees, the provisions constituting the legal framework for the making public policy on economic security are Decree 58/2018 "On the decision of the National Security and Defence Council of Ukraine as of March 1, 2018 'On urgent measures to protect the national interests of the State in the field of aircraft construction'" as of March 06, 2018, "On the decision of the National Security and Defence Council of Ukraine as of May 14, 2020, Decree 184/2020 "On the application, cancellation and introduction of changes in personal special economic and other restrictive measures (sanctions)" as of 14 May 2020, Decree 874/2019 "On the Decision of the National Security and Defence Council of Ukraine as of December 2, 2019 'On urgent measures to ensure energy security'" as of December 02, 2019, "On the Decision of the National Security and Defence Council of Ukraine as of December 18, 2016, Decree 560/2016 "On urgent measures to ensure national security of Ukraine in economic sector and protection of interests of depositors" as of 18 December 2016, as well as Order 270/2016-rp "On delegation of Ukraine to participate in negotiations with the International Bank for Reconstruction and Development on conclusion of the Contract on Indemnity (Guarantee on supply of safety gas of Ukraine) between Ukraine and International Bank for Reconstruction and Development" of 09 November 2016.

At the local level, regulations adopted by local public administrations are important in ensuring regional economic security.

Local public administrations are responsible, inter alia, for the social and economic development of the relevant territories, the budget, finance and accounting, the administration of property, privatization, promotion of entrepreneurship development and implementation of public regulatory policy and foreign economic

activity. For its part, the local public administration: drafts social and economic development programmes and submits them to the relevant Council for approval, ensures their implementation and reports to the relevant Council on their implementation; report to the Council on the advisability of placing new enterprises and other objects in the respective territory, regardless of the form of ownership; submit proposals for the establishment of special (free) economic zones, changes in the status and territory of such zones, in agreement with the relevant local self-government bodies; prepares, approves and submits to the Council for its consideration a forecast of the relevant budget; prepares and submits to the Council for approval the draft of the relevant budget and ensures its implementation; reports to the relevant Council on its implementation (Law of Ukraine On local state administrations, 1999).

5. International regulations

These documents are of importance, as they provide a basis for the implementation of global economic security policies, and they serve as guidelines for the adoption of national regulations governing economic issues, issues of fighting economic crime and promoting international cooperation in financial customs, investment activities, etc. Therefore, the focus should be on the provisions of international legal regulations, ratified by Ukraine, which constitute the legal principles for implementing public policy on economic security: 1) Final Act of the Conference on Security and Cooperation in Europe as of 01 August 1975; 2) Criminal Convention Against Corruption (ETS 173) as of 27 January 1999; 3) Civil Convention Against Corruption as of 04 November 1999; 4) Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime as of 16 May 2005; 5) International Code of Conduct for Public Officials as of 23 July 1996; 6) UN Resolution on Crime prevention and criminal justice in the context of development: implementation and prospects for international cooperation" as of 07 September 1990; 7) European Convention on Certain International Aspects of Bankruptcy (ETS 136) as of 05 June 1990; 8) Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 08 November 1990; 9) International Covenant on Economic, Social and Cultural Rights; 10) Energy Charter Treaty and its Final Act. Protocol on Energy Efficiency and Related Environmental Aspects as of 17 December 1994; 11) Resolution "International Economic Security" as of 17 December 1985, etc.

The administrative legal provisions are of special importance in the legal framework for implementing public policy on economic security, because, in fact, they are a catalyst for translating the conceptual provisions of legal regulations into everyday activities related to strengthening economic security of the country. Administrative and legal provisions constitute the administrative and legal regulatory framework for implementing public policy by authorized public administrators. Therefore, this phenomenon will be further considered in detail.

The administrative and legal regulatory mechanism is important in implementing public policy on economic security of the State. As we have noted above, the legal framework for implementing public policy on economic security of the State should be considered primarily as a system of law provisions, enshrined in current Ukrainian legislation and by-laws, programme and strategic documents of the State, which establish the objective, tasks, rules, order and procedures for the activities of authorized actors in ensuring economic security of the State.

In turn, administrative and legal provisions constitute the central element of the administrative and legal regulatory mechanism used by the authorized actors of public policy on economic security (public administration bodies) to regulate, steer and organise social economic relations. Therefore, in the mechanism for implementing public policy on economic security, with the help of the main instrument of the administrative and legal regulatory framework, that is, administrative and legal provisions, the authoritative instructions of laws, and codes, the Basic Law, international treaties and other institutional instruments are implemented into the practice of the State, its bodies and officials.

The key makers of legal and administrative provisions are the executive authorities: the Cabinet of Ministers of Ukraine, the central executive authorities and local executive authorities.

The Cabinet of Ministers of Ukraine, on the basis of and in compliance with the Constitution and laws of Ukraine, issues binding regulations, such as resolutions and orders. Regulations of the Cabinet of Ministers of Ukraine are issued in the form of Resolutions of the Cabinet of Ministers. Acts of the Cabinet of Ministers of Ukraine on organizational and administrative issues and other current issues are issued in the form of Orders of the Cabinet of Ministers of Ukraine (Law of Ukraine On the Cabinet of Ministers of Ukraine, 2014).

The Ministry, within the scope of its powers, issues orders signed by the Minister. The central executive authority, within the scope of its powers, on the basis of and in compliance

with the Constitution and laws of Ukraine, issues managerial orders, organizes and controls their implementation (Law of Ukraine On Central Bodies of Executive Power, 2011), in turn, the head of the local State administration, within the scope of his/her powers, issues directives, while the heads of structural units issue orders (Law of Ukraine On local state administrations, 1999).

The administrative and legal regulations on public economic policy and policy on national and regional economic security are as follows: Instructions on the processing of materials relating to administrative offences by bodies of revenue and duties, and Procedure for obtaining information on taxpayers' accounts registered with the control authorities by the National Agency of Ukraine for finding, tracing and management of assets derived from corruption and other crimes, Advisory clarifications on the application of the provisions of Parts 2, 5 and 6 of Article 52 of the Law of Ukraine "On protection of economic competition," Parts 1 and 2 of Article 21 of the Law of Ukraine "On protection against unfair competition," the Form of the regulation on the basis of the results of planned (unplanned) event of State supervision (control) of compliance with the requirements of the law on consumer protection by the economic entity, Regulations on financial monitoring by primary financial monitoring entities, Regulations on the application of sanctions to non-banking financial institutions.

The focus should be on administrative and legal regulations, adopted by local executive authorities, such as the Order of the Head of the Kharkiv Regional State Administration "On expansion of production of a type of economic activity," "On approval of the plan of measures for 2020 on filling local budgets of the region, economical and rational use of budget funds in the process of implementation of local budgets"; the Order of the Head of the Dnipropetrovsk Regional State Administration "On approval of the 2020 Procedure for granting and use of the subvention from the regional budget to local budgets for social and economic development," "On approval of the Regulation on the procedure of initiation and submission of investment projects of All-Ukrainian Public Budget of Dnipropetrovsk Oblast."

In addition to the adoption of administrative provisions, the administrative and legal regulatory mechanism for implementing public policy on economic security is reflected in the exercise of managerial powers, such as control, inspection, organizational powers of administrative and legal nature, by authorized public administrators.

6. Conclusions

However, along with this analysis of the legal framework for implementing public policy on economic security, certain shortcomings in the legal regulatory mechanism for making public policy on economic security of the State should be underlined:

1. First of all, our country lacks a strategic (conceptual) instrument on economic security. This issue is very important in the context of the global economic crisis and the increase in government borrowing. The formulation and adoption of the National Economic Security Strategy should be the main reference point for the State's efforts to promote both own economic interests and economic security of everyone, who lives in our country.

2. The next step, in our opinion, should be the introduction of appropriate amendments to the Law of Ukraine "On National Security" with regard to singling out its part on the issues of economic security. The grounds for this proposal are the fact that the security and defence sector is based on the economic indicators of the development of the State, that is, a strong economy can defend the country according to the best international standards.

3. The issue of legislative support for the operation of an independent financial investigation body, which has already been announced on several occasions by the State authorities, is a topical one.

4. Ukraine's legislation governing the Accounting Chamber of Ukraine requires improving for better State control over the use of budgetary funds.

These issues will be discussed in detail in our further study.

The analysis of the legal framework for implementing public policy on State economic security enables to make certain conclusions and overviews.

1. The legal framework for implementing public policy on economic security of the State should be considered primarily as a system of law provisions, enshrined in current Ukrainian legislation and by-laws, programme and strategic documents of the State, which establish the objective, tasks, rules, order and procedures for the activities of authorized actors related to regulating and developing public economic relations, ensuring citizens' social and economic rights and freedoms and protecting them in the event of violations; an enabling environment for the further development and growth of the national economy and ensuring competitiveness (Koshykov, 2020).

2. The legal framework for implementing public policy on economic security in Ukraine is contained in the Constitution, legislative

acts (laws, codes) and by-laws (regulations of the Government, central and local executive authorities), international legal acts and agreements ratified by Ukraine in accordance with the established procedure.

3. The administrative legal provisions are of special importance in the legal framework for implementing public policy on economic security, because they constitute the administrative and legal regulatory framework for implementing public policy by authorized public administrators. (Koshykov, 2020). These provisions are mainly contained in by-laws adopted by the Government of Ukraine, ministries and central and local executive authorities. In addition to the adoption of administrative provisions, the administrative and legal regulatory mechanism for implementing public policy on economic security is reflected in the exercise of managerial powers, such as control, inspection, organizational powers of administrative and legal nature, by authorized public administrators.

4. The specificity of the provisions of administrative law in the legal framework for implementing public policy on economic security is that they have clearly defined limits of their powers (scope of legal regulation), that is, the subject matter of the activities of the bodies of public administration and the public relations of an administrative nature that arise as a result of the exercise of managerial powers by them. This statement enables to argue that the object of administrative and legal regulatory mechanism for the implementation of public policy on economic security of the State is public relations of a managerial nature, arising between the State and economic entities or other legal and natural persons in the field of ensuring national economic security and its constituent branches. The specificity of this relationship is that one of the parties is the State, represented by an authority, such as a public administration body vested with real powers, which has the right to require certain legal conduct from other participants.

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МІСЦЕ ПОЛОЖЕНЬ АДМІНІСТРАТИВНОГО ЗАКОНОДАВСТВА В СИСТЕМІ ПРАВОВИХ ЗАСАД РЕАЛІЗАЦІЇ ДЕРЖАВНОЇ ПОЛІТИКИ У СФЕРІ ЗАБЕЗПЕЧЕННЯ ЕКОНОМІЧНОЇ БЕЗПЕКИ ДЕРЖАВИ

Анотація. ***Метою статті*** є з'ясування місця положень адміністративного законодавства в системі правових засад реалізації державної політики у сфері забезпечення економічної безпеки держави.

Результати. Наголошено на тому, що складність класифікації правових норм, які регулюють питання забезпечення економічної безпеки України, зумовлюється тим, що до її складових елементів належать фінансова безпека, макроекономічна безпека, виробнича безпека, енергетична безпека, зовнішньоекономічна безпека, інвестиційно-інноваційна безпека тощо. У зв'язку із цим проаналізовано сукупність нормативно-правових актів, які становлять основу правових засад реалізації державної політики у сфері економічної безпеки, за юридичною силою, зокрема: Конституцію України, міжнародні нормативно-правові акти та угоди, ратифіковані Україною у встановленому порядку, законодавчі акти (закони, кодекси), підзаконні нормативні акти (акти уряду, центральних і місцевих органів виконавчої влади). Акцентовано на певних недоліках у правовому регулюванні формування й реалізації державної політики у сфері забезпечення економічної безпеки держави та запропоновано шляхи їх усунення.

Висновки. Доведено, що особливістю норм адміністративного законодавства в системі правових засад реалізації державної політики у сфері економічної безпеки є те, що вони мають чітко визначену межу своєї дії (межі правового регулювання), а саме предметну сферу діяльності органів публічної адміністрації та суспільні відносини управлінського характеру, що складаються внаслідок реалізації ними організаційно-владних повноважень. З огляду на це зроблено висновок, що норми адміністративного законодавства спрямовані на впорядкування суспільних відносин управлінського характеру, які виникають між державою та суб'єктами господарювання або іншими юридичними та фізичними особами у сфері забезпечення національної економічної безпеки і її складників. Підкреслено, що особливістю цих відносин є те, що однією зі сторін є держава в особі суб'єкта владних повноважень – органу публічної адміністрації, наділеного владними повноваженнями, який має право вимагати від інших учасників певної правової поведінки.

Ключові слова: економічна безпека, національна безпека, державна політика, адміністративно-правові засади, суб'єкти, адміністративне законодавство, оптимізація.

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DISTANCE LEARNING TECHNOLOGIES IN LEGAL STUDIES

Abstract. ***Purpose.*** The aim of the article is to define the role of distance learning in the system of higher education, including legal studies, its main advantages and disadvantages, and the specificities of its implementation.

Results. The organization of the educational process in higher educational institutions using distance learning technologies has been updated. Specificities of the introduction of distance learning in the system of domestic legal education are outlined. The study analyses the educational potential of information resources for the effective organization of distance learning in legal studies. It is established that a differentiated approach should be taken to solving the problems associated with legal studies in higher educational institutions. Despite considerable experience in the use of innovative information technologies in education in general and in the teaching of legal subjects in particular, active creation of educational platforms on the Internet, search for the best ways to use information and communication tools, consideration of their didactic potential, as well as the use of various information technologies that meet the challenges of modern education, are still relevant.

Conclusions. Most educational online platforms focus only on their technical capacity, such as the development of qualitative templates of tables, calendars, e-mails, documents for recording lectures or meetings, however, objectively the lack of developed methodology for organizing distance learning exists. The available recommendations and step-by-step instructions are mainly concerned with the technical aspects of the organization of the educational process, from setting quality sound and image to creating a virtual background. However, the methodology of conducting training sessions remains mostly traditional. This approach is dangerous for passive students, as it is very difficult to supervise their educational activities in a virtual environment. Therefore, the focus should be on finding the best methods and techniques for organizing education in a distance learning environment.

Key words: higher educational institutions, legal studies, distance learning technologies, information resources, digital education platforms.

1. Introduction

Under global integration and the rapid development of global information technologies, a universal communication environment is emerging promptly. Therefore, the main task of education is to develop the adaptive qualities of the individual in the context of the globalization of social life, the diversity of information flows and the integration of science and culture. Modern information technologies enable all actors in the educational process to work in various formats and to implement innovative forms of acquiring knowledge. With appropriate technical support and advanced knowledge of information and communication tools of all actors in the educational process and of online teaching methods by teachers, it is possible to organize effective distance learning, in particular in legal studies.

The Ukrainian pedagogical dictionary defines distance learning as a form of learning in which Communication between a teacher and a student or teacher and a pupil takes place through correspondence, tapes, audio and video cassettes, computer networks, cable and satellite television, telephone or telefax, etc. (Honcharenko, 1997, p. 92). However, in modern education, this definition of distance learning, exhaustive at the time of the creation of the dictionary (1997), requires correlation, as such concepts as tape, audio and video cassettes are no longer relevant, a distance learning is mostly associated with the use of digital technology.

The aim of the article is to define the role of distance learning in the system of higher education, including legal studies, its main advan-

tages and disadvantages, and the specificities of its implementation.

A domestic literature review shows that the use of ICT tools for the realization of educational goals is being investigated by V. Bykov, A. Hurzhii, M. Zhaldak, S. Ivanova, S. Lytvynova, I. Malytska, N. Morze, V. Oliinyk, N. Soroko, A. Spirin, T. Tarnavska, Yu. Tryus, etc. The author takes advantage of the statement of foreign researchers T. Singh, S. Chan, who argue that ICT is not only a supplementary tool, additional to traditional teaching methods, but also an important tool for supporting new ways of learning (Singh & Chan, 2014).

2. The role of distance learning in everyday life

Distance learning is well established in everyday life, since it is almost impossible to find a person who does not make use of distance learning resources, at least for domestic purposes. Distance learning is a democratic, simple and convenient learning system which, according to the standard of higher education in the specialty 081 "Law," is equivalent with full-time (day, evening), correspondence, distance learning (Order of the Ministry of Education and Science On approval of the standard of higher education in the specialty 081 "Law" for the second (master's) level of higher education, 2020). The indisputable advantages of distance learning are its characteristics, such as mass, accessibility, openness, interactivity, comfort, efficiency, economy, etc. It is important to understand how distance learning should be organized in order to provide an effective creative dialogue-based educational process in legal studies.

In domestic education, the date of the official start of distance learning is January 21, 2004, since Order 40 of the Ministry of Education and Science of Ukraine approved "Regulation on distance learning" (Order of the Ministry of Education and Science On approval of the Regulations on distance learning, 2004), which marked the beginning of the introduction of new technologies in the field of education (Order of the Ministry of Education and Science On approval of the Regulations on distance learning, 2004). Currently the Regulation, approved by MES Order 466 of 24 April 2013, is in force with certain changes and clarifications, determined both by rapid development of digital technologies and competency orientation of the educational process.

The Regulation on distance learning provides specific definitions of the content and format of education with remote access. In particular, the concept of "distance education" has been interpreted as the "individualized process of acquiring knowledge, skills, and ways of cognitive activity of a person," realized "mainly through indirect interaction of remote participants of the educational process" (Order of the Ministry of Education and Science on approval of the Regulations on distance learning, 2013). Its purpose is to provide educational services using modern information and communication technologies. The Regulation also provides a number of definitions, the understanding of which is important in the context of the organization of distance learning, in particular: "asynchronous regime," "web-based studies (programmes)," "web-based distance learning," "distance learning," "information and communication technologies of distance learning," "psychological and pedagogical technologies of distance learning," etc.

Modern computer telecommunications can provide knowledge transfer and access to a variety of educational information equivalent to traditional means of learning and sometimes even more efficiently. The quality and structure of courses, as well as the quality of distance learning teaching, are sometimes better than in traditional forms. State-of-the-art digital technologies, such as interactive disks, electronic bulletin boards, multimedia hypertext, accessible through the global Internet, etc. not only actively engage higher education applicants in the educational process, but they also enable to manage this process, unlike most traditional learning environments. The integration of sound, movement, image and text creates an extremely rich learning environment, which increases the involvement of students in the learning process. The interactive capabilities of the programmes and information delivery systems used in distance learning enable to development and promote feedback, dialogue and continuous support impossible in most traditional learning systems.

Experience shows that distance learning is particularly important in extreme situations. The ability of educators to respond to the needs of society in a timely manner, to display a high level of information culture and to be familiar with the methods of organizing distance learning in such an environment is of great importance.

In the modern world, there is a trend to rapidly update the requirements for the organization of educational environment and the qualifications of teachers. Some educational resources and distance learning technologies were used by law teachers before extreme conditions. However, the introduction of quarantine and the introduction of intensified anti-epidemic measures in a territory with a high incidence of acute respiratory disease COVID-19 caused by coronavirus SARS-CoV-2 has made

this form of education necessary and only possible.

A differentiated approach should be taken to solving the problems associated with legal studies in higher educational institutions. Despite considerable experience in the use of innovative information technologies in education in general and in the teaching of legal subjects in particular, active creation of educational platforms on the Internet, search for the best ways to use information and communication tools, consideration of their didactic potential, as well as the use of various information technologies that meet the challenges of modern education, are still relevant.

The standard of higher education in specialty "Law" is defined as "modern information and communication equipment, information resources and special software used in activities in the field of law" (Order of the Ministry of Education and Science On approval of the standard of higher education in the specialty 081 "Law" for the second (master's) level of higher education, 2020). According to the instrument, the system of ensuring quality higher education by higher educational institutions (internal quality system) provides, inter alia, for the implementation of such procedures and measures, how to ensure the availability of information systems for the effective management of the educational process.

Distance learning, as an innovative educational process with the use of information and computer technologies, assists students in realizing their own educational goals aimed at personal development. The use of distance learning implies that not only knowledge, but also the ability to use it to address specific life situations, ways to acquire and use knowledge successfully, and the ability to make responsible, well-reasoned decisions are of importance.

It should be noted that in the context of the rapid spread of digital technologies in society, of the skills to use digital devices, need to be carefully selected such forms of learning organization, appropriate for abilities and interests of applicants for higher legal education.

The use of digital technologies implies that traditional learning methods remain relevant. Therefore, a modern professional teacher should be familiar with the teaching methodology and implement it through the use of digital technologies where their application is motivated and feasible. It is important that students are not simply passive users of information, but rather that they create their own understanding of the content of education.

The introduction of distance learning technologies into the educational process is not possible without the use of information and telecommunication technologies. There are different forms of distance learning. We will briefly describe those that are most effective in organizing legal studies in higher educational institutions.

A chat session is a training session conducted using chat technology. The chat sessions are held in synchronization, that is, all participants have simultaneous access to the chat. The number of participants in chat sessions can be 2 and more. However, the optimal number is 10-12 people.

Web-based sessions are distance-learning sessions, conferences, seminars, business games, virtual tours and other forms of Internet-based training. For their organization and implementation, specialized educational web-forums are used, that is, the form of users' work on a certain topic with recordings, which remain on one of the sites with a set program. In contrast to chat sessions, web forums offer longer working hours, and do not require synchronous interaction of all participants in the educational process.

Online conference (web conference, internet conference) is organization of online meetings and real-time collaboration via the Internet. This form of organization of the educational process is appropriate for final classes, as it allows participants in the educational process to share their projects, course work, etc., and to summarize the studied.

An audio conference is an electronic conference in which participants use telephones or other equipment specifically designed for voice communication. This type of distance learning organization is rather accessible, as it does not present any particular technical difficulties. Its use is justified in introductory classes, when studying new material.

A video lecture is a presentation of educational material, where a recording of the teacher's explanation or his/her virtual counterpart (avatar) is on the monitor. Video lectures in legal studies are most effective if accompanied by videos. The advantage of this form of presentation of educational material is that the students can independently regulate the course of a video lecture, return to difficult moments; and the teacher can reuse the material, make certain corrections in accordance with actual social processes, changes in legislation and the like.

3. Features of distance and traditional learning

Furthermore, distance learning, like traditional learning, involves the control of students' knowledge acquired, the level of integral, general and special (professional, subject) competences in the applicants of education. In this form of organization of learning, the opti-

mal form is online testing, since this method does not require the direct presence of the students in the educational institution, and under methodically considered selection of tasks for testing reflects their actual level of knowledge. In particular, any model of preparing students of higher legal educational institutions on the basis of distance learning technology should include: a flexible combination of independent activities with different sources of information, prompt and systematic interaction with the course lecturer, group work such as training in cooperation with participants in the course; joint telecoms projects of participants in the course, monitoring of the educational activities of students and presentation of intermediate and final results of education.

The influence of psycho-emotional, organizational, technical and partly professional factors on the effectiveness of the organization of distance learning can be observed.

In particular, it should be noted that the process of developing and introducing information and communication technologies into the educational environment should be methodically controlled, predictable and based on methods and strategies for the use of information technologies. Distance learning, as a new form of developing the competences of students, involves the use of special means, methods and techniques for organizing educational activities, and requires a high degree of self-organization of all participants in the educational process.

Any form of distance learning organization is supervised by a teacher (tutor). In such context, the level of his/her methodological training and mastery of modern educational technologies are of importance, as well as skills in directing them towards the development of students' ability to solve research and/or innovation problems in the field of law.

Mastering various forms of distance learning requires training courses in online learning methodologies for educators, including online interactive learning methods and individual learning trajectories.

A highly professional teacher combines in his/her practice both own distance learning skills and the possibilities of educational online platforms. For example, *Google Classroom* is a free service for distance learning. Through this service, the teacher can create own virtual group and individual courses in which students are given access via special codes. One of the unquestionable advantages of this educational platform is that it can be used anywhere there is an Internet, using both a computer and a telephone. The teacher has the opportunity to publish teaching materials, announcements in the tape of the group (course), adding an image or video if necessary, to communicate with students in a chat, to conduct interviews, tests, to place thematic assignments on the page of each course, indicating the deadlines for their completion. In addition, a teacher can give each student an individual assignment that others will not see, making cheating impossible. In real time mode, students' performance of tasks can be observed, a list of completed or not completed works can be seen and evaluated. Moreover, this interactive platform enables teachers to share experiences, improve their skills and interact with colleagues.

As experience shows, *Zoom* has received a considerable number of supporters as a service for conducting online meetings, videoconferences, seminars and the like. The person who has created the account can arrange the meeting. The program is suitable for both individual and group activities. The actors of the educational process may be in front of the computer or use a tablet or telephone. It is very convenient that the built-in interactive board allows to switch to it quickly from screen display. There is also a chat room where you can write messages.

On the platform of the national educational community *Vseosvita* webinars are broadcast and educational news is posted. *Test Designer* is a convenient service on the site *Vseosvita* enabling the teacher to create test tasks of different types, in particular on choice of the correct answer option (either one or several), with open answer and cross-question.

The online platform *Na Urok* provides significant opportunities for organizing remote work, exchange of experience between teachers. For example, a potential of free online testing service for remote assessment of students' knowledge is justifiably demanded. The unquestionable advantages of the service are the possibility of performing training tests for self-testing, because it enables to absorb theoretical knowledge without additional efforts. In addition, the teacher has the opportunity to promptly test the knowledge of students, to obtain an objective picture of the number of correct answers provided, to analyse both general trends regarding the gaps in the knowledge of a certain group (course) and of each student, and to identify ways of eliminating them.

The online educational platform *Test Pad* allows teachers to develop their own tests, crossword puzzles, to conduct surveys using a convenient online constructor. In addition, a significant amount of teaching material is available on the platform and is publicly available. Each student has the possibility to take training in his or her own training room and to monitor his or her learning results.

The organization of distance learning requires changes not only in the work of the teacher but also in the activities of the student. Therefore, it is important to clearly define the algorithm of the work of the actors of the educational process, to voice the rules of conduct and so forth. Direct distance learning should be preceded by training sessions that address technical issues and the specifics of a particular form of distance learning. A careful combination of different types of distance learning enables to make the learning process productive and to increase the motivation of the students.

The active introduction of remote technologies into the educational practice of the National Academy of Internal Affairs, in particular in the course of the Theory of the State and Law, has made education more accessible, efficient, comfortable compared to traditional technologies.

4. Conclusions

Most educational online platforms focus only on their technical capabilities, such as the development of qualitative templates of tables, calendars, e-mails, documents for recording lectures or meetings, however, objectively the lack of developed methodology for organizing distance learning exists. The available recommendations and step-by-step instructions are mainly concerned with the technical aspects of the organization of the educational process, from setting quality sound and image to creating a virtual background. However, the methodology of conducting training sessions remains mostly traditional. This approach is dangerous for passive students, as it is very difficult to supervise their educational activities in a virtual environment. Therefore, the focus should be on finding the best methods and techniques for organizing education in a distance learning environment.

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ТЕХНОЛОГІЇ ДИСТАНЦІЙНОГО НАВЧАННЯ У ПРОЦЕСІ ВИВЧЕННЯ ПРАВОЗНАВЧИХ ДИСЦИПЛІН

Анотація. ***Метою статті*** є визначення ролі дистанційного навчання в системі вищої освіти, зокрема правової, його основних переваг і недоліків, а також особливостей реалізації.

Результати. Актуалізовано питання організації освітнього процесу в закладах вищої освіти із застосуванням технологій дистанційного навчання. Окреслено особливості запровадження дистанційного навчання в системі вітчизняної юридичної освіти. Проаналізовано освітній потенціал інформаційних ресурсів для ефективної організації дистанційного навчання у процесі вивчення правознавчих дисциплін. Встановлено, що до вирішення завдань, пов'язаних із вивченням правознавчих дисциплін у закладах вищої освіти, необхідно підходити диференційовано. Незважаючи

на значний досвід використання засобів інноваційних інформаційних технологій в освіті загалом і навчанні правознавчих дисциплін зокрема, на активне створення освітніх платформ в інтернет-просторі, залишається актуальною проблема пошуку оптимальних форм застосування інформаційно-комунікаційних засобів, урахування їхніх дидактичних можливостей, а також використання різних інформаційних технологій, що відповідають викликам сучасної освіти.

Висновки. Більшість освітніх онлайн-платформ акцентують лише на їхніх технічних можливостях, а саме розробленні якісних шаблонів таблиць, календарів, електронних листів, документів для занотовування лекцій чи зустрічей, однак є об'єктивні підстави для того, щоб констатувати відсутність розробленої методики організації дистанційного навчання. Наявні рекомендації, покрокові інструкції стосуються переважно технічних аспектів організації освітнього процесу (від налаштування якісного звуку й зображення до створення віртуального фону). Водночас методика проведення навчальних занять залишається в більшості випадків традиційною. Такий підхід небезпечний для пасивних здобувачів освіти, оскільки простежити за їх навчальною діяльністю в умовах віртуального заняття дуже складно. Відтак необхідно зосередити увагу на пошуку оптимальних методів і прийомів організації освітнього процесу в умовах дистанційного навчання.

Ключові слова: заклади вищої освіти, правознавчі дисципліни, технології дистанційного навчання, інформаційні ресурси, цифрові освітні платформи.

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THE ADMINISTRATIVE AND LEGAL IMPACT ON THE ECONOMY AND ENTREPRENEURSHIP: COMPARATIVE AND LEGAL ASPECT

Abstract. ***Purpose.*** The issue of state influence on the economy and entrepreneurship is actively discussed in professional and scientific circles of lawyers and economists of any modern country. Ukraine is no exception. Domestic scientists have repeatedly tried to develop considerably significant theoretical and applied recommendations for improving the business climate in our country. During the existence of Ukraine as an independent state, the problems of state regulation in the field of economy, economic activity (entrepreneurship in particular) were reflected in the context of research on state influence on the economy, legal regulation of business, implementation of state regulatory policy in business, some legal institutions. administrative law (concerning administrative services, administrative liability, etc.). Some aspects of organizational and legal regulation of economic activity are constantly under the scrutiny of domestic scientists. Despite such strong attention from scholars, lawyers and economists, in Ukraine these aspects are practically not formed and are not provided at the state level. So far, effective principles of state influence on the economy and entrepreneurship have not even been declared, practical forms and methods of its implementation have not been defined and, accordingly, proper effective legal support in this sphere of public life has not been created.

Research methods. The work is performed by applying general scientific and special methods of scientific knowledge.

Results. Analytical and staging consideration of the outlined issues is the purpose of this study. The article is the authors' attempt on the basis of analysis and comparison of foreign experience of state influence in the fields of economics and entrepreneurship to continue and in some aspects introduce a discussion (primarily in administrative law), which would be devoted to finding solutions and solving scientific, applied and practical problems of future development and improvement of the state presence in the field of economy and entrepreneurship of Ukraine.

The article on the example of Germany, Sweden, Finland, France, Great Britain and the United States examines some opinions and views of legal scholars and economists on determining the role of the state in regulating social relations in certain areas of the economy and entrepreneurship. First of all, it is analyzed the administrative and legal impact in certain areas of public life.

Conclusions. Taking into account the analysis, we express our own opinions and considerations on the outlined issues.

Key words: administrative and legal influence, state presence, economy, entrepreneurship, business, economic activity, state regulation, state regulatory policy.

1. Introduction

According to the IMF report, Ukraine has been the poorest country in Europe since 2017 (Ukraina stala naibidnishoiu krainoiu Yevropy, 2018). "Ukraine's investment attractiveness index in the first half of 2020 was 2,51 points out of 5 possible and continues to be negative. These are the conclusions of a new wave of expert

research conducted by the European Business Association. In the previous period, the index was 2,95 points" (Investory pohirshyly otsinku biznes-klimatu Ukrainy, 2020).

Currently, the economic situation in Ukraine, imperfect legal framework for entrepreneurship, corruption, incomes and lack of experience in the proper implementation of investment projects suggest that it is impossible to hope for the implementation of strategically important economic projects without government intervention in today's conditions. Unfortunately, this is confirmed by the contents of the Ukrainian government most programs, which clearly showed a chronic disease of almost all previous domestic government programs – declarativeness, lack of clear indicators and key indicators, which will make it difficult to assess the performance of any government (as well as predecessors, etc.), and the first lines of the text of the program "Today Ukraine is in the deepest economic, political and social crisis in the history of its independence. The country is brought to the brink of bankruptcy, society – to a social and humanitarian crisis. The threat of Ukraine's loss of sovereignty and territorial integrity has become real. The country is one step away from financial and economic collapse" are generally questionable, at least because these words were simply copied from the program of the government of Arseniy Yatsenyuk (Ukraina stala naibidnishoiu krainoiu Yevropy, 2018).

Latest research and publications. Today, as in all years of independence, the issue of country influence on the economy and entrepreneurship is actively discussed in professional and scientific circles of lawyers and economists: I. Akimova, O. Belyanevych, J. Zhalilo, O. Zhuravsky, I. Zapatrina, T. Yefimenko, P. Yeshchenko, T. Kolomoyets, A. Krysovaty, O. Ryabchenko, N. Saniakhmetova, D. Stechenko, V. Shcherbyna, etc. At the same time, in Ukraine practically no effective principles of state influence on the economy and entrepreneurship have been formed, ensured, even declared, practical methods and forms of its implementation have not been determined and, accordingly, proper effective legal support in this sphere of public life has not been created.

A consideration of analytical issues is the *purpose* of this study.

Presentation of basic research material. In the EU member states, there is no common understanding of the concept and scope of Law of the Economy, but the role of Law in regulating the economy is equally understood by all the countries (Saniakhmetova N. O., 1998, p. 87). Today in Europe there is a general trend towards "a whole set of institutional and procedural reforms that allow the EU: to establish a common legal framework and institutional structure for the formation of an area of freedom, security and justice, to put an end to parallel legislation, etc. ..." noted by domestic researchers in international law (Makarukha Z., 2010, p. 193). However, there are other opinions in Ukraine. Thus, a different position is argued by the well-known scholar of commercial law V. Shcherbyna, who also strongly opposes the adoption of the Economic Code in our country, arguing his point of view that the subject of regulation of this Code "cannot be defined, because this subject had to regulate all social relations in the economic sphere, including: administrative, labor, financial, tax, land, environmental, etc." (Shcherbyna V., 2010, p. 15). In general, this is a fair statement.

It is almost universally recognized that administrative and legal interference in the regulation of the economy in general and entrepreneurship in particular is more prevalent in countries with social market economies, which are also declared by Ukraine's political leaders.

2. Some aspects of the state presence in the German economy

A striking example of a classic country with a socially oriented market economy is the Federal Republic of Germany. In this country, administrative and legal regulation affects the activities of most businesses and entrepreneurship activities, which produce almost half of the gross product. Under the condition that German statistics take into account only those sectors of the economy in which the level of administrative and legal regulation is the highest, and do not take into account the areas of entrepreneurship that are regulated indirectly.

Individual domestic researchers argue that when referring to the German economy, one should not talk about strengthening state regulation, but about improving the efficiency of state action (Morozov V.S., 2006). It seems to be the right and effective conduct. It is also true that the global goal of state regulation in Germany is specified in the following special tasks:

- promoting market organization and market-competitive relations; solution of economic and economic-organizational issues raised by certain influential groups of economic entities;
- achieving economic, political, social and fiscal goals aimed at maintaining and ensuring market order in the country;
- adjusting the allocation of resources in order to influence the economic structure and the structure of the national product.

At the same time, it seems expedient to say that different tasks require different forms of state intervention: on the one hand, direct administrative, and purely economic influence,

on the other hand. Taking into account everything mentioned above, the system of state regulation can be divided into two levels: market-organizational and financial (Stechenko D. M., 2006, p. 48-49). Organizational and legal support is an external sectoral intervention of public administration bodies in industry, entrepreneurship and freedom of public-private contracts, etc., which is carried out through the refusal of certain branches of social production and enterprises from the general principles of market order in Germany. Thus, "the provisions on public contracts, provided for in paragraphs 54-62 of the Law of Germany "the Administrative Procedure Act", are widely used in the field of construction law, roads, educational law, commercial and administrative law and the law of subventions" (Kuibida R., 2009, p. 81).

As the bearer of the policy of economic and legal influence, the state controls the market behavior of all economic entities. In Germany, the practical result of tripartite negotiations between the government, businesses and trade unions was the basis of a comprehensive national strategy in 2006 – "The High-Tech Strategy" (The High-Tech Strategy for Germany, 2006). One of the main priorities in the development of this act was to identify 17 key technologies that need to be developed, the relationship between science and economics, improving the financing system of economic entities in this area, and so on. In connection with the successful implementation of the High-Tech Strategy for Germany in 2010, the government decided to further implement this project and adopted a new document – "Ideas, innovation, economic prosperity. High-Tech Strategy 2020 for Germany" (Bobrovytskyi A., 2009).

Thus, the evidence from German practice shows that market and organizational regulation is also a form of economic macropolitics.

3. About the Swedish model of regulation of social and market economy

Another example of a classical civilized model of regulation of the social market economy is the Swedish model of regulation. The term "Swedish model" is associated with the formation and strengthening of Sweden in the second half of the twentieth century as one of the most developed countries in the socio-economic aspect, which is characterized by a combination of good governance, political stability, sustainable economic growth, a high level of social protection and a decent level of welfare. The formation and development of the Swedish economic system was not free from the negative effects of global economic crises and recessions, as well as internal socio-economic contradictions. However, the government has always managed to find an acceptable compromise between the interests of employees and employers, small and large owners, between the need to maintain a high level of employment and wages, on the one hand, and constantly increase the competitiveness of the national economy, on the other hand (Bobrovytskyi A., 2009). At the same time, even in the critical stage of development of the world economy after the crisis of 2008-2009, the Swedish government tried to fulfill a strategic task to avoid unjustified protectionism (Hullhren S., 2009).

In terms of production, Sweden is ahead of most EU countries, its GDP per capita is much higher than the corresponding average for the EU (Bobrovytskyi A., 2009). The essence of state regulation of the Swedish economy is to maximize the production and development of private sector entrepreneurship and the greatest possible redistribution of profits by the state through a progressive tax system and public social infrastructure to improve the living standards of the average population.

It is fascinating that Sweden spends more than 50% of GDP to finance the state's economic functions and solve a number of social problems (Krysovatyi A. I., Koshchuk T. V., 2009, p. 129). Administrative and legal support in the country can be provided to the least mobile and attractive in terms of entrepreneurship industries, such as ferrous metallurgy, shipbuilding and mining. According to Swedish law, some state-owned enterprises that are designed to perform special state management functions are even monopolies. This applies to such areas of public life as energy, transport, post, and communications (Shvaika L. A., 2008, p. 434-438). Strong state influence in the field of entrepreneurship in Sweden is confirmed by the doctrine of building a socially oriented market economy, which provides for the centralization of about 33% of GDP only through indirect and personal taxation (Krysovatyi A. I., Koshchuk T. V., 2009, p. 130), which would not be possible without the use of administrative remedies and measures. A feature of the Swedish economy, an important factor in increasing competitiveness is the orientation of the Swedish economy to high technology (the so-called "knowledge economy"). Therefore, large national and multinational companies invest heavily in research and development (R&D), and the main development is carried out in Sweden (Bobrovytskyi A., 2009).

4. Some aspects of the regulation of the Finnish economy

Finland is a highly developed small industrial country. International recent research shows that Finland is one of the most developed and competitive countries in the world. Its

advantages are political stability, highly developed infrastructure, accessibility and reliability of telecommunications, freedom of banking competition, well-established system of cooperation between enterprises and universities, including the development of new technologies, high educational level of workforce and management, ease of doing business (Finliandiia).

As in most Western European countries, taxation is the most important instrument of administrative and legal regulation of the economy in Finland. As for the above-mentioned countries, Finland is also characterized by a high level of administrative and legal regulation of the economy and significant state intervention in the field of entrepreneurship. The country's tax system has several direct and indirect taxes. The main direct tax is income tax, utility and property taxes. The most important indirect taxes are sales tax, customs taxes, tax equalization and vehicle excise taxes, excise duties on alcoholic beverages, tobacco and some other goods. At the same time, the Finnish tax authorities have the rights of inquiry and investigation. State-owned and semi-state-owned companies account for 14% of the total number of large industrial companies in Finland. They provide 35% of total sales, perform 30% of export operations, focus on their production 25% of the workforce (Shvaika L.A., 2008, p. 439). Conditions for doing business in Finland, including legislation, availability of financial resources, state support, lack of bureaucracy and corruption meet all the conditions for increasing the competitiveness of entrepreneurship (Makara O. V., 2007, p. 48).

Among the measures of administrative and legal regulation of entrepreneurship a significant place is occupied by ensuring healthy and effective competition. In Finland, these issues are dealt with by the Finnish Competition Authority under the Ministry of Trade and Industry and the Competition Division, which reports to the provincial governments. In their work, these public bodies are guided by the antitrust law of Finland, the purpose of which is to "protect healthy competition" from the practice of unjustified restrictions. At the same time, within the framework of Finnish legislation, the activities of enterprises are completely independent. Schweik L. A. emphasizes that the state determines only the general conditions of companies through legislation, monetary and credit policy, currency control, taxation, safety rules, environmental regulations, standards, etc. (Shvaika L. A., 2008, p. 440).

5. Experience in regulating the French economy and entrepreneurship

France is one of the few industrialized countries where there is a rather strict regime of state regulation of entrepreneurship, which has survived to this day, as traditionally the mechanism of state regulation of the economy in France has its own history and a variety of economic and administrative and financial instruments. Today, as in the scientific and educational literature, it is noted in the textbook that in these features lies the uniqueness of the French economy, which is often called a hybrid of planned and market approaches. The post-war period, during which the government tried to find the most effective combination of the Keynesian methods of regulation with the development of free enterprise, was quite significant. The main factors that led to the economic transformation of the French economy in the second half of the twentieth century, in particular, were the following.

This increases the presence of the state and state property from 10% of the value of national property to 40-50%% at the beginning of 1980s. This is the formation of competitive powerful Transnational Corporations (for example, the automobile corporation "Renault") with a high ratio of state share in the share capital structure. However, this approach often proved to be quite burdensome for the French budget, which forced the government to compensate for the damage to the inefficient public sector. As well as high rates of scientific and technological progress and a successful combination of public and private investments aimed at the development of nuclear energy, electrical industry, chemical, pharmaceutical industries, production of aviation and automation equipment. The following factors should also be noted before the administrative and legal impact. Concentration and centralization of industrial and financial capital, significant strengthening of the positions of French firms in international and especially European markets. Clear choice and stimulation of development of branches of national specialization. Unconditional state support for basic and applied research in priority areas of the French economy. Maximum encouragement on a complementary basis for the development of industrial and social infrastructure, the quality of which has largely become exemplary in the European Union (Frantsuzka model ekonomiky, 2005).

For the development of the economy and entrepreneurship, Ukraine should adopt French experience, such as the indicative plan in the country has no directive significance, although adopted by the National Assembly (Parliament). This plan covers a limited number of mandatory tasks and has a more focused, recommendatory nature, in fact, it is a summary of the proposals of various government institutions and non-governmental organizations.

Ukraine should also take into account that the implementation of the French model of planning and conducting took place at the European level. The current model of the European Commission and other European structures, the development of the current seven-year development plan in the EU, the creation of structural funds and social, regional and agricultural policies are due to the fact that France wants to see European supranational governance systems that are most comparable with the main components of its national model (Frantsuzka model ekonomiky, 2005).

Stimulating the development of competition is an important area of administrative and legal regulation of the market in France. The role of the state is manifested in the organizational and legal aspect in encouraging the development of small enterprises, for example, industrial, family, group, which are assisted in obtaining long-term and short-term government loans, training of management staff, tax benefits, commercial information, etc. (Shvaika L. A., 2008, p. 432). In addition, besides the widespread use of enterprise motivation mechanism in state planning, the state appears as a product customer, owner of works and services.

The French experience clearly confirms the conclusion that the market, whatever its achievements, does not solve many problems (especially in the social spheres and spheres of public life), especially those problems that are caused by the general needs of different population segments and are important for the future of the country.

It should be added that the market does not solve the problems of social protection, does not provide basic, priority research, it is extremely limited in the creation of infrastructure and development of public transport. These and other problems must be solved by the state, using the administrative and legal mechanism for issuing special government orders to manufacturers, which are a priority for many companies, because in conditions of fierce competition in the market they ensure constant investment, profit and social results. It is also possible to directly stimulate government procurement through preferential pricing, taxation and lending.

In other words, France is developing a branched social sector and at the same time trying to flatten structural maladjustments of the economy through budget interventions (Krysovatyi A. I., Koshchuk T. V., 2009, p. 128). Therefore, the indicative plan is of great importance for the administrative-territorial units of France (which is important to consider for Ukraine in terms of the development of decentralization policy). When it is approved by parliament, it becomes a guide for concluding public-private agreements with regions, departments and communes on the material and financial aspects of their development, including subsidies and grants from the central budget. This is a positive example of concluding administrative and legal agreements between various public administration bodies, business entities, etc. The nature of fiscal policy directly depends on the indicative plan: the more subsidies – the less need to attract their own financial resources and vice versa.

Today, the closer convergence of national markets of countries with developed market relations has forced the transition from indicative planning to strategic planning. Its essence is to choose the main priorities for the development of the national economy, the leading role in the implementation of which should be played by the country. Due to strategic planning it is determined the ways in which society should go, decide which markets are best to operate, which technology to master first, how to ensure the social unity of the country, which sector of the economy and social structures should be relied on (Stechenko D. M., 2006, p. 47).

Thus, the essence of strategic planning in France is to choose the main priorities of the national economy, the leading role is played by the country, which is trying to decisively influence the definition of the main directions of social relations in the economy and domestic entrepreneurship, etc.

6. State presence in the British economy

Great Britain, like France, as well as other industrialized nations in general, significantly strengthened some forms of state regulation of the economy after the end of World War II. The main reason for this, at least initially, regardless of the types of regulation introduced, was the protection or promotion of the public interest. Many public funds that regulate the production and sale of food and medicine are aimed at this. Research on dominant market positions and the prevention of significant mergers of companies are aimed at supporting competition and promoting effective economic development. After the Second World War, the number of laws governing the economy in the UK has grown significantly and remains so today (Saniakhmetova N. O., 1998, p. 87-88). Even the adoption in the second half of the twentieth century of forms and rigid methods of regulation inherent in Thatcher's government did not lead to a "return to a lower level of government," as promised by the prime minister. Neoliberal model of state regulation in the UK has extended its influence to utilities and other sectors of the economy (Pabst A., 2010, p. 47).

Thus, the United Kingdom, especially London, has traditionally been the world's financial center. The United Kingdom has an extremely independent, developed and international trade econ-

omy. In the United Kingdom, according to both domestic and foreign scientists (Stechenko D. M., 2006; Utton M. A., 1986), there was no period when the economy could function freely from state regulation of one kind or another, although its distribution and direction changed.

In the past, there were more foreign banks in London than in any other city in the world, although it is not yet known whether this tendency persists after Brexit. Increased competition and technological developments have accelerated changes of an administrative nature. Thus, the International Stock Exchange was reorganized and the historic two-tier structure of brokers and speculators was abolished. Brokers followed the instructions of investors to buy and sell shares and stocks, and speculators "created" markets for these securities. As a result, the new companies link British and foreign banks with former brokers and jobbers. These new financial institutions are governed by the Financial Services Act 1986, the Construction Companies Act 1987, and the Banking Act 1987.

In 1997, the government established the Financial Services Authority (FSA) to regulate the financial services industry, making some organizational changes. Namely, the government has replaced a number of separate oversight organizations, some of which now operate on a self-regulatory basis. Among other tasks, the FSA has taken over the administrative supervision of commercial banks in the United Kingdom from the Bank of England. The FSA was acting on the basis of protectionism, and due to this it was widely criticized for its response to the financial crisis that erupted in 2008 and which led to forced state financial assistance to a number of well-known British banks. As a result, the Financial Services Act 2012 repealed the FSA, and the "tripartite" system of financial regulation (FSA, the Bank of England and HM Treasury) was replaced in 2013 by three new bodies - the Financial Conduct Authority (FCA), the Financial Policy Committee (FPC) and the Prudential Regulation Authority (PRA). FPC and PRA were structured in the Bank of England, that was returned to the administrative functions of supervision and regulation of banks (United Kingdom – Economy, 2020). Administrative and legal impact on the economy in the UK, primarily related to such institutions as: economic database; financial incentives, prices and incomes, credit, foreign trade; monopolies and mergers; regulation of market behavior, consumer protection, intellectual property, environmental control. At the same time, the administrative and legal regulation of entrepreneurship is primarily used in such sectors of the economy as agriculture, fisheries, energy, and transport.

There are a number of organized financial markets in the United Kingdom. Securities markets include the International Stock Exchange, which trades officially registered shares; an Over-the-Counter (OTC) securities market for small companies; and the Third Market for small unlisted companies. Money market activities include trading in promissory notes, certificates of deposit, short-term deposits and, increasingly, trading securities in pounds sterling. Other markets are markets that trade in Eurocurrency, Eurobonds, foreign currency, financial futures, gold, shipping brokerage operations, freight futures, and futures on agricultural and other commodities (United Kingdom – Economy, 2020).

We believe that economic growth in the UK is not least due to the stability of the financial and tax system. And this despite the fact that over the past few decades the economy and entrepreneurship in the country have been nationalized and denationalized, prices and incomes have been subject to mandatory voluntary control, attempts have been made to control industrial relations through legislative restrictions, "gentlemen's agreements" and etc. (Kozyryn A. N., 2011).

In other words, in the United Kingdom, selective administrative and legal intervention of the state in the economy is not accidental and short-term. Attempts are made here to encourage the development of certain industries, entrepreneurship, and so on. In the United Kingdom, there are clear administrative and legal mechanisms and relevant units in government business support bodies that deal with the placement of government orders in small businesses on a competitive basis.

In addition, there is a system of subcontracting, which allows large enterprises to transfer part of the orders to small enterprises. Intervention at the micro level has become a major part of the state economic strategy (Saniakhmetova N. O., 1998, p. 88). Currently, the United Kingdom conducts a fairly active budget financing of economic (related to the development of infrastructure and capacity building of certain sectors of the economy) and social programs (Krysovatyi A. I., Koshchuk T. V., 2009, p. 128).

7. On government intervention in the US economy

Government intervention in the economy is a constant rule in the history of the United States, that is the most developed country in North America (Audretsch, David B., 1989, p. 9). The state as person in state regulatory agencies (analogues of Civil Services, inspections, agencies in Ukraine) has a strong influence on the economy, which operates in the microstructures of the economy (Brody E. David, 1986, p. 3).

Strengthening the presence of the state in the United States is reflected in the signifi-

cant expansion of direct regulation of economic life, expanding the scope of state control, and in the United States new activity categories fall under state control (Samuelson Pol, 2000, p. 278, 286, 302). The United States actively uses the fiscal potential of personal tax, does not significantly expand the limits of social taxation, follow a strategy of moderate fiscal efficiency of corporate tax and does not avoid the development of property taxation. Unlike Western Europe, the United States does not consider it appropriate to set significant fiscal targets for the taxation of consumption processes. This tax structure indicates the desire of this country to fix the main tax burden on relatively well-off strata of society and at the same time create a favorable tax environment for entrepreneurship as a prerequisite for GDP growth (Krysovatyi A. I., Koshchuk T. V., 2009, p. 130).

Researchers of macroeconomic regulation of US entrepreneurship admit that until the economic and financial crisis of 2008-2010, the US market regulation mechanism was considered the most developed, because neither direct nor indirect government intervention in the economy caused undesirable deformation of the mixed economy. The functioning of the US economy is based on the "supply economy", which is characterized by the idea of the central role of the market. The state regulates the management relations of enterprises, at the same time ensures their freedom, encourages honest business activity and punishes those who ignore the rights and interests of market participants. US market self-regulation is complemented by state and is formed into a mechanism of purposeful macroeconomic regulation. All this benefits domestic entrepreneurship (Rechmen D. D., Meskon M. C., Bouvy K. L., Tyll D. V., 1995, p. 359-360).

Throughout the long history of the United States government agencies still perform numerous functions to control economic activity: issue laws against tax evasion and fictitious entrepreneurship, exercise customs control, regulate the activities of public and rail transport, monitor the implementation of labor and social security laws, set the minimum and maximum prices, regulate public works, national defense, national and local taxation, provide a minimum wage (Martin T. Farris, 1978, p. 307-312). According to the American historian A. Brinkley, in the most difficult times for US entrepreneurship, the Government intensifies its intervention in the regulation of certain sectors of the economy to prevent negative phenomena, while playing a crucial role (Brinkley A., 1997, p. 920).

Among the measures and means of administrative and legal regulation of the US market, an important place has always been occupied by the programming of the economy, which covered the development and implementation of federal and regional programs. Administrative and legal regulation of the US economy makes extensive use of monetary policy, including government procurement policy. Due to government orders, such sectors of the US economy as the nuclear, aerospace, electric power, and other industries were practically created. In the regulation of managerial relations in the United States a prominent place is occupied by fiscal policy, which is to establish a regime of state taxation and public spending, when they help to dampen economic fluctuations, promote high employment, limit inflation or mitigate stagnation (Louis Hartz, 1948, p. 362).

Direct and indirect state intervention in the economic life of the United States is based on a system of theoretically sound and proven in economic practice universal methods and leverages. It is not aimed at deforming or eliminating the system of private enterprise, the competitive environment, the foundations of a mixed economy, etc. At the same time, having the most powerful scientific and technological potential among developed countries, the United States is trying to maintain its position as a leading country. According to the American scientist M. Weidenbaum (Weidenbaum L. Murray, 1995, p. 46), the general trend of business regulation is one that continues on its upward trajectory. Both corporations and the US federal government attach great importance to the further progress of the information sector of the economy. According to American experts, efficient and effective telecommunications not only play a crucial role in the information competence of the nation, but also serve as a driving force for the growth of national wealth and, consequently, its economic potential (Shvaika L. A., 2008, p. 441).

On the example of the United States, the Ukrainian-Canadian scientist N.O. Saniahmetova. In her opinion (which we fully share), according to the ideals of classical laissez-faire capitalism, the US economy is characterized as a "mixed" system. The state has a strong influence on the economy, penetrates into the microstructure of the economy and the functioning of a successful economic system. Although, private entrepreneurs make most decisions at their own discretion, their scope is reduced, and accordingly the sphere of state influence increases (Saniakhmetova N. O., 1998, p. 95).

8. Conclusions

Taking into account the above, it is worth agreeing with the conclusions that highlight the most similar features in the foreign experience of administrative and legal influence of the state on the economy, as follows:

Firstly, the most significant of these features is the focus on the efficiency of the economy and market forces, when the degree and form

of state influence were mainly dictated by what best promotes competition in the market. This is a manifestation of international competition in most commodity markets in the world, which has an impact on public policy. In market economies, where market mechanisms and state intervention should be minimal, there is a need to use state influence in case of market failures or imperfections, in particular, the existence of monopolies, the weakness of small businesses, structurally weak industries, etc., which cause and require state aid and to some extent administrative and legal interference. Market economies have taken a variety of measures to help certain sectors of the economy, regulate the behavior of entrepreneurs, and sometimes participate in business. Typical state intervention in the economy was carried out in the form of regulation through the activities of government agencies. State regulation is justified where the free market system is unable to function effectively (for example, in the areas of consumer protection; labor protection; for the rational use of natural resources) (Saniakhmetova N. O., 1998, p. 88).

Secondly, today modern international economic relations cannot be limited exclusively to power relations between states; An important place in their system is occupied by transnational relations between non-governmental actors. As a basic system of social relations, international economic relations are regulated not only by international economic law, but also by other branches and institutions of international law (Tolochko O. N., 2013).

Thirdly, analyzing the theories of state influence on the economy and entrepreneurship, it is appropriate to take into account the fact that: "Since the regulation of the economy takes many different forms and affects by various means, it is clear that there is no single explanation of its causes and possible positive effects on the economy. State regulation of a market economy in all its manifestations covers such a large number of markets for goods and services and differs so significantly in form and volume that one theory is difficult to explain at least some of regulation cases" (Saniakhmetova N. O., 1998, p. 84-85).

These findings indirectly confirm the well-chosen data of expert economist V. Novikov which cover all the stories of economic success over the past 70 years, namely: 13 cases where during the life of one generation of GDP per capita has grown at least four times, which demonstrates the researcher-economist in the following table 1:

From this table follows another simple and obvious conclusion, which is also useful for

Table 1

Country	The period	GDP	Political regime and ideology in the country
Botswana	1960-2007	18	Multi-party liberal democracy but, in fact, a one-party system. The whole period of growth in power was one party, all presidents were its members. Resource-based economy(diamonds).
Brazil	1950-1980	4	1951-1954: the fascist regime of Vargas, 1956-1964: the democratic regime, 1964-1980: the power of military dictators.
Hong Kong	1960-1997	10	British colony.
Indonesia	1966-1997	5	Dictatorial regime with official anti-communist ideology, periodic changes in the economic policy of neoliberalism and nationalism. The collapse of the neoliberal economy in 1997.
China	1978-2019	24	One-party authoritarian system with official communist ideology, in practice — economic nationalism.
Japan	1950-1983	11	Multi-party constitutional monarchy, but the whole period of growth in power was one party.
South Korea	1960-2001	12	Until 1987 — authoritarian military rule. The first civilian president was elected in 1992, and a liberal-democratic regime has now been established.
Malaysia	1967-1997	6	A multiparty constitutional monarchy, but throughout the period of growth in power there was one coalition led by the Malay Nationalist Party.
Malta	1963-1994	9	Parliamentary democracy – in fact, bipartisan. During the period of growth, the economic policies of both parties were nationalistic.
Oman	1960-1999	9	Absolute monarchy of the medieval type (sultanate). Resource-based economy (oil).
Singapore	1967-2002	27	Formally — a multiparty democracy, in fact — a one-party authoritarian regime. During the period of growth, the head of government changed only once — in 1990.
Taiwan	1965-2002	11	Almost the entire period of growth in power was one party ("The Kuomintang"), which ideology is a mixture of nationalism and socialism. Until 1987, martial law has been declared.
Thailand	1960-1997	7	Most of the period of growth took place under a military junta.

Ukraine: economic growth does not depend on the ideology of the ruling political force, it can be equally successfully provided by communists, anti-communists, nationalists and even just military dictators who cared (which is important – the authors' note) economic growth (Novykov V., 2019), in particular, through investments of any origin (excluding, of course, criminal sources).

Thus, as a *general conclusion*, it can be argued that in foreign experience of administrative and legal influence of the state on the economy and entrepreneurship, the most characteristic feature to be considered in Ukraine is the fact that any regulation is justified where the free market system, unable to function effectively.

Accordingly, the use of legal regulation of the economy and entrepreneurship as a kind of state regulation depends on the specific area (direction) of regulation and is justified in cases where the degree and form of legal influence on the economy and entrepreneurship is justified by the fact that this influence best promotes competition.

It is also worth supporting the proposal of domestic young researchers to develop and implement a strategy for the development of high-tech industries (Chubenko V., 2019), which can be an impetus not only to the conceptual proclamation by the state of the need to develop high-tech industries, as well as to initiate effective and systematic measures of high-tech products.

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ПРО АДМІНІСТРАТИВНО-ПРАВОВИЙ ВПЛИВ НА ЕКОНОМІКУ ТА ПІДПРИЄМНИЦТВО: ПОРІВНЯЛЬНО-ПРАВОВИЙ АСПЕКТ

Анотація. Проблематика державного впливу на економіку й підприємництво активно обговорюється у професійних і наукових колах юристів та економістів будь-якої сучасної країни. Не є винятком із цього Україна. Такі відомі вітчизняні вчені, як І. Акімова, О. Беляневич, Я. Жаліло, О. Журавський, І. Запатріна, Т. Єфименко, П. Єщенко, Т. Коломоєць, А. Крисоватий, О. Рябченко, Н. Саніахметова, Д. Стеченко, В. Щербина, неодноразово намагалися виробити значущі теоретико-прикладні рекомендації щодо оздоровлення бізнес-клімату в нашій країні. За часів існування України як незалежної держави проблеми державного регулювання у сфері економіки, господарської діяльності (зокрема, підприємництва) отримували відображення в контексті наукових дослі-

джень державного впливу на економіку, правового регулювання підприємницької діяльності, реалізації державної регуляторної політики в бізнесовій сфері, окремих правових інститутів, насамперед адміністративного права (щодо адміністративних послуг, адміністративної відповідальності тощо). Окремі аспекти організаційно-правового регулювання господарської діяльності постійно перебувають під пильною увагою вітчизняних науковців. Це зокрема, стосується деяких праць О. Вінник, Т. Кравцової, В. Крикуна, В. Опришка, В. Нагребельного, А. Омельченка, Є. Петрова, С. Познякова, В. Полатая, О. Харитонової, С. Чистова, В. Фещенка, Л. Швайки та багатьох інших дослідників. Незважаючи на таку потужну увагу з боку вчених-юристів та економістів, в Україні на державному рівні практично не сформовані, не забезпечені, навіть не задекларовані дієві принципи державного впливу на економіку й підприємництво, не визначені практичні форми та методи його здійснення, а отже, не створене належне дієве правове забезпечення в цій сфері суспільного життя. Аналітично-постановочний розгляд окреслених питань і становить ***мету*** дослідження.

Методи дослідження. Роботу виконано на підставі загальнонаукових і спеціальних методів наукового пізнання.

Результати. Стаття є спробою авторів на підставі аналізу та порівняння закордонного досвіду державного впливу у сферах економіки і підприємництва продовжити, а в окремих аспектах (насамперед в адміністративно-правовій науці) запровадити дискусію, яка була би присвячена пошуку шляхів розв'язання та вирішенню науково-прикладних (а можливо, і практичних) проблем майбутнього розвитку й удосконалення державної присутності у сфері економіки та підприємництва України. У статті на прикладі Німеччини, Швеції, Фінляндії, Франції, Великої Британії та США розглядаються окремі думки вчених-юристів та економістів щодо визначення ролі держави в упорядкуванні суспільних відносин у сферах економіки та підприємництва, а також аналізується адміністративно-правовий вплив в окремих галузях суспільного життя.

Висновки. З урахуванням зробленого аналізу автори висловили власні міркування з окреслених питань та надали пропозиції щодо покращення ситуації в розглядуваній сфері.

Ключові слова: адміністративно-правовий вплив, бізнес, господарська діяльність, державне регулювання, державна регуляторна політика, державна присутність, економіка, підприємництво.

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FEATURES OF PUBLIC LEGAL RELATIONS REGARDING THE PROTECTION OF RIGHTS OF BUSINESS ENTITIES IN UKRAINE

Abstract. ***Purpose.*** The aim of the article is to distinguish features of public legal relations regarding the protection of the rights of business entities in Ukraine.

Results. The article determines that in case of violation of the rights of business entities by private persons (for example, other business entities), this dispute is subject to private law, that is, regulated by the relevant legislation and provides for a wide range of forms of its realization. At the same time, if the business entity activates its subjective right to appeal to the court, the administrative body or the very competent body on human rights, the relations between the business entity and the authority are subject to public law and are the basis of the legal category "administrative and legal protection".

Conclusions. It is formulated that the features that are inherent in these public legal relations are: a) general one – interrelation between actors of a large variety of constitutional roles, where one of the actors necessarily is the authority, effects thereof is due to the use of administrative instruments; the behaviour of the participants of interrelation normalised by legal regulations, to a greater extent provisions of administrative legislation; dynamism, capability to develop and be terminated; the presence of privileged position of one of the participants of interrelation, in particular the person over the authority, which is manifested in the right to act or omit the realization of the functions of the State, or the authority over the person in case of recognition as an objective regulatory component of such person's behaviour; they are caused by the realization of public interest; b) special ones – a special objective elements of legal relations, that is, the need to organize protection, its realization by means prescribed by the provisions of administrative legislation or the fact of violation of the rights of a business entity in Ukraine by the authority; unification within the mechanism for the protection of the rights of business entities in Ukraine of public legal relations regarding the organization of proper protection of the rights of entrepreneurs and the procedure for its realization in case of initiation of administrative and legal protection of the rights of business entities in Ukraine or the fact of violation of the rights of business entities by the authority; parallel existence of public and private legal relations regarding protection of rights of business entities in Ukraine.

Key words: protection, features, rights of business entities, private legal relations, public legal relations.

1. Introduction

Any legal relations are a form of implementing social relations. They always develop, as they arise on the basis of relevant legal provisions. Such provisions are established and provided by the State and are in constant dynamics (Danylenko, 2021, p. 12). All business legal relations, in particular those regarding the protection of the rights of business entities, are comprehensive and include both public-legal and private legal elements (Biriukov, 2013, p. 56). The main question is what ratio between them.

Peculiarities of entrepreneurial activity and the essence of public legal relations are sufficiently studied in scientific research. In particular, significant scientific developments have been made by such scientists as: O. Banchuk, V. Bevzenko, I. Berestova, V. Biriukov, A. Danylenko, O. Krupchan, O. Kharytonova, N. Khliborob, Yu. Tsvirkun, and others. However, the proposed consideration of this issue has not been under focus of their scientific studies, that is, they are still not regulated and some of its provisions need further research.

The aim of the article is to distinguish features of public legal relations concerning the protection of the rights of business entities in Ukraine.

2. Specificities of public and private relations

According to I. Berestova (Berestova, 2019), it is the person, his/her life and health, honour and dignity, immunity and safety as the highest social value of the state is the sole purpose of law. At the same time, public and private law is not a purpose, but is a different means of achieving it. The main task of private law and public law is an enabling environment for the most complete self-realization of the interests of society, individuals and their satisfaction by the State. Additional goals are formed and implemented in practice by functions that are necessary homogeneous, expedient areas of private and public law, caused by the necessity to satisfy objective needs of society, separate interests of the State. Public law should ensure full realization of private law without distorting it. However, without public law, private law is insufficiently effective or even ineffective (Bakaeva, 2010, pp. 20-21).

The consideration of the issue on the nature of public and private law has led to the formation of two areas in legal science: one of them is based on the well-known Ulpian's sentence (Publicum jus est, quod ad statum rei romanae spectat, privatum quod ad sintgulorum utilitatem pertinet) and derives from the difference in goals and interests subject to legal protection, while the second is based on the principle of inadmissibility of changing public legal provisions by private agreements, also presented by Roman lawyers (Publicum jus pactis privatorum mutari non potest) and derives from the difference in the nature of provisions or in the subject of will affected by the violation of private and public rights (Ioffe, 1949; Kharytonova, 2002, p. 36).

The scientist O. Banchuk argues that during the delimitation of public and private relations it is necessary to take into account a number of features. Among these criteria, the scientist identifies the following: 1) difference between the parties to relations – public relationship requires that a participant must be a person involved in them for the purpose of exercising public authorities granted to him/her. However, it is important that the public authority exercises its powers in these relations; 2) the difference in the legal status of the participants of the relations – in public legal relations a certain party (private persons or lower public authorities) is subordinate to another authority. Subordination is manifested in the ability of the authority in the course of exercising its powers to solve the question of the rights and duties of the person who participates in legal relations; 3) difference in the content of legal relations – in public relations their participants may commit such actions and fulfil their duties only in the manner expressly provided for in law; 4) the difference in the forms of protection of rights – public legal relations (criminal and administrative), due to subordination of private persons to the will of the authorities, realized in public authorities, should be considered by the court in view of the comprehensive protection of the rights of the actually weaker party in relations (private person); the nature of dominant interest in relations – in public and legal relations the interests of the State, the people, the national minority, the territorial community, individual persons may be expressed (Banchuk, 2011, pp. 145-148).

Accordingly, public law regulates relations through imperative orders, which cannot be changed by any individual's private will. The imperative method determines the nature of the relationship, one of the parties thereof is the public authority. In public-legal relations, all is subordinated to the will of State power. And the ability of the State body to exercise powers is an important feature of the latter. However, this ability is practical, provided it becomes an exercise of these powers to fulfil the duties of the authority (Tsvirkun, 2013, p. 25).

It should also be taken into account that these relations may arise both between the authority, on the one hand, and legal, physical persons, on the other, and between two authorities (Khliborob, 2010). In particular, according to O. Kharytonova, two main types of public legal relations can be identified: those that directly express the basic formula of the managerial influence of the "actor – object", in which the power of administration is manifested, are relations of authority-subordination; and those which are outside the direct imperious influence of the actor on the object, but are organically related to its implementation. They are an organizational prerequisite for the emergence of power relations. Sometimes these legal relations are called subordination and coordination, while the latter reject the existence of authoritarianism inherent in public law. Nevertheless, this is not quite true, because coordination is a part of the legal power manifestations of public authority. In addition, a large number of public legal relations arise between the parties not directly subordinated. But in these cases, one of the parties, due to its competence, is entitled to issue legal regulations, binding for the party, organizationally not subject to the authority. For example, this is typical for inter-branch management relations. In addition, public authorities may issue binding regulations addressed to citizens, public organizations, etc., not directly subordinated to them. Regardless of the nature of the subordination, the main feature of public legal relations remains – the legal inequality of the parties,

the legal dependence of one party on another, which is conditioned by the legal powers necessary to resolve one or the other issue of one party – the public authority (Kharytonova, 2002, pp. 42-43).

Therefore, public legal relations are governed by legal regulations, to a greater extent by the provisions of administrative legislation, interrelation between parties of different constitutional roles, where one of the parties necessarily has powers that represent the exercise of functions of the state for the provision, realization, protection of public interest.

3. The essence of public relations to protect the rights of business entities

With regard to the essence of public legal relations of protection of rights of business entities, it should be noted that, in our opinion, it is their dualistic nature, where, on the one hand, its content is determined by the necessity of protection of rights of entrepreneurs, and on the other, by the procedure for its realization in case of: a) initiation of administrative and legal protection of the rights of business entities in Ukraine; b) the existence of a violation of the rights of a business entity by the authority.

In order to justify the above, it is necessary to focus on the formulation of Art. 20 of the Economic Code of Ukraine, namely: "The State provides protection of rights and legitimate interests of business entities. Considering that the provisions of civil and economic law regulate exclusively private legal relations, it can be stated that the protection of the rights of the entities under study is a public sector. In this case, unequivocally public legal relations should be considered, and more precisely their first type – public legal relations concerning the organization of proper protection of the rights of entrepreneurs in Ukraine. That is, the administrative activity of the public authorities related to proper protection of the rights of entrepreneurs in Ukraine is the basis for its practical realization in the appropriate manner.

It should be considered that in case of violation of the rights of business entities by private persons (for example, other business entities), this dispute is subject to private law, that is, regulated by the relevant legislation and provides for a wide range of forms of its realization. At the same time, if the business entity activates its subjective right to appeal to the court, the administrative body or the very competent body on human rights, the relationship between the business entity and the authority is subject to public law and is the basis of the legal category "administrative and legal protection."

In addition, the relations where both the dispute over the law and the procedure of its resolution are public should be considered. This is particularly true if the public authorities violate the rights of entrepreneurs (regulatory, supervisory or by other actions), while other authorities directly protect them.

4. Conclusions

The analysis conducted makes it possible to state that public legal relations regarding the protection of the rights of business entities in Ukraine have features that are inherent in all public legal relations: the presence of privileged position of one of the participants of interrelation, in particular the person over the authority, which is manifested in the right to act or omit the realization of the functions of the State, or the authority over the person in case of recognition as an objective regulatory component of such person's behaviour; they are caused by the realization of public interest;

– interrelation between actors of a large variety of constitutional roles, where one of the actors necessarily is the authority, effects thereof is due to the use of administrative instruments;

– the behaviour of the participants of interrelation normalised by legal regulations, to greater extent provisions of administrative legislation;

– dynamism, capability to develop and be terminated;

– the presence of privileged position of one of the participants of interrelation, in particular the person over the authority, which is manifested in the right to act or omit the realization of the functions of the State, or the authority over the person in case of recognition as an objective regulatory component of such person's behaviour;

– they are caused by the realization of public interest.

Specificity of legal relations under analysis is determined by special features, such as:

– special objective elements of legal relations, that is, the need to organize protection, its realization by means prescribed by the provisions of administrative legislation or the fact of violation of the rights of a business entity in Ukraine by the authority;

– unification within the mechanism for the protection of the rights of business entities in Ukraine of public legal relations regarding the organization of proper protection of the rights of entrepreneurs and the procedure for its realization in case of initiation of administrative and legal protection of the rights of business entities in Ukraine or the fact of violation of the rights of business entities by the authority;

– parallel existence of public and private legal relations regarding protection of rights of business entities in Ukraine.

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ОЗНАКИ ПУБЛІЧНИХ ПРАВОВІДНОСИН ЩОДО ЗАХИСТУ ПРАВ СУБ'ЄКТІВ ПІДПРИЄМНИЦЬКОЇ ДІЯЛЬНОСТІ В УКРАЇНІ

Анотація. ***Метою статті*** є виокремлення ознак публічних правовідносин щодо захисту прав суб'єктів підприємницької діяльності в Україні.

Результати. У статті визначено, що в разі порушення прав суб'єктів підприємницької діяльності приватними особами (наприклад, іншими суб'єктами господарювання) цей спір є приватноправовим, регулюється відповідним законодавством та передбачає досить широке коло форм його реалізації. Водночас якщо суб'єкт підприємницької діяльності активізує своє суб'єктивне право на звернення до суду, адміністративного органу чи безпосередньо органу правозахисної компетенції, відносини між суб'єктом підприємницької діяльності та суб'єктом владних повноважень є публічно-правовими, а також основою правової категорії «адміністративно-правовий захист».

Висновки. Обґрунтовано, що цим публічним правовідносинам притаманні загальні та спеціальні ознаки. Загальними ознаками є: а) наявність зв'язку між суб'єктами здебільшого різної конституційної ролі, де один із суб'єктів обов'язково має владні повноваження, реалізація яких має свій вияв у застосуванні ним інструментів адміністративної діяльності; б) урегульованість поведінки учасників взаємозв'язку правовими актами, здебільшого нормами адміністративного законодавства; в) динамічність, здатність до розвитку та припинення; г) наявність привілейованого становища одного з учасників взаємозв'язку порівняно з іншим, зокрема особи над суб'єктом владних повноважень, що проявляється в наявності права вимоги щодо вчинення чи утримання від дій, які репрезентують реалізацію функцій держави, або суб'єкта владних повноважень над особою в разі визнання об'єктним складником регулювання поведінки такої особи; ґ) зумовленість реалізацією публічного інтересу. Натомість спеціальними ознаками публічних правовідносин є: а) особливий

об'єктний склад правовідносин – необхідність організації захисту, його здійснення засобами, передбаченими в нормах адміністративного законодавства, чи наявність факту порушення прав суб'єкта підприємницької діяльності в Україні суб'єктом владних повноважень; б) об'єднання в межах механізму забезпечення захисту прав суб'єктів підприємницької діяльності в Україні публічних правовідносин щодо організації належного захисту прав підприємців та процедури його здійснення в разі ініціації адміністративно-правового захисту прав суб'єктів підприємницької діяльності в Україні або наявності факту порушення прав суб'єкта підприємницької діяльності суб'єктом владних повноважень; в) паралельне існування публічних і приватних правовідносин щодо захисту прав суб'єктів підприємницької діяльності в Україні.

Ключові слова: захист, ознаки, права суб'єктів підприємницької діяльності, приватні правовідносини, публічні правовідносини.

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SPECIAL PRINCIPLES FOR MAKING PUBLIC POLICY ON FIREARM CIRCULATION IN UKRAINE

Abstract. The relevance of the article is the fact that the principles for making public policy on firearm circulation in Ukraine are a set of basic (fundamental) ideas, which contribute in a comprehensive manner to the legitimate, optimal and effective public policy-making in this field in a State that is legal, democratic and social. ***The aim of the article*** is to form a relevant scientific understanding of the nature and system of special principles for making public policy on firearm circulation.

Results. The importance of the principles for making public policy on firearm circulation derives from the fact that they are a complex, mutually agreed system, since the operation of a system of principles of law implies two levels (orders) of system relations: external or environmental (forward and backward) and internal (i.e., within a system of principles of law). The principles under study are considered as a set of individual sectoral (administrative and legal) and certain basic ideas of public administration, which together contribute to the legitimate, optimal and effective public policy-making in the field of firearm circulation in Ukraine as a legal, democratic and social State.

Conclusions. The system of special principles for making public policy on firearm circulation today involves the following principles: 1) openness and transparency; 2) harmonious consistency (non-conflict); 3) objective justification; 4) scientific soundness and harmonization (unity) of theory and practice; 5) reality and completeness; 6) planning and predictability; 7) rationality and efficiency; 8) relative flexibility and timeliness; 9) constancy. Today, in Ukraine, there is no special legislative act on arms trafficking in the country, and therefore, it is necessary to create and adopt a bill on arms trafficking, which will contain an article on a set of principles of arms circulation, which will apply to the formation and implementation of state policy sphere.

Key words: public policy on firearm circulation, firearms, firearm circulation, legal principles, implementation of public policy, special principles, public policy-making.

1. Introduction

The principles for making public policy on firearm circulation in Ukraine are a set of basic (fundamental) ideas, which contribute in a comprehensive manner to the legitimate, optimal and effective public policy-making in this field in a State that is legal, democratic and social. The importance of the principles for making public policy on firearm circulation derives from the fact that they are a complex, mutually agreed system, since "the operation of a system of principles of law implies two levels (orders) of system relations: external or environmental (forward and backward) and internal (i.e. within a system of principles of law). Internal system relations can be classified in genetic, structural (construction relations), coordination, subordination and confrontational ones" (Zakharova, 2009, p. 9). In other words, the principles for making public policy on firearm circulation facilitate the implementation of the relevant processes in accordance with objective and fundamental rules, which prevent actors of the law to make public policy to the detriment of the individual, society and the State.

Among these basic ideas, the special principles for making public policy on firearm circulation are of particular significance, because them comprehensively detail the basic ideas of general law (the principles of the rule of law, humanitarianism, justice and legal equality, legality and the inevitability of liability) in accordance with the actual needs of the sector in question. The importance of these principles is grounded on the fact that their totality is determined by separate sectoral (administrative and legal) principles and principles of public administration. Therefore, it should be noted that a comprehensive study of current special principles for making public policy on firearm circulation in Ukraine is required for practice.

2. Theoretical justification of the problem

Despite the importance of special principles for making public policy on firearm circulation in Ukraine, it should be noted that this issue has not yet been studied by domestic and foreign administrative law experts. In addition to this, the essence of the sectoral (administrative and legal) principles and principles of public administration have already been under focus of P.D. Baranchyk, M.V. Dzhafarova, Ye.A. Myronenko, N.D. Petrushyna, S.V. Potapenko, A.A. Pukhtetska, I.B. Stakhura, Yu.M. Frolov, A. Sharaia, A.M. Shkolyk, and other scientists. The scientific findings of these and other scientists confirm the actual possibility to distinguish and theoretically define the essence of special principles for making public policy on firearm circulation, taking into account the legal nature and legal content of this type of public policy, as well as the specificities of making this policy.

Consequently, the aim of this research is to form a relevant scientific understanding of the nature and system of special principles for making public policy on firearm circulation. This aim will be achieved by implementing *tasks* as follows: 1) To define the concept of "special principles for making public policy on firearm circulation in Ukraine"; 2) To outline the structure of the principles being studied and to analyse the requirements, established by these principles for the proper course of making public policy in this field; 3) To summarize the results of the study.

3. Formation of principles of realization of the state policy in the field of arms circulation in Ukraine

The special principles for making public policy on firearm circulation are a set of individual sectoral (administrative and legal) and certain basic ideas of public administration, which together contribute to the legitimate, optimal and effective public policy-making in the field of firearm circulation in Ukraine as a legal, democratic and social State. Therefore, the group of principles includes fundamental ideas such as:

1) The principle of openness and transparency in making public policy on firearm circulation in Ukraine. In our study, the rationale for considering the principle of openness and the principle of transparency as a generalized fundamental idea is in the fact that the principles of transparency and openness should be mutually agreed upon, since without transparency as citizens and their collectives' adequate awareness of the conditionality and content of the activities of public authorities" in corresponding field no conscious and effective public influence on these activities can be" (Lopushniak 2010, p. 76). Consequently, the principle of openness and transparency in the context of the issue under consideration requires at least the following:

a) Making public policy on firearm circulation in Ukraine provides for the possibility for citizens (their associations) to carry out the active actions, not prohibited by law, related to determining the form (scope) and content of such policy, as well as its implementation specificities;

b) The process of making public policy on firearm circulation in Ukraine should be fully regulated at the level of national legislation, namely, involve the rules and standards in respect of: sufficient grounds and a (positive and negative) enabling environment for public authorities' actions related to making such public policy in this field; methods (expertise) for carrying out actions (decision-making) related to making public policy in this field; a set of criteria for the sufficiency of forming public policy under study, as well as the efficiency (rationality) of its implementation; legal effects of carrying out actions (decision-making), aimed at making public policy in question; legal effects of improper (unlawful) actions (decision-making) related to making public policy; the possibility of participation by citizens (their associations) at the various stages of making public policy in this field;

c) All citizens should be informed of all the processes related to making public policy on firearm circulation and must be aware of their rights and obligations with regard to the circulation and use of firearms;

2) The principle of harmonious (non-conflict) consistency in making public policy on firearm circulation in Ukraine. As is well known, making all public policies (public policy under study is no exception): a) should not harm making other public policies; b) should be consistent with other public policies, especially with security policies (in different sectors of public life, including law enforcement), economic (including budget) and social policies; c) be comprehensive (non-fragmentary) and shall be implemented in a coherent manner at all levels at which it is objectified and in all vectors within the same level; d) should not be contrary to the public interest or to the common good in society (first of all, it means that actions (decisions), aimed at making public policy on firearm circulation may not call into question the constitutional order in the State, the highest social value in the State, the national security of the State, etc.);

3) The principle of objective justification for making public policy on firearm circulation in Ukraine. This fundamental idea derives conceptually from the previous one and requires that,

in practical reality, the actions (decisions) by Parliament, public administrators (including the actors of civil society) always be conducted (made) exclusively: a) in compliance with the requirements of Article 19 of the Constitution of Ukraine, which provide for: the process of law-making, that is, preparation, elaboration, adoption (by: adopting a new provision; amending an existing one; finding the legal regulation or its individual provision null and void) and the formal promulgation of the relevant legal provision, which is based on the knowledge of objective social needs and interests of society" (Gladkii, 2016, p. 1); processes of compliance with and implementation of the results of law-making in practice; b) when these actions (decisions) are objectively required and inaction (failure to make these decisions) prevent the proper realization of the objective of public policy on firearm circulation in Ukraine (scientists also call this requirement "social necessity" of actions, which is "a certain problem or an 'acute issue' in Ukrainian society that today require a solution") (Pochtovyi, 2009, p. 7); c) when the relevant actions (decisions) of public authorities are based fully on real (and verified) data that constitute a sufficient ground and/or condition for carrying out (making) those actions (decisions);

4) The principle of the scientific soundness and harmonization (unity) of theory and practice in making public policy on firearm circulation in Ukraine. Making strategies and plans for the development of legislation on firearm circulation in the State, as well as the making and adopting laws in this field, institutional changes in the mechanism of firearm circulation, as well as the functioning of the mechanism, require relevant actions (decisions) to be directly based on the practical and relevant scientific thinking of domestic and foreign legal experts in administrative law. This is a general requirement of scientific soundness. Therefore, the relevant principle requires, at least, the following:

a) Making public policy on firearm circulation in the State should take into account the current scientific thought on issues related to firearm circulation. According to scientists, an important part of the principle of scientific soundness is "the broad, as much as possible, involvement of scientists in the discussion and justification of particular legislative provisions, especially those that determine the conceptual basis of the process construction" (Loboiko, 2016, p. 44);

b) Any amendments of the regulations governing firearm circulation in Ukraine should be consistent with the extent to which such amendments are scientifically justified. This is extremely relevant, since nowadays, in our State, frequently the conclusions on the draft laws of Ukraine by the Central Scientific Experts Office, as well as the comments on the draft laws by the Main Legal Department are ignored and the draft legislation is adopted in the form that these actors consider to be scientifically unjustified, contradictory, irrelevant, declarative, etc., that calls into question the efficiency of the relevant changes, as well as the development of Ukraine as a modern State governed by the rule of law;

5) The principle of the reality and completeness of making public policy on firearm circulation, which requires making public policy on firearm circulation to meet all objective public needs for firearm circulation (as well as in respect of prevention of threats that have not yet emerged) and should genuinely address them. In this context, the relevant decisions of public authorities should not be declarations, as well as their actions should not be imitations of public administration;

6) The principle of planning and predictability of making public policy on firearm circulation in Ukraine. This principle requires making public policy in question to be practically planned, thus predictable (in terms of manifestations, effects) and controllable (the actor of monitoring can, on the basis of plans, strategies and evidence, form a control assessment of making public policy), as well as can prevent the risks in the field of firearm circulation and minimize the negative impact of those risks, which cannot be eliminated;

7) The principle of the rationality and efficiency of making public policy on firearm circulation in Ukraine. Taking into account scientific understanding of the essence of concepts "rationality" (Korablova 2011, p. 12; Stasenko, 2015, p. 173) and "efficiency" (Hindes 2011, p. 3; Hontareva, 2019, pp. 27-45) we argue that this special fundamental idea requires: a) the processes of making public policy on firearm circulation in Ukraine to be carried out according to an objective logic, that is, their required (planned) results should be consistently achieved with the minimum effort (means) and/or using the optimal set of such efforts (means); b) making public policy on firearm circulation should have effects that genuinely address current problems (precedes certain problems in the field concerned), rather than imitate the activities of the State or justify expenditures from the State budget, etc.;

8) The principle of relative flexibility and timeliness in making public policy on firearm circulation in Ukraine, which requires: a) the change (repeal) of the forms and instruments for making public policy on firearm circulation to be as flexible as possible and as

required by the timeliness of appropriate adjustments at a certain stage of society; b) the flexibility of such changes to be relative, that is, they should not cause changes in the course of making this type of public policy, when the mechanism for firearm circulation does not require them; c) the process of making such public policy to take place in the light of current factors, which demand it, or the facts, which reveal the need to prevent real threats to the functioning of the mechanism for making public policy on firearm circulation in the future;

9) The principle of constancy of making public policy on firearm circulation, which requires: a) actions (decisions) of the public policy makers to be evaluated in relation to the actions (decisions) already implemented (made) and planned actions (decisions) that have been implemented (made) and are planned to be implemented (to be made); b) public policy-making to be sustainable in the static and dynamic manifestation of these processes.

4. Conclusions

In view of their social and legal significance, the special principles for making public policy on firearm circulation in Ukraine are aimed holistically at ensuring successful (effective, rational, predictable, required) development of processes and relations in the field of firearm circulation in the State, conducting management of public policy makers and/or implementers in this field, in the process of which the tasks and the goal of the phenomenon under study are achieved. The importance of the principles revealed in this scientific article requires their list to be legislated (taking this into account, their implementation will be ensured by the requirements of the principle of legality: "an abstract idea, which expresses the principle of generally binding law, which complies with the legality" (Muravenko, 2012, p. 383). However, it should be noted that Ukraine still does not have a special legal regulation on the circulation of weapons in the State, and therefore, a draft law on the circulation of firearms should be made, adopted and include an article providing for a set of principles for firearms circulation that will govern processes of making public policy in this field.

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СПЕЦІАЛЬНІ ПРИНЦИПИ ФОРМУВАННЯ ТА РЕАЛІЗАЦІЇ ДЕРЖАВНОЇ ПОЛІТИКИ У СФЕРІ ОБІГУ ЗБРОЇ В УКРАЇНІ

Анотація. Актуальність статті полягає в тому, що принципи формування й реалізації державної політики у сфері обігу зброї в Україні є комплексом базових (засадничих) ідей, які сукупно сприяють законному, оптимальному та ефективному формуванню й реалізації державної політики в зазначеній сфері в державі, котра є правовою, демократичною та соціальною. ***Метою статті*** є формування актуальної наукової думки щодо сутності та системи спеціальних принципів формування й реалізації державної політики у сфері обігу зброї в Україні.

Результати. Важливість принципів формування й реалізації державної політики у сфері обігу зброї зумовлена тим фактом, що вони являють собою складну, взаємоузгоджену систему, оскільки функціонування системи принципів права передбачає виникнення системних зв'язків двох рівнів (порядків): зовнішніх зв'язки, або зв'язків із середовищем (прямих і зворотних), та внутрішньосистемних зв'язків, тобто зв'язків усередині системи принципів права. Досліджені принципи тлумачать як сукупність окремих галузевих (адміністративно-правових) і певних засадничих ідей публічного адміністрування, що сукупно сприяють законному, оптимальному й ефективному формуванню та реалізації державної політики у сфері обігу зброї в Україні як правовій, демократичній і соціальній державі.

Висновки. Встановлено, що систему спеціальних принципів формування та реалізації державної політики у сфері обігу зброї в Україні сьогодні становлять такі принципи: 1) відкритості та прозорості; 2) гармонійної узгодженості (неконфліктності); 3) об'єктивної виправданості; 4) наукової обґрунтованості та узгодження (єдності) теорії і практики; 5) реальності та повноти; 6) плановості та очікуваності; 7) раціональності й ефективності; 8) відносної гнучкості та своєчасності; 9) постійності. На сьогодні в Україні відсутній спеціальний законодавчий акт про обіг зброї в державі, а відтак необхідне створення та прийняття законопроєкту про обіг зброї, у якому буде міститися стаття, присвячена комплексу принципів обігу зброї, що поширюватимуться на процеси формування й реалізації державної політики в зазначеній сфері.

Ключові слова: зброя, обіг зброї, державна політика у сфері обігу зброї, правові принципи, реалізація державної політики, спеціальні принципи, формування державної політики.

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SOME SPECIFIC FEATURES OF THE GUILT OF A TAXPAYER UNDER THE TAX CODE OF UKRAINE

Abstract. ***Purpose.*** Clarification of the content of the taxpayer's guilt as one of the elements of tax offenses and as one of the conditions for brining to financial responsibility in the cases provided for by the Tax Code of Ukraine.

Research methods. In preparing the work, there were used both general scientific (analysis, synthesis) and special (historical-legal, comparative-legal) methods of scientific research.

Results. The study analyzes the concept of guilt in the contemporary theory of law and establishes that the guilt of a taxpayer in tax law is consistent with the concept of behavioral (objective) guilt. It is emphasized that evidence of guilt in committing a tax offense is a possibility for the taxpayer to comply with the rules and regulations for the violation of which the Tax Code of Ukraine provides for liability, but the failure to take sufficient measures to comply with acts that can be classified as unreasonable, unfair and negligent, upon proving this fact by the supervisory authority. There are also analyzed the preconditions of legislative consolidation of valuation concepts, which are the criteria for proving the taxpayer's guilt by the controlling body. The use of the concepts of reasonableness, good faith, due diligence in judicial practice is studied.

Conclusions. Guilt as an element of a tax offense is expressed in the model of the offender's behavior and characterizes his actions as the failure to meet the established criteria in specific cases provided for by the Tax Code of Ukraine, which is consistent with the concept of behavioral (objective) guilt. When proving the guilt of a taxpayer by the controlling body, the objective circumstances of the tax offense are important, not the subjective attitude of the taxpayer to the committed offense. The combination of the interrelated concepts of "reasonableness", "good faith", and "due diligence" is the basis for the supervisory authority's conclusion as to whether the taxpayer has taken sufficient measures to prevent the committing of an offense when proving his guilt.

Key words: taxpayer's guilt, guilt concepts, reasonableness, good faith, due diligence.

1. Introduction

With the entry into force of the relevant amendments to the Tax Code of Ukraine (TCU) as of January 1, 2021, it was introduced a taxpayer to be held financially liable for tax offenses if there is guilt in his actions in the cases provided by the TCU. In particular, paragraph 109.1 of Art. 109 defines a tax offense as an illegal, guilty (in cases expressly provided by the TCU) act (action or failure to act) of the taxpayer (including persons equated to it), regulatory authorities and/or their officers (officials), other subjects in cases expressly provided by the TCU. Paragraph 109.3 of Art. 109 of the TCU provides a list of cases in which the establishment by the supervisory authorities of the guilt of a person is a necessary condition for bringing him/her to financial responsibility for committing a tax offense.

Until January 1, 2021, para. 109.1 of Art. 109 of the TCU defined tax offenses as "illegal acts (action or inaction) of taxpayers, tax agents

and/or their officials, as well as officials of regulatory authorities, which led to non-compliance or improper compliance with the requirements of this Code and other legislation, control in compliance with which is entrusted to the supervisory authorities".

Comparison of both versions of para. 109.1 of Art. 109 of the TCU permit us to conclude that their main difference in the definition of "tax offense" is the introduction of such a component as the **guilt** of a taxpayer.

Thus, until January 1, 2021, the domestic tax legislation provided for liability without establishing the guilt of a taxpayer (as a mandatory element of the tax offense in the cases provided), which led to the application of financial sanctions in case of proof of the offense. However, some scholars believe that innocent liability is directly contrary to the goals, functions, and principles of legal responsibility. Thus, innocent responsibility creates in citizens disrespect for the law and relevant public authorities (Basin, 2006).

Guilt is the basis of legal responsibility, but, despite this, there is no unity in the legal doctrine on the definition of this concept. Its content remains the subject of debate among many scholars in various fields of law. Guilt is a complex and multifaceted phenomenon that can be considered as a philosophical, psychological, sociological and ethical-legal problem. Many domestic and foreign scholars and practitioners (L. Voronova, O. Gedziuk, T. Gubanova, D. Getmantsev, A. Ivansky, M. Kucheryavenko, S. Lawsky, O. Muzyka-Stefanchuk, A. Polyanychko, E. Smychok, R. Usenko, M. Fedorov, R. Khanova, and others) devoted their works to the study of guilt in tax relations, but a significant number of aspects remain controversial and unresolved even today.

Consequently, the **purpose** of this publication is the clarification of the content of the taxpayer's guilt as one of the elements of tax offenses and as one of the conditions for enforcing the financial responsibility in the cases provided for by the Tax Code of Ukraine. This involves studying the concepts of guilt in the theory of law using general scientific (analysis, synthesis) and special (historical-legal, comparative-legal) methods of scientific research.

2. The concept of guilt in legal science

In the theory of law, there are several concepts of guilt: normative, evaluative, psychological, dangerous state, behavioral (objective guilt), behavioral-psychological (objective-subjective), and so on. The science of criminal law most greatly developed the study of guilt that influenced the approaches to determining the institution of guilt in other branches of legal science.

V. Zhernokuy notes that the concept of guilt can be generally reduced to two approaches. The first (psychological) consists of the views of those scientists who understand guilt as a "mental attitude of a person to their illegal behavior." The second approach involves behavioral theory according to which an abstract model of expected behavior in a particular situation of a reasonable and conscientious participant should be used to determine guilt (Zhornokui**,** 2020, p. 161). In the post-Soviet countries, the concept of behavior (the concept of objective guilt) is studied mainly by representatives of the civil law science. According to this approach, guilt is considered not as a special mental attitude of the individual, but as an objective category. Its supporters argue that the guilt is the failure to take measures to prevent adverse consequences of their own behavior (Braginskij, Vitryanskij, 1998, pp. 582–613).

Some scholars believe that the characterization of guilt as a person's mental attitude to the act is one-sided, so there is a need to find other approaches to defining the concept of "guilt" (Halkevych, 2017, pp. 109–110). The understanding of guilt as a person's mental attitude to the act does not meet the needs of evolving legislation and law enforcement practice, it cannot be viewed as general in all branches of law, neither can it be applied to legal entities, so it is necessary to develop a different, general theoretical approach to characterizing this concept (Yurchak, 2016). Another significant disadvantage of the psychological theory of guilt is that, interpreting guilt as a mental attitude, its representatives actually identify guilt as a legal category with the concept of guilt in psychology, i.e. implement the concept taken from psychology "guilt-emotion" (attitude) with its inherent subjectivism in the categorical apparatus of the legal science (Zhornokui**,** 2020, p. 161).

The understanding of guilt acquires special significance in the context of liability of legal entities. This aspect provoked heated discussions among Soviet scholars, representatives of the general theory of law, as well as civil and administrative law. In particular, the impossibility of practical application to organizations of "psychological" understanding of guilt under civil and administrative law was one of the prerequisites for the application of "behavioral" concept of guilt, which was supported, in particular, by B.I. Puginsky in the 1970s (Puginskij, 1979, pp. 63–70). Today, some scholars argue that the most acceptable, consistent, logical approach is to understand the guilt of legal entities on the basis of a behavioral concept that can be applied in civil, tax, administrative and other areas of law (Samylov, 2013, p. 171).

3. The concept of behavioral (objective) guilt and specific features of the taxpayer's guilt

The so-called objective approach to determining guilt (the concept of objective guilt or behavioral concept) is inherent in Anglo-American and continental law, as well as international commercial law (Karnaukh, 2014, p. 104). An analysis of the special literature shows that in common law and in German law, the concept of objective guilt dominates in legal practice, in particular, in the administration of justice (Lahe, 2001, p. 130). However, the use of the word "guilt" is not common, instead the term "negligence" is preferred, although the legal reference literature consideres the terms "guilt" and "negligence" as synonymous (Black's law dictionary, 1991, p. 421).

A. Karnaukh, having thoroughly studied guilt as a condition of tortious liability in the countries of the Anglo-American legal family, points out that the philosophical basis and starting point of the legal interpretation of guilt in Anglo-American jurisdictions is the assertion that guilt is legally different from guilt in the moral and ethical sense. A person cannot judge another person, he can only condemn his/her actions (Karnaukh, 2011, p. 530).

Based on such philosophical origins, British scholars note that guilt is a deviation from the standard of good behavior, not a mental attitude to action (Tunc, 1983, pp. 63–86). For example, J. Fleming emphasizes: "We must assume that guilt is not a mental attitude, but a way of behavior that does not meet the appropriate standard set in society" (Fleming, 1992, p. 105). In the law of Great Britain and the USA, such standard of prudence, which should be the purpose of behavior, is considered "behavior of the reasonable man". An intelligent person is an abstract concept used by judges, comparing the behavior of each individual defendant with the standard of behavior of this abstract intelligent person. This is the so-called test, in which the main answer to the question: "How would a reasonable person behave in this situation?" (Howarth, 1995, p. 37). For example, in the United States, a taxpayer is exempt from liability if there is evidence that he or she has taken the appropriate precautions and prudence in the conduct of business, that is, the conformity of a pattern of conduct chosen by a reasonable person. Thus, the violation of the law occurred in circumstances beyond the control of the taxpayer. Reasonableness of behavior and good faith for these purposes is determined separately in each case (Lawsky, 2009, p. 104). In other words, guilt is seen as failure to take the precautions that a reasonable person would resort to under the same circumstances.

The Tax Code of Ukraine does not contain the concept of "guilt", but para. 112.2 of Art. 112 of the TCU states that a person is considered guilty of an offense if it is established that he/she had a possibility to comply with the rules and regulations for violation of which the TCU makes liable, but did not take sufficient measures to comply with them. The measures taken by the taxpayer to comply with the rules and regulations of tax law are considered sufficient if the supervisory authority does not prove that by performing certain actions or inaction for which liability is provided, the taxpayer acted unreasonably, in bad faith and without due diligence.

In otjer words, the possibility for a taxpayer to comply with the rules and regulations for which the TCU makes liable, but failure to take sufficient measures to comply with them through acts that may be classified as unreasonable, unfair and without due diligence, provided the control body proves committing a tax offense.

A. Polyanychko notes that guilt as an element of a tax offense is a form of behavior of the offender. This understanding of guilt in tax law is radically different from the content of the concept of guilt as an institution of criminal law. The key to criminal law is to understand whether a person was aware of the nature of his action and whether he/she foresaw or could have foreseen its consequences. Instead, the presence of guilt in committing a tax offense is determined by the external features of the act itself and does not require clarification of the mental attitude of the person to his actions. Thus, guilt in tax law is an element of the objective part of the composition of the tax offense, not its subjective part (Polianychko, 2021).

Thus, the analysis of the TCU norms states that guilt as an element of a tax offense is expressed in the model of the offender's behavior and characterizes his/her actions as not meeting the established criteria in specific cases provided for by the TCU, consistent with the concept of behavioral (objective) guilt. According to the TCU, the guilt of the taxpayer is determined by the objective part of the tax offense, so when proving it by the supervisory authority, the objective circumstances of the tax offense are important, not the subjective attitude of the taxpayer to the offense.

4. Criteria for proving the taxpayer's guilt by the controlling body

It should also be noted that the TCU enshrines valuation concepts (interpretation of these concepts is not provided in the TCU), which are the main criteria when proving the taxpayer's guilt as one of the mandatory conditions for bringing him/her to financial respon-

sibility in the TCU cases. The set of interrelated evaluative concepts of "reasonableness", "good faith", "due diligence" is the basis for concluding whether the taxpayer has taken sufficient measures to prevent committing of an offense (having a possibility to comply with rules and regulations), but only conclusion is not enough, the supervisory authority is obliged to provide convincing evidence of guilt.

Legislation of such vague concepts as "sufficient measures", "reasonableness", "good faith" and "due diligence" gives the supervisory authorities the power to assess the taxpayer's actions at their discretion, based on specific circumstances, which, in turn, will provide some flexibility of the tax legislation and is designed to prevent abuse by taxpayers.

According to M. Kucheryavenko, discretion in the tax regulation is a complex and multifaceted phenomenon. The main factors that determine the existence of several behaviors of the subjects of tax relations are the nature and content of tax law, the specifics of the terminology of tax law, the presence of conflicts of tax law and valuation concepts in the content of the latter (Kucheriavenko, 2017, p. 41).

Evaluative concepts in their interpretation by the controlling body each time acquire a specific meaning, are filled with meaning and are an important manifestation of discretion. The presence of assessment categories in the tax norms significantly strengthens the discretionary powers of tax authorities and courts. The open, i.e. deliberately incomplete structure of the evaluation concept allows the law enforcer to supplement it with new features and content (Demin, 2017, p. 50). The authors of the book "Delicate Balance: Taxes, Discretion and the Rule of Law" are also right to point out that "giving discretionary powers to tax administrations evokes the strongest feelings in the field of tax law" (Evans, Freedman, Krever, 2011).

A fair balance between the needs of the public interest and the requirements for the protection of fundamental human rights in a democracy must be taken into account both during rule-making and in the process of law enforcement (Zadorozhnia, Kapeliush, Karmalita et al., 2018, p. 46). At the same time, all states in one way or another actively oppose aggressive tax planning, in particular, using the General Anti-Avoidance Rules (GAAR), i.e. general approaches to combating tax evasion, which began to apply in practice by different states in the beginning of the 20th century.

According to A. Demin, General Anti-Avoidance Rules are a special kind of relatively specific legal remedies in the field of taxes and fees. In the general sense, GAARs are superordinate principles that prohibit a taxpayer from abusing subjective tax rights, dishonest conduct in the field of taxes and fees, but do not specify what "abuse" is. The taxpayer is offered general and vague criteria and guidelines developed by the judicial and law enforcement practice. Opposition to such norms has been very strong throughout the world, but today they are widely implemented either as general principles of tax law or as judicial doctrines (Demin, 2017, p. 50).

This approach is not new for domestic judicial practice and law enforcement activities of regulatory authorities. For example, in the decision of the Supreme Court of December 4, 2019 in case № 826/15729/17, it is stated: "business activities are carried out by the business entity at its own risk, and therefore, in economic relations, the participants of economic turnover must exercise reasonable caution, because the negative consequences of choosing an unscrupulous counterparty are borne by such participants. Thus, proper tax prudence as a legal prerequisite for obtaining tax benefits, which implies that conscientious taxpayers need to take care of the preparation of the evidence base, which would confirm the manifestation of due diligence in choosing a counterparty" (Postanova Verkhovnoho Sudu vid 04.12.2019 u spravi № 826/15729/17).

In turn, the requirements for a taxpayer to justify the choice of counterparty are conditioned by the decisions of the European Court of Human Rights, which stipulate that the taxpayer should not be liable for abuses committed by his counterparties if he/she did not know about such abuses and could not know about them (Rishennia Yevropeiskoho sudu z prav liudyny u spravi «Biznes Suport Tsentr proty Bolharii» (2010, March 18), №6689/03). The decision of the Supreme Court of the panel of judges of the Administrative Court of Cassation of January 14, 2020 in case № 826/16482/15/ established that the good faith of the taxpayer's actions is in accordance with the actions committed by him for economic purposes. Accordingly, the taxpayer, in addition to assessing the commercial attractiveness of the terms of the contract, must take into account the risks that indicate the bad faith of the counterparty, and his actions must be consistent with the economic purpose (Postanova Verkhovnoho Sudu vid 14.01.2020 u spravi № 826/16482/15/).

5. Conclusions

Summarizing the above, we specify that in accordance with the provisions of the TCU, guilt as an element of a tax offense is expressed in the model of the offender and characterizes his actions as not meeting the criteria in specific cases provided by the TCU, consistent with the concept of behavioral (objec-

tive) guilt. According to the TCU, the guilt of the taxpayer is determined by the objective side of the tax offense, so when proving it by the supervisory authority, the objective circumstances of the tax offense are important, not the subjective attitude of the taxpayer to the offense.

The combination of the concepts of "reasonableness", "good faith" and "due diligence" is the basis for the conclusion of the supervisory authority on whether the taxpayer has taken sufficient measures to prevent the commission of an offense when proving his guilt. Thus, the taxpayer's guilt is seen as the failure to take the precautionary measures that a "reasonable person" would resort to in the same circumstances. In this case, the concepts of "good faith", "due diligence", "caution" are interrelated and determine the characteristics of the behavior of a "reasonable person", which is used as an appropriate standard of prudence and can be considered the purpose of proper behavior of the taxpayer.

Giving the tax authorities the discretion to assess the actions of the taxpayer in proving his/her guilt, based on the criteria of reasonableness, good faith and due diligence can be seen as a necessary response of the state to the challenges of the economic globalization and aggressive tax planning. After all, taxpayers are constantly looking for new ways to reduce tax liabilities, using the stability of tax rules and manipulating them without formally violating the law. At the same time, such an approach requires a balance between the ability of tax authorities to perform their tasks and functions and the compliance with the legitimate rights and interests of taxpayers.

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ДЕЯКІ ОСОБЛИВОСТІ ВИНИ ПЛАТНИКА ПОДАТКІВ ЗА ПОДАТКОВИМ КОДЕКСОМ УКРАЇНИ

Анотація. ***Метою статті*** є з'ясування змісту вини платника податків як одного з елементів податкового правопорушення та як однієї з умов притягнення до фінансової відповідальності у випадках, що передбачені Податковим кодексом України.

Методи дослідження. У дослідженні використано як загальнонаукові (аналіз, синтез), так і спеціальні (історико-правовий, порівняльно-правовий) методи наукового пізнання.

Результати. У роботі охарактеризовано концепції вини в теорії права та констатовано, що на сьогодні вина платника податків у податковому праві узгоджується з концепцією поведінкової (об'єктивної) вини. Наголошується на тому, що свідченням вини у вчиненні податкового правопорушення є можливість дотримання платником податків правил і норм, за порушення яких у Податковому кодексі України передбачена відповідальність, однак не вжито достатніх заходів щодо їх дотримання через діяння, які можуть бути кваліфіковані як нерозумні, недобросовісні та без належної обачності, за умови доведення цього контролюючим органом. Проаналізовано передумови законодавчого закріплення оцінних понять, які є критеріями доведення контролюючим органом вини платника податків. Розглянуто використання понять розумності, добросовісності, належної обачності в судовій практиці.

Висновки. Вина як елемент податкового правопорушення виражається в моделі поведінки порушника та характеризує його діяння як такі, що не відповідають встановленим критеріям у конкретних випадках, передбачених Податковим кодексом України, що співвідноситься з концепцією поведінкової (об'єктивної) вини. Під час доведення контролюючим органом вини платника податків мають значення об'єктивні обставини вчинення податкового правопорушення, а не суб'єктивне ставлення платника податків до вчиненого правопорушення. Сукупність пов'язаних між собою понять «розумність», «добросовісність» і «належна обачність» є підставою для висновку контролюючого органу про те, що платник податків вжив достатніх заходів для запобігання вчиненню правопорушення, у разі доведення його вини.

Ключові слова: вина платника податків, концепції вини, розумність, добросовісність, належна обачність.

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SPECIFICITIES OF OPTIMISING THE SYSTEM OF PENAL BODIES AND INSTITUTIONS

Abstract. ***Purpose.*** The aim of the article is to study the process of optimization of the system of penal bodies and institutions.

Results. In the article, the author analyses the process of optimising the system of penal bodies and institutions. The problems of inadequacy of the management of the domestic penitentiary system are underlined. The optimization of the activities of the State Penitentiary Service of Ukraine in the field of management of the penitentiary system and optimization of the activities in the field of execution of sentences are studied. It is underlined that one of the areas of optimization of the activity of the State Penitentiary Service of Ukraine in the field of penitentiary system management is a significant optimization of the activities of pre-trial detention centres, penal institutions, and enterprises of penal institutions. It is determined that the Ministry of Justice of Ukraine is the main actor entrusted with optimizing the system of penal institutions. The main tasks of optimizing the system of penal bodies and institutions are determined.

Conclusions. It is concluded that penal policy should include the following main tasks: reduction of the number of penal institutions; improvement of financial and logistical support of existing institutions and, accordingly, provision of appropriate condition of newly established institutions; personnel changes in modern penal policy; improvement of organizational and managerial structure of the system of execution of sentences. In addition, it is important to determine the range of actors to carry out optimization of penal institutions with a clear division of functions between them and the legal mechanism of its realization. The focus is on the issue of execution of sentences, alternative to deprivation of liberty, which are realized by means of the mechanism of probation supervision.

Key words: optimization, penal bodies and institutions, State Penitentiary Service of Ukraine, probation.

1. Introduction

One of the important areas of improving the mechanism for public policy on execution of sentences is optimization of the system of penal bodies and institutions. This is a necessary step toward solving the problem of improving the effectiveness of the organization and activity of penal bodies, which has permanent relevance for Ukraine, as well as for any other civilized country. In fact, the limited State financial and material resources that fund these bodies' performance, as well as the necessity and importance to protect human rights and society during execution of sentences, especially in the form of deprivation of liberty, significantly complicate the tasks of successful solution of the above problems.

The aim of the article is to study the process of optimization of the system of penal bodies and institutions.

Individual aspects of activities of penal bodies and institutions have been under study by scientists such as: K.V. Avtukhov, I.H. Bohatyrov, O.A. Hrytenko, A.P. Helia, O.H. Kolb, V.A. Lvochkin, O.V. Lysodied, I.S. Mikhalko, M.V. Romanov, A.Kh. Stepaniuk, V.M. Trubnikov, I.S. Yakovets, et al. However, the issue of analysing the state of affairs in optimization of the system of penal institutions today remains unclear and requires a comprehensive study.

2. Determination of areas for reforming the State Penitentiary Service of Ukraine

Today, the system of management of the penal bodies and institutions is undergoing reform, which requires to define certain areas of its improvement. K. Muraviov argues that such areas include determination of clear hierarchy of actors of the system of management of penal bodies and institutions at the regulatory level;

improvement and specification of the legal status of parties to legal relations that arise within the system of management of penal bodies and institutions; updating of current and adoption of new legal regulations, which establish legal principles of functioning of the system of management of penal bodies and institutions, first of all, in so far its reform; legislative consolidation of the regional offices' activity; improvement of personnel, logistical and financial support of the penal bodies and institutions (Muraviov, 2016, p. 247).

With regard to the ways of reforming the State Penitentiary Service of Ukraine, L. Holovko stresses that the main priority areas of public policy in this field are the solution of the following problems:

- bringing the conditions of detention of prisoners in pre-trial detention centres and persons in the places of deprivation of liberty to European standards;
- overcrowding of places of detention of prisoners and convicts;
- growth of TB and HIV infection and other epidemic diseases among prisoners and convicts;
- insufficient logistics of the penal bodies and institutions;
- prevention of new crimes by persons taken into custody and serving sentence, as well as prevention of tortures or inhuman or degrading treatment of persons held in penal institutions;
- improvement of work with personnel of the penitentiary service, upgrading of their professional training (Holovko, 2016).

The problem of the imperfect management of the domestic system of execution of sentences was stated in the Concept of State Policy in the Field of Reforming the State Penitentiary Service of Ukraine, adopted by Decree 631/2012 of the President of Ukraine of November 08, 2012. In particular, it provides for that despite the adoption of the Penitentiary Code of Ukraine, which provides for qualitatively new principles of execution of sentences, today in Ukraine the Soviet system of management of legal institutions with the features of administrative and command management, which prevents proper execution of tasks vested to the State Penitentiary Service of Ukraine, is actually preserved. At the same time, it is planned to carry out organizational, methodical and informational measures aimed at introduction of a modern model of management of the State Penitentiary Service of Ukraine, providing it with qualified personnel, humanization of conditions of detention of convicts and persons taken into custody, modernization of production of enterprises of the penal institutions (Decree of the President of Ukraine on the Concept of State Policy in the Field of Reforming the State Penitentiary Service of Ukraine, 2012).

The current Concept of State Policy in the Field of Reforming the State Penitentiary Service of Ukraine points to the inefficiency of the system of execution of sentences, alternative to deprivation of liberty, which is caused by the inconsistency of logistics and the number of personnel of the penitentiary inspection with the scope of tasks and functions assigned to it. The process of execution of sentences, not related to deprivation of liberty, does not provide social and educational influence on convicted persons and is mainly a formal control over the fulfilment of duties imposed on them by the court (Decree of the President of Ukraine on the Concept of State Policy in the Field of Reforming the State Penitentiary Service of Ukraine, 2012).

At the end of 2015, the recommendations of the Administration of the State Penitentiary Service of Ukraine concerning further development of this body noted that the priority of this way is optimization of the system of functioning of penal bodies and institutions, pre-trial detention centres, personnel of the State Penitentiary Service of Ukraine and increase of its efficiency in the context of the new policy on public administration (Leikovskyi, 2015).

However, the issue of optimization of the process of serving sentences not connected with the deprivation of liberty, unfortunately, is not under focus of the Concept of reforming (development) of the penitentiary system of Ukraine (Order of the Cabinet of Ministers of Ukraine On approval of the Concept of reforming (development) of the penitentiary system of Ukraine, 2017).

The process of optimization started with adoption of Resolution 396 of the Government of Ukraine On the procedure for optimizing the activities of pre-trial detention centres, Penal Institutions and enterprises of penal institutions in 2017. This Resolution empowered the system with a legal and organizational instrument, enabling to formalize conservation of unnecessary penal institutions. The previous practice of using this instrument led to the occurrence of 27 optimized institutions, 2 of which found a "new life" in the system of the Ministry of Defence of Ukraine.

As for today, Ukraine is one of the three "leaders" in terms of the number of complaints to the European Court of Human Rights concerning conditions of detention and treatment in places of deprivation of liberty, the domestic system of execution of sentences requires significant changes.

The essence of the reform in the field of execution of sentences is the fulfilment of the following main tasks:

1. Optimization of the organizational structure of penal and probation bodies and institutions. Development of the basic law on the system and status of penal and probation bodies and institutions.

2. Optimization of the number of institutions. Totally, in Ukraine there are 148 penal institutions and pretrial detention centres, 121 operating ones with more than 52 thousand prisoners and convicts at scheduled filling of 112 thousand. According to preliminary estimates, the demand for a penal system for the even detention of convicted and imprisoned persons is 55-60 institutions.

3. Introduction of optimal system of outsourcing in penal institutions. It is about providing ready-made quality services on nutrition, education, treatment, clinical, protection, etc. That is, there is no need for service and house-keeping units, and the head of the colony will have an opportunity to independently control the quality and quantity of services provided on the basis of agreements concluded. The previously proposed system of private prisons, according to the world experience, is subject to severe criticism because of significant violations of human rights and the principles of execution of sentences.

4. Gradual transfer of the function of supervision by the Prosecutor's Office with parallel changes in the system of execution of sentences and probation, as well as supervisory powers. That is, to organize systematic interdepartmental control and monitoring by experts of relevant State and law enforcement bodies with the involvement of human rights defenders, representatives of the Ombudsman. Then the role of the Prosecutor's Office will be to coordinate these processes (Website of the Prosecutor General's Office of Ukraine, https://www.gp.gov.ua).

3. Finding out the required number of penal institutions

One of the areas of optimization of the activity of the State Penitentiary Service of Ukraine in the field of penitentiary system management is a significant optimization of the activities of pre-trial detention centres, penal institutions, and enterprises of penal institutions.

The Procedure for optimizing the activities of pre-trial detention centres, penal institutions and enterprises of penal institutions, approved by Resolution 396 of the Cabinet of Ministers of Ukraine of June 7, 2017, provides for the mechanism for optimizing activities of pre-trial detention centres, penal institutions and enterprises of penal institutions with in order to save State funds and decrease the share of depreciation deductions in the cost of production of the enterprises of penal institutions (Resolution of the Cabinet of Ministers of Ukraine On the Procedure for Optimizing the Activities of Pre-trial detention centres, Penal Institutions and Enterprises of Penal Institutions, 2017), such optimization is carried out by means of their conservation (de-conservation), liquidation, as well as change of the type of the penal institutions.

Order 2865/5 of the Ministry of Justice of Ukraine On optimization of penitentiary institutions of September 13, 2017 determined 13 State penal institutions to be conserved. During the government meeting, the first Deputy Minister of Justice of Ukraine N. Sevostianova noted: "To save budget funds we offer to conserve 13 institutions, which are filled from 8% to 44%. This decision will allow to save more than UAH 70 million of budget funds as soon as next year". Meanwhile, human rights defenders express concern that the consequences of the reform may be different - both positive and negative. For example, the creation of large-scale penal institutions will have a negative impact on the observance of the rights of the convicts (Belous, 2017).

Further research of the necessary number of penal institutions is one of the important steps and stages of reform of the penal system of the State. Its implementation, in combination with other measures, will lead to rational use of the forces and means available, relocation of the prisoners to places of deprivation of liberty with better conditions, formation of financial preconditions for further reform.

The necessity of choosing the optimal number of penal institutions is also conditioned by the provision of the Law of Ukraine On the number of the State Penitentiary Service of Ukraine, and in accordance with para. 2 of this legal regulation, the total number of personnel, providing the activities of penal institutions, pre-trial detention centres, is 33 percent of the number of persons who are detained.

Hence, two aspects are problematic. The first one is that the legal provisions on execution of sentences in practice are not implemented and do not correspond to the modern state of things. The second one is a number of penal institutions of a reverse proportion, when the number of staff is more than the number of convicted persons. These problems should be solved within the framework of optimization of penal institutions.

For example, in one of the penal institutions for women, their number is about 100, while the number of personnel is about 200. Although at different times in this institution there were an average of 1000 convicted persons, and at worst, more than 1500. Accordingly, the infrastructure of such institution is aimed

at keeping a much larger number of people than there are physically. This requires the personnel to make efforts aimed at preserving the property at the disposal of the institution (which mainly begins to decline), and at the same time to provide security measures of the whole object, which is operated on an average of 30 percent (Vysotska, Hrechaniuk, & Nesyn, 2020).

The content of organizational measures should involve: development and practical application of modern approaches to the management of penal institutions; termination of the operation of the penal institutions with a significant reduction of the contingent and conservation of their objects; liquidation of and taking outside the cities those institutions objects thereof are in despair and do not correspond to the infrastructure of a modern city; construction of modern European pretrial detention centres and penal institutions, in particular by conducting open competitions on involving private partners in realization of the principles of State-private partnership; establishment of the system of interregional bodies of management of the SPS of Ukraine; introduction of decentralization of management and transition to mixed type of management of penal bodies and institutions, pretrial detention centres: central and territorial; change of the system of forming the staff structure of penal bodies and institutions by means of legislative establishment of fixed limit of the staff number, which will be reviewed annually depending on filling of penal institutions and pre-trial detention centres; legislative consolidation of the grounds for creation of penitentiary institutions of municipal and private ownership (Leikovskyi, 2015).

4. Main problems in reforming the State Penitentiary Service

The issue of identifying the actors to carry out the process of optimization of the penal institutions remains unclear.

I.S. Yakovets argues that Ukraine does not have a single system of actors capable of optimizing the process of execution of sentences. Currently, the President of Ukraine, the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, the Ministry of Justice of Ukraine and the State Penitentiary Service of Ukraine are engaged in organizing the process of execution of sentences. But their activities in the field of execution of sentences are irregular, lack necessary cooperation and interaction. Therefore, attempts to optimize the process of execution of sentences do not reach the set goals and have a formal character (Yakovets, 2013, p. 153).

Since the abolishment of the State Penitentiary Service, the Ministry of Justice of Ukraine has been recognized as its replacement, accordingly, the process of optimization of the system of penal institutions has been assigned to it.

Thus, one of the priorities, tasks and goals set forth in the proposed reform of the penitentiary system of Ukraine is to improve the organizational structure and staffing of this system. At the same time, the reduction of the number of penal institutions should be accompanied by improvement of the quality of their organization and functioning. In particular, it is the necessity of re-equipment of existing and construction of new penal institutions in order to ensure proper, up-to-date requirements and standards, conditions of maintenance of persons.

The focus should be on a doubtful legal mechanism for optimization of the system of penal institutions.

Thus, depending on the nature of the relationship that needs regulation, it is necessary to distinguish the following basic types of legal methods that can be used for optimization: 1) penal methods that provide execution of punishment and an enabling environment for correction and re-socialisation; 2) administrative and legal methods, enabling to regulate relations between penal bodies and institutions of different levels; 3) civil and legal methods regulating economic relations; 4) labour methods regulating labour relations with the participation of convicts and staff (Yakovets, 2014, p. 173).

Moreover, nowadays the issue of alternative kinds of punishment and optimization of the activities of the State Penitentiary Service of Ukraine in the field of their implementation is especially topical.

The main priorities are announced to be: full implementation of the probation service – the first pilot offices for underaged persons, opened with assistance from *AGRITeam Canada*, have showed excellent results: 96% of underaged persons have not committed repeated offenses after the removal from the register of penal inspection; demilitarisation – reduction of the number of registered employees in the system from the current 77% to 28% (on the example of the new structure of central apparatus and interregional departments); re-socialisation – demilitarisation of the system will allow to shift the focus more on psychological work with convicted persons, to receive additional professional skills, which in turn will allow to increase the number of citizens who will be able to return to the society more easily; new people in the system – after the renewal, reorganization of the system and increase of the wages rate, new people (not less than 20% of the personnel) will be able to enter historically the most closed system (Maslyukivska, 2016).

Therefore, the importance of establishing an optimal model of the system of execution

of sentences is directly connected with the possibility of its development, while the steps taken within this process are aimed at improving the quality of penal activities and effectiveness of policy on execution of sentences in general.

5. Conclusions

Therefore, based on the analysis of the modern system of execution of sentences, it is necessary to emphasize once again the importance of optimising penal policy.

These activities should include the following main tasks: reduction of the number of penal institutions; improvement of financial and logistical support of existing institutions and, accordingly, provision of appropriate condition of newly established institutions; personnel changes in modern penal policy; improvement of organizational and managerial structure of the system of execution of sentences.

In addition, it is important to determine the range of actors to carry out optimization of penal institutions with a clear division of functions between them and the legal mechanism of its realization. The focus is on the issue of execution of sentences, alternative to deprivation of liberty, which are realized by means of the mechanism of probation supervision.

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ОСОБЛИВОСТІ ОПТИМІЗАЦІЇ СИСТЕМИ ОРГАНІВ ТА УСТАНОВ ВИКОНАННЯ ПОКАРАНЬ

Анотація. ***Мета статті*** полягає в дослідженні процесу оптимізації системи органів та установ виконання кримінальних покарань.

Результати. У статті автор проводить аналіз процесу оптимізації системи органів та установ виконання покарань. Виокремлено проблеми недосконалості управління вітчизняною системою виконання кримінальних покарань. Досліджено оптимізацію діяльності Державної кримінально-виконавчої служби України у сфері управління кримінально-виконавчою системою та у сфері виконання покарань. Наголошено на тому, що одним із напрямів оптимізації діяльності Державної кримінально-виконавчої служби України у сфері управління кримінально-виконавчою системою є оптимізація діяльності слідчих ізоляторів, установ виконання покарань і підприємств установ виконання покарань. Визначено, що основним суб'єктом, на якого покладено здійснення процесу оптимізації системи установ виконання кримінальних покарань, є Міністерство юстиції України. Визначено основні завдання оптимізації системи органів та установ виконання кримінальних покарань.

Висновки. Констатовано, що кримінально-виконавча політика повинна включати в себе такі основні завдання: скорочення кількості установ виконання покарань; покращення фінансового й матеріально-технічного стану наявних установ та, відповідно, забезпечення належного стану новостворених установ; кадрові зміни в сучасній кримінально-виконавчій політиці; удосконалення організаційно-управлінської структури системи виконання кримінальних покарань. Окрім того, важливо визначати коло суб'єктів проведення оптимізації установ виконання покарань із чітким розподілом функцій між ними, а також правовий механізм її реалізації. На особливу увагу заслуговує питання виконання покарань, альтернативних позбавленню волі, які реалізуються за допомогою механізму наглядової пробації.

Ключові слова: оптимізація, органи та установи виконання покарань, Державна кримінально-виконавча служба України, пробація.

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FOREIGN EXPERIENCE IN PREVENTING LUCRATIVE VIOLENT CRIMES COMMITTED BY CHILDREN

Abstract. ***Purpose.*** The aim of the article is to analyse foreign experience in preventing lucrative violent crimes committed by children.

Results. The article establishes that respect for international norms and principles in the protection of the rights and interests of the child requires appropriate political will and a willingness to update national legislation and reform social institutions, ensuring the stable development of the State and the modernization of the system for the prevention of crime and the protection of the rights of underaged persons in criminal proceedings. International standards are aimed at giving priority to educational and social measures over punitive measures with forced isolation from society. Therefore, it is important, in the process of implementing international standards, to preserve the distinctiveness of the means for protecting the rights and freedoms of the child in Ukraine; of measures to prevent and combat child crime; and of the juvenile criminal justice system, which reflects Ukraine's economic, political, ideological, religious, educational and cultural characteristics and identity. The importance of long-term interventions, corrective measures and influencing the criminal delinquency of children, while maximizing all resources, including the family, education, community volunteers, with a view to promoting the well-being of the child and reducing interference by the law, and the effective, fair and humane treatment of underaged persons involved in juvenile criminal proceedings are indisputable.

Conclusions. It is concluded that foreign experience has shown the efficiency of the adoption of specialized legal instruments to create a legal basis for specific criminological measures to prevent lucrative violent crimes committed by children. There is a trend to reduce the role of the police in the prevention of children crime and to concentrate these functions in specialized social and educational institutions, while activities of the police and other law enforcement bodies are primarily aimed at stopping crimes as well as their recidivism. The prevention of child delinquency is based mainly on measures of assistance, education and upbringing, and the priority of educational measures over correctional measures. It is proved that in order to further improve and develop the domestic system for the prevention of juvenile delinquency, to make and implement new effective forms and methods of prevention into the activities of preventive entities, it is necessary to study and implement certain foreign methodological developments and practical techniques in this field, considering the national peculiarities resulting from the previous development of our State and the modern transformational processes in all sectors of social life.

Key words: child, lucrativeness, violence, crime, lucrative violent crime, prevention, foreign experience.

1. Introduction

Modern socio-economic and political transformations in the country, connected with reforming of all sectors of social life, inevitably lead to significant changes in society, breakage of former moral values, norms, traditions, stereotypes of thinking. These transformations have a negative impact on the formation of the personality of children and contribute to their criminal and other violations. According to the State Target Social Programme "Youth of Ukraine" for 2021-2025, approved by the Resolution of the Cabinet of Ministers of Ukraine of December 23, 2020, the necessity of self-realization and development of the potential of youth in Ukraine, their participation and integration into society, which will develop their national consciousness on the basis of social and State values and responsible citizenship, will provide young people with opportunities for successful realization and socialization, will increase the level of their civic competence, ability to

be independent, life-proof, active, patriotic and responsible participants of social life, is one of social values, and its social support is one of the main priorities of public policy. There is a need to solve problems related to the low level of participation of young people in public life, in the activities of institutions of civil society; civil competence, including respect for legal provisions, human rights standards, first of all tolerant attitude and mutual respect; preparing young people for family life, responsible attitude of young people to family planning and their own reproductive health; socialization, reintegration and adaptation of young people living in difficult circumstances, vulnerable and marginalized groups in society, especially youth with disabilities; conscious choice of profession and career development and development of leadership qualities (Resolution of the Cabinet of Ministers of Ukraine State Target Social Programme "Youth of Ukraine" for 2021-2025, 2021).

On the background of a general decrease in the number of registered criminal offenses committed by children, the lucrative violent encroachments have a steady tendency to increase, in particular, the share of the robberies has increased from 19,2 to 21.1 %; the robbery with extreme violence – from 4.8 to 5.4 %, extortion – from 1.8 to 2.1 %, misappropriation of a vehicle – from 3.9 % to 4.3 %), among which every third crime is committed in the state of alcohol or drug intoxication, almost 70 % of them by a group of persons (in particular, adults and organized groups) and repeatedly. It is a concern to the downward shift in the age of the person guilty. According to statistical data of the State Judicial Administration of Ukraine, the juvenile's sentences have certain positive dynamics, in particular: in 2017, 1025; in 2018, 1185; in 2019, 1766; and in 2020, 1377. However, the proportion of underaged persons who committed lucrative violent crimes among convicted persons shows negative trends in their number: in 2017, 1.2 %; in 2018, 1.4 %; in 2019, 1.4 %; and in 2020, 1.6 %. These data make it clear that the development of effective measures to prevent lucrative violent crimes committed by children is not only an effective means of protecting children, but it must also become a priority of criminological policy and an effective means of protecting the nation's gene pool (Website of the Office of the Prosecutor General of Ukraine, 2021; Certificate of crimes committed in Ukraine in 2014-2020, 2021).

This is why further reform of existing legislation in the field of criminal policy on children as one of the most vulnerable sectors of the population, is particularly relevant: bringing legislation into line with international standards and its effective implementation in practice.

2. Laws and regulations against lucrative violent crimes committed by children

According to the State Target Social Programme "Youth of Ukraine" for 2021-2025, the need for the full development and self-realization of youth is one of the social values, and its social support is one of the main priorities of public policy. There is an urgent need to address the problem of the low employment of young people in the labour market in the chosen profession and the practical skills of young specialists (in 2021, in Ukraine the unemployment rate among young people aged 15-24 was 23.1 %); low motivation of young people to adopt healthy and safe lifestyles; lack of a sustainable downward trend in youth crime, violence and systemic prevention (Resolution of the Cabinet of Ministers of Ukraine State Target Social Programme "Youth of Ukraine" for 2021-2025, 2021).

The United Nations and UNESCO, the UNICEF and other international organizations focus on the *prevention of negative phenomena in the youth environment*. Many efforts have been made to find new or adapted approaches to the prevention of juvenile delinquency. In this regard, other countries, in particular the United States of America and the United Kingdom, have considerable experience in juvenile delinquency prevention, which is of interest in this field. The Anglo-American system of crime prevention is dominant and leading in Europe, the USA and Japan (Vedernikova, 2005, 43), which takes three main forms: situational, social, community-based prevention.

Crime prevention specialists, depending on their perception of the causes of the offence, identify the following approaches to prevention: *a structural approach* linking effective crime prevention to significant social and economic changes in society; *a psychological approach* that recognizes the crucial preventive importance of influencing the personality of the potential offender as well as of persons who have already committed offences (in order to prevent recidivism); *a situational approach*, where the decisive role is the social and physical factors of the external environment, totally enabling criminal manifestations (Konovalova, 2007, pp. 61-62).

This is the way to differentiate the concepts that focus on general prevention (the structural approach) and those that justify special prevention measures (the psychological and situational approach). In addition, British and American criminologists pay particular attention to special prevention measures.

Special prevention is carried out at three levels:

– *Primary prevention*, aimed at eliminating environmental factors that encourage the commission of offences;

– *Secondary prevention*, aimed at preventing the criminalization of potential offenders and involving influence on unstable persons, including children of "risk groups";

– *Tertiary prevention,* aimed at preventing recidivism by persons who have already committed offences.

Primary offending prevention is considered crucial in British (as well as in American) criminology and is based on the assumption that most offences are of a situational nature and are committed as a result of certain opportunities, provided a specific enabling environment for the offences. The very situation instigates and provokes the commission of certain types of offences. Situational prevention, as opposed to the above-mentioned forms aimed at blocking the causes of crime, primarily affects the reduction of opportunities to commit individual crimes. The essence of this method is to organize State support for crime prevention campaigns, to consider urban planning and development projects in order to create a crime-free environment, focusing on identifying and preventing opportunities for youth to commit crimes, and, more recently, pressure on business and industry to change practices if they can affect the growth of crime. Nowadays, in the United Kingdom, France, the Netherlands and some other countries, this form of prevention is part of official anti-crime policy (Vedernikova, 2014, p. 278).

Therefore, the most effective area of prevention is the timely elimination of criminogenic environmental factors, as well as the creation of an anti-crime environment in which the offender will abandon the intention to commit an offence, that is, the conditions that will make the commission of offences more difficult and thus make the target less vulnerable, which will make the commission of offences more risky and less rewarding.

3. Specificities of global experience in preventing child-related violent crimes

Recently, British and American scholars have focused on the implementation of participatory social prevention measures. Delinquency is a social problem in which entire society must participate.

The tasks of social prevention are:

– Improvement of social conditions;

– Strengthening the role of social institutions;

– Increased opportunities for education, decent employment, recreation (Luneev, 2012, p. 687).

This type of prevention focuses on working with children, as the adolescent environment is considered the most problematic in terms of the potential offending. One way of implementing social prevention is to work with children in schools. Children receive basic information in schools. School curricula should include subjects that contribute to the upbringing of the child as a law-abiding citizen, lectures and talks on the prevention of offences will help to properly shape the child's personality.

It should be noted that British and American scholars have come to the conclusion that citizens should unite at their place of residence (the entrance, house, yard, city, etc.) in order to maintain cleanliness, order in their territory and ensure the safety of their members, which will reduce the number of offences. This type of prevention is called "community-based prevention." Police officers take an active part in organizing the preventive activities of citizens' associations. They provide citizens with advice and practical assistance. The most common forms of this type of prevention are the implementation of programmes of "neighbourhood watch," "Stop an offender," etc.

Secondary prevention is aimed at preventing the criminalization of those whose behaviour and way of life indicate that they may commit offences. In contrast to primary prevention measures, which are general in nature and aimed at eliminating the causes and conditions of the offence, secondary prevention measures are individual in nature and are related to the impact on the personality, its negative features, determining wrongful conduct. Secondary prevention measures are based on the prediction of the individual behaviour of a person, that is, a study of persons prone to offences and the sources of negative influence on them.

A variety of school programmes for the education and control of the behaviour of underaged persons of the "risk group" and programmes for preventive work with their parents are specific measures of individual prevention. Abroad, such programmes are implemented jointly by the police, educational institutions and social services. Individual prevention measures should be used with great caution, as they can stigmatize underaged persons and accelerate the commission of offences.

Tertiary prevention is aimed at preventing recidivism by persons who have already committed offences. The prevention of recidivism is linked to the application of police, judicial and penal measures aimed at the timely identification of the perpetrators of offences, their prosecution and the application to them of the appropriate means while serving their sentences. In the prevention of recidivism, special emphasis is placed on criminal law measures. In order to prevent recidivism, measures

of increased control over the behaviour of persons who have served their sentences, as well as programmes for their individual rehabilitation, are also widely used (Dzhuzha, Vasylevych, & Hida, 2011, pp. 497-498).

It should be noted that the United Nations has had specialized crime prevention structures for over 50 years. Thus, in accordance with the United Nations General Assembly Resolution of 1 December 1950, every five years international congresses are held as forums for the exchange of policies and for stimulating and preventing crime. The importance and popularity of these congresses is reflected in the increase in the number of participating countries. For example, while 40 countries attended the First UN Congress in 1955 in Geneva, 145 countries attended the First UN Congress in Vienna in 2014 (Kruter, 2015, p. 144).

Examples of foreign programmes aimed at preventing juvenile delinquency include:

Truancy and Disaffected Pupils Programmer is a program aimed at reducing absenteeism and the number of students who are negative attitudes toward school. This programme implements activities aimed at improving the registration of pupils who are absent from school; responding to the absence from school on the first day; and implementing educational programmes for parents; prevention of school hooliganism, threats and bullying of classmates; treatment of truancy and supervision of truancy; organization of training programmes for teachers and staff of children's organizations, with a view to mastering special methods for positively influencing the behaviour of underaged persons and responding to deviant behaviour; improvement of the school teaching system (United Kingdom, United States of America);

Students for Justice is a programme implemented by police officers in cooperation with teachers of educational institutions to familiarize students with different aspects of the law enforcement system. The programme uses role-playing games with students. Students are divided into groups representing police, prosecutors and judges. They inspect the scene of the offence, question witnesses, suspects, apply for an arrest warrant, conduct court proceedings, etc. The school authorities assist the police in organizing the games. The programme fosters students' respect for law enforcement, eliminates mistrust of the police and creates an atmosphere of trust and understanding (United States) (Moroz, Koval & Tychyna, 2008, p. 89).

The most effective programmes are based on a multi-factor approach and apply from early childhood onwards and are not so much oriented to the individual (aggressive behaviour, stress, coping skills) but rather to the unfavourable characteristics of the nearest family and social environment. We believe that such programme can be used for the prevention of child delinquency, since it is quite often the defects in family education that cause deviant behaviour.

Some promising programs include the Seattle Social Development Project (Hill et al., 2001), Youth Violence Prevention Project *PeaceBuilders* (Embry et al., 1996), The programme *Family and School together* (FAST), which combines parents' education and home visits with school activities aimed at improving the social functioning of teenagers in school. The latter was introduced in half of US schools and showed high rates of abstinence even after the programme (Cornell, 2000) (Moroz, Koval & Tychyna, 2008, p. 93).

In order to prevent robberies by school-age children, two projects are mainly mentioned: Youth Positive Employment (a wide range of development activities, especially holiday programmes) and Safer School Partnership including police duty in schools, buses, and other mediation, extra-curricular activities, boxing, tourism, individual work with risk groups, interactive website. It is important that the deterrent intervention do not interfere with other initiatives, and that many agencies have been involved in the partnership (Moroz, Koval & Tychyna, 2008, 103).

In the United Kingdom special units of "children's police" have been created to prevent crimes committed by children, working with young people up to the age of 17, whose behaviour indicates their demoralization. Regular contacts have been established between the school administration and the "children's police." With the assistance of the community, the British Police practises three types of contact. Individual contact, which is a policeman's moral and psychological, controlled action on a specific person. Some cities have established special services for police officers in relation to the community. Anyone wishing to do so may attend a reception, receive advice or provide information of interest to the police. The most promising group contacts between the police and the community are thematic meetings at universities, colleges and primary schools. In some regions, the course "Protection of Public Order" is introduced into the school curriculum. The Metropolitan Police trains lawyers to speak on radio and television. The Police Five Minute TV programme has been popular for many years (Matvitckii, 2016, pp. 58-59).

In Canada, long-term interventions focus on helping children who are in a socially unsuitable environment for their personal development, or who are prone to antisocial or socially hazard-

ous activities. The programme activities are mainly designed to foster a positive attitude towards social norms, rules, the law and public morals, education and to correct juvenile delinquency and crime, as well as to foster responsible behaviour. Preventive measures against socially unacceptable behaviour on the part of underaged persons include the legal, medico-biological and social aspects.

Social prevention implies examination of children and involves social organizations, parents, teachers and neighbours that ensure early prevention of criminal behaviour of children. In addition, Girls Club of Canada/America Programs and Services for At-Risk and Families are created, implemented, funded directly by volunteer organizations, and schools engage local self-government bodies and local budgets. The Youth Inclusion Program is based on good-neighbourliness and is used in high-risk areas. (Public Safety Canada Ottawa, 2014: pp. 84–85). It aims to reduce child delinquency and anti-social behaviour by creating safe spaces where young people can acquire special skills and learning assistance. Positive examples provided by workers and voluntary programme participants help change the attitudes of young offenders towards learning and delinquency.

The social focus of the Boston Gun Project and Operation Ceasefire and Seattle Social Development Project reflects the clear interaction between educational institutions and State authorities regarding children, law enforcement and juvenile justice, the social welfare authorities, as well as the parents of the children participating in the programme. The Canadian prevention program has a steady trend to involve the public in the implementation of measures to prevent juvenile delinquency, which is prone to criminal behaviour, or to commit offences or crimes, under the criminal justice (Matvitckii, 2016).

Most programmes are comprehensive, with concentrated educational, observation and corrective measures to influence socially unacceptable behaviour, including criminal behaviour.

Educational, observation and corrective programmes are generally of a long duration (Fast Track, Olweus Bullying Prev Program, Life Skills Training, Leadership and Resiliency Program). They are designed to have a two- and three-year impact on the development process of a child who is prone to antisocial behaviour (such as alcohol and drug abuse, violence towards peers or younger pupils and aggression towards animals, etc.) during their schooling.

Each component of the education and observation programme includes a separate curriculum, which provides for: a programme description, a detailed description of individual groups of measures, and a sample of forms (questionnaires), the necessary materials for the implementation of these components and replicas, as well as appropriate professional and personnel support or coordination.

These programmes are aimed at preventing juvenile delinquency by involving the public in these activities and by seeking new opportunities for adolescents from risk groups to realize themselves. These programmes are purely preventive and produce the expected results only with the active participation of all actors involved in prevention (Moroz, Koval & Tychyna, 2008, p. 103).

4. Conclusions

Therefore, it should be noted that foreign experience has shown the efficiency of the adoption of specialized legal instruments to create a legal basis for specific criminological measures to prevent lucrative violent crimes committed by children. There is a trend to reduce the role of the police in the prevention of children crime and to concentrate these functions in specialized social and educational institutions, while activities of the police and other law enforcement bodies are primarily aimed at stopping crimes as well as their recidivism. The prevention of child delinquency is based mainly on measures of assistance, education and upbringing, and the priority of educational measures over correctional measures.

On the basis of the review of foreign experience, the Recommendations of the European Union, United Nations and UNICEF documents, the innovative model proposed in this article of three-level prevention of lucrative violent crimes committed by children should be adopted, due to the need for a new, more effective response to such crimes and their prevention, with a view to minimizing punishments.

Therefore, in order to further improve and develop the domestic system for the prevention of juvenile delinquency, to make and implement new effective forms and methods of prevention into the activities of preventive entities, it is necessary to study and implement certain foreign methodological developments and practical techniques in this field, considering the national peculiarities resulting from the previous development of our State and the modern transformational processes in all sectors of social life.

The review of foreign experience enables to highlight the main areas of social rehabilitation for children who have committed lucrative violent crimes in Ukraine: 1) establishment and development of preventive services for working with children; 2) the diagnosis of the social environment; 3) community

assistance and mentoring to address the most important issues for children; 4) mediation by "patronage" services in the form of support for children particularly sensitive to conflict in the family, school, in the street; 5) ensuring an appropriate place of residence capable of replacing the family; 6) the use by family social workers of special psychological cards for each child in a given neighbourhood from the moment of birth to take timely precautions until he reaches the age of majority; 7) establishment of the institution of family social workers and assigning each family with a child, at the place of residence, to a specific social worker, who cooperates with the health authorities and institutions; 8) legal propaganda by employees of the Juvenile Prevention Service among students of educational institutions, which is an essential component of both educational programmes and the activities of the National Police to stop deviant behaviour among children (Semenyshyn, 2018, p. 191).

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ЗАРУБІЖНИЙ ДОСВІД ЗАПОБІГАННЯ КОРИСЛИВИМ НАСИЛЬНИЦЬКИМ ЗЛОЧИНАМ, ЩО ВЧИНЯЮТЬСЯ ДІТЬМИ

Анотація. ***Метою статті*** є аналіз зарубіжного досвіду запобігання корисливим насильницьким злочинам, що вчиняються дітьми.

Результати. У статті з'ясовано, що дотримання міжнародних норм і принципів у сфері захисту прав та інтересів дитини потребує відповідної політичної волі й готовності до оновлення національного законодавства, реформування соціальних інститутів, що забезпечують стабільний розви-

ток держави, модернізації системи запобігання злочинності та захисту прав неповнолітніх у сфері кримінального судочинства. Міжнародні норми спрямовані на пріоритетність освітніх, виховних, соціальних заходів над каральними з примусовою ізоляцією від суспільства. Тому у процесі імплементації міжнародних норм важливе збереження своєрідності засобів охорони прав і свобод дитини в Україні, заходів запобігання та протидії злочинності дітей, власної системи ювенальної кримінальної юстиції, які відображають економічні, політичні, ідеологічні, релігійні й культурно-виховні особливості та самобутність України. Не викликає сумнівів важливість запровадження заходів тривалого втручання, корекції та впливу на кримінальну протиправну поведінку дітей за умови максимальної мобілізації всіх ресурсів, у тому числі сім'ї, освіти, громади, волонтерів, з метою сприяння благополуччю дитини та скорочення втручання з боку закону, а також ефективного, справедливого й гуманного поводження з неповнолітніми, що перебувають у сфері ювенального кримінального судочинства.

Висновки. Зарубіжний досвід свідчить про дієвість прийняття спеціалізованих нормативно-правових актів із метою створення правового підґрунтя спеціально-кримінологічних заходів запобігання корисливо-насильницьким злочинам, що вчиняються дітьми. Спостерігається тенденція до звуження функцій поліції з профілактики злочинності дітей та зосередження цих функцій у спеціалізованих соціальних та освітніх установах, а діяльність поліції та інших правоохоронних органів спрямовується переважно на припинення злочинів та їх рецидиву. Запобігання злочинності дітей ґрунтується здебільшого на заходах допомоги, навчанні та вихованні, пріоритеті виховних заходів над виправними. Визначено, що для подальшого становлення й розвитку вітчизняної системи профілактики правопорушень серед дітей, а також для розроблення й упровадження в діяльність суб'єктів профілактики правопорушень нових, ефективних форм і методів запобігання необхідно вивчати та впроваджувати певні закордонні методичні напрацювання і практичні прийоми в цій сфері, проте робити це необхідно з урахуванням національних особливостей, зумовлених попереднім розвитком нашої держави та сучасними трансформаційними процесами, що відбуваються в усіх сферах суспільного життя.

Ключові слова: дитина, користь, насильство, злочин, корислива насильницька злочинність, запобігання, зарубіжний досвід.

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DISTINCTION BETWEEN COVERT INVESTIGATIVE (SEARCH) ACTIONS AND OPERATIONAL-TECHNICAL MEASURES AND SEARCH OPERATIONS (PART 1)

Abstract. *Purpose*. The aim of the article is to analyse and distinguish between operational and technical measures, covert investigative (search) actions and search operations, and to reveal their role and significance in criminal proceedings.

Results. The article studies general theoretical and problematic issues of distinguishing between covert investigative (search) actions and search operations, operational and technical measures, intelligence and counter-intelligence operations. The genesis of covert investigative (search) actions, the regulatory framework for forms of covert collection of information and the possibility of its use in criminal proceedings are reviewed. The general features and differences in the manner of collecting and using information collected from covert actions, the procedure and use in criminal proceedings are analysed. The author makes conclusions on the scope of application of search operations (operational and technical measures), which is broader than and not limited to criminal proceedings, although the results of such measures may be used in criminal proceedings. Emphasis is on the fact that the objective of search operations is to seek information on illegal activities and to detect criminal offences, while the objective of covert investigation (search) actions is to collect and verify evidence in a specific criminal proceeding in connection with a specific commission of a crime, an attempt or preparations. The objectives of counter-intelligence activities are analysed as a form of operative-search activities under part 2 of art. 2 of the Law of Ukraine "On counter intelligence activities," such as collecting, analytical processing and use of information; counteracting intelligence, terrorist and other activities of the special services of foreign States, as well as those of organizations, individual groups and individuals, aimed at the detriment of the State security of Ukraine; developing and implementing measures related to prevention, elimination and deactivation of threats to the interests of the State, society and the rights of citizens. The evaluation of the results of such activities for the admissibility of evidence is emphasised.

***Conclusions*.** The study determines the main criteria for distinguishing covert investigative (search) actions from search operations and operational and technical measures according to the objective, aim, legal grounds and actors of conduct, forms of monitoring and supervision of compliance with the law during their conduct, enabling conditions for violation (restriction) of rights and freedoms of individual and legal entities. The need to respect fundamental human and civil rights and freedoms while covertly collecting information and interfering in private communication is emphasised.

Key words: covert investigative (search) actions, operative-search activities, operational and technical measures, documents in criminal proceedings, evidence, admissibility of evidence, investigative actions.

1. Introduction

Before the adoption of the new version of the CPC in 2012, the criminal procedural legislation of Ukraine did not contain such a concept as CI(S)A. Instead, the form of covert collecting of information related to criminal activity was search operations, including operational and technical ones, regulated by the Law of Ukraine "On operative-search activities," by other laws, orders, instructions classified restricted, "secret" and "top secret."

The regulatory framework for forms of covert information-gathering in criminal procedure legislation was long overdue and was necessitated by the need to establish clear and understandable rules for the conduct of such actions in order to safeguard human and civil rights, establishment of more effective judicial control over the restriction of such rights, especially in cases of interference with private communications or interference with the inviolability of the home, and introduction of a mechanism for the restoration of violated rights, freedoms and the introduction of a mechanism for State compensation for damage caused by interference with private life.

2. Analysis of legal regulations

As a result, CI(S)A have involved both elements of investigative (search) actions and search operations (hereinafter referred to as SO), operational and technical measures (hereinafter referred to as OTM).

When the 2012 CPC was being developed and adopted, scientists and practitioners discussed the further existence of SO and OTM, the significance and applicability of which essentially diminished after the introduction of CI(S)A. The proponents of the abolition of operative-search activities (hereinafter referred to as OSA) insisted on the need to prevent operational units from carrying out any actions aimed at collecting evidence, information-gathering without entering the URPI and beyond criminal proceedings. Contrary to this position, the representatives of the special services and operational units argued for the advisability and necessity of retaining this form of exercising powers by operational units, due to the specificity of the operational, operative-search activities, the impossibility of carrying out all operational measures solely within criminal proceedings.

Finally, the Law of Ukraine "On operative-search activities," like others regulating some aspects of the organization and conduct of intelligence and counter-intelligence operations, has not been repealed, and despite a significant decrease in the scope of SO and OTM, they are carried out, as well as the results of criminal proceedings are used in order to achieve the goal and objectives of OSA.

The issues of CI(S)A, OSA, the problems of their application, use and delimitation were under study by O.A. Bilichak, Yu.Yu. Brazhnik, O.M. Drozdov, O.V. Kaplina, S.S. Kudinov, V.D. Pcholkin, O.P. Sniherov, A.M. Tytov, O.H. Shylo, and others.

The possibility of assessing the results of operative-search activities in criminal proceedings through the compliance with the provisions of the principle of the rule of law and the principle of legality was studied by O.S. Oliinyk (Oliinyk, 2021).

The aim of the article is to analyse and distinguish between SO, OTM and CI(S)A, and to cover their role and significance in criminal proceedings.

3. Control and supervision in case of *violation (restriction) of human rights and freedoms and rights and freedoms of legal entities*

The analysis of the provisions of the CPC of Ukraine, the laws of Ukraine "On operative-search activities," "On intelligence," "On counter-intelligence activities" allows defining the following basic criteria for the delineation of CI(S)A and SO, OTM:

1. *With regard to objective (purpose)*. In accordance with Art. 1 of the Law of Ukraine "On operative-search activities" (hereinafter referred to as the LoU on OSA) (Law of Ukraine "On operative-search activity", 1992), the objective of operative-search activities is to search for and record actual data on the unlawful acts of individuals and groups for which the CC provides liability, intelligence and subversive activities of the special services of foreign States and organizations in order to suppress offences and in the interests of criminal proceedings, as well as to collect information in the interests of the security of citizens, society and the State.

The objective of CI(S)A, which is a form of investigative actions under articles 223, 246 of the CPC of Ukraine, is the gathering (collecting) of evidence or the verification of evidence already collected in a particular criminal proceeding.

The following conclusions can be drawn from the wording. The scope of application of SO (OTM) is broader than and not limited to criminal proceedings, although the results of such measures may be used in criminal proceedings. The objective of SO is to seek information on illegal activities and to detect criminal offences, while the objective of CI(S)A is to collect and verify evidence in a specific criminal proceeding in connection with a specific commission of a crime, an attempt or preparations. The objectives of counter-intelligence activities as a form of operative-search activities, under part 2 of art. 2 of the Law of Ukraine "On counterintelligence activities" (here and after referred to as the LoU on CA) are collecting, analytical processing and use of information that implies signs or facts of the intelligence, terrorist and other activities of the special services of foreign States, as well as those of organizations, individual groups and individuals, aimed at the detriment of the State security of Ukraine; developing and implementing measures related to prevention, elimination and deactivation

of threats to the interests of the State, society and the rights of citizens.

2. With regard to the aim. The aim of the application of CI(S)A is solely to safeguard the interests of criminal proceedings, to identify the perpetrators of specific criminal offences recorded in the URPI and investigated, and to prove their guilt. Instead, the aim of operative-search, intelligence and counter-intelligence activities is to prevent, promptly detect and prevent external and internal threats to the security of Ukraine and to cease intelligence, terrorist and other unlawful attacks by the special services of foreign States, as well as by organizations, groups and individuals, against the State security of Ukraine, and the elimination of an enabling environment for them and the reasons for their occurrence.

Therefore, the aim of SO is precisely to cease and prevent offences. The interests of criminal proceedings are considered as an additional (secondary) task. Operative-search activities in connection with intelligence activities or the detection and cessation of intelligence and subversive activities may not always involve the commission of an act, a doing, liable under the CC, but be required by the general interests of the security of citizens, society and the State.

3. With regard to causes and grounds for conducting OSA. According to art. 6 of the LoU on OSA, grounds for OSA are:

1) Sufficient information collected in the manner established by law, which requires verification by means of search operations on: criminal offences being prepared; persons who prepare the commission of a criminal offence; fugitives from pre-trial investigation bodies, the investigating judge, the court or evaders from serving their sentences; persons missing; intelligence and subversive activities of the special services of foreign States, organizations and individuals against Ukraine; the real threat to the life, health, housing and property of judicial and law enforcement personnel in connection with their official activities; as well as persons participating in criminal proceedings, members of their families and close relatives, with a view to creating the necessary conditions for the proper administration of justice; officers of the Ukrainian intelligence agencies in connection with the official activities of these persons, their close relatives and persons who cooperate or have cooperated in confidence with the intelligence agencies of Ukraine, as well as their family members for the purpose of appropriate intelligence activities;

2) Requests of competent State bodies, institutions and organizations for the screening of persons in connection with their access to State secrets and to work with nuclear materials and nuclear facilities; as well as persons granted permission to stay unaccompanied in controlled and sterile areas, restricted areas, protected areas and critical sectors of such airports areas;

3) The need to verify persons in connection with their appointment to posts in the Ukrainian intelligence agencies or their involvement in confidential cooperation with such bodies, and the access of persons to intelligence secrets;

4) Search and counter-intelligence operations (Law of Ukraine on Intelligence, 2020);

5) Availability of consolidated materials from the central executive authority implementing public policy on preventing and combating the legalization (laundering) of proceeds from crime or the financing of terrorism (SCFM) collected in the manner prescribed by law.

The cause (the form containing the grounds for OSA (establishment of the OPC)) under part 6 of Art. 2 of the LoU on OSA may be applications, reports of citizens, officials, public organizations, mass media, in written assignments and decisions of the investigator, instructions from the prosecutor, rulings of the investigating judge or court, materials of law enforcement agencies, requests and communications from law enforcement bodies of other States and international law enforcement organizations, as well as requests by authorized State bodies, institutions and organizations designated by the CMU to inspect persons in connection with their access to State secrets, work with nuclear materials and nuclear facilities.

With regard to counter-intelligence activities as a form of operative-search activities, the causes and the grounds on which it is conducted are provided for in article 6 of LoU on CA and have certain specificities.

Grounds for counter-intelligence activities are:

1) Sufficient information, which should be verified by means of special forms and methods, on: intelligence activities against Ukraine by the special services of foreign States, as well as by organizations, individual groups and individuals; infringement of the State sovereignty, constitutional order and territorial integrity of Ukraine; terrorist attacks or activities; criminal offences against peace, the security of mankind and the international legal order;

2) Execution of the tasks defined by law regarding: counter-intelligence support for economic, information, scientific and technological potential, defence and industrial, transport complexes and their facilities, and the national communications system, the Armed Forces of Ukraine and other military formations established in accordance with the laws of Ukraine, military and technical cooperation, compliance

with international non-proliferation regimes; the counter-intelligence support for Ukrainian diplomatic establishments abroad and the security of staff of such establishments and members of their families in the host State, and of Ukrainian citizens who are sent abroad and who are aware of information constituting a State secret, and the protection of State secrets in these establishments; counter-intelligence protection of State authorities, law enforcement and intelligence agencies, protection of State secrets; protection of embassies and missions of foreign States in Ukraine and their personnel against terrorist attacks; examination and verification of persons to be administered for access to State secrets, to work with nuclear materials and to nuclear facilities or to confidential cooperation; ensuring own security, including members of agencies and units engaged in counter-intelligence activities, members of their families and persons who assist and support in counter-intelligence activities; information and analytical support for State authorities (regarding threats to State security of Ukraine);

3) The need to detect by technical means and to shut down radio-electronic and other devices whose operation poses a threat to the State security of Ukraine or a precondition for leaking information with restricted access, as well as radiation from radio-electronic media used for illegal purposes.

The focus should be on certain specificities and differences in the grounds for operative-search and counter-intelligence activities. According to LoU on OSA, the basis for OSA can only be sufficient information, which needs to be verified, *collected in the manner prescribed by law*. Instead, the ground for CIA is any sufficient information, which needs to be verified by special forms, methods, means, regardless of legality of its origin. Counter-intelligence activities require neither the source nor the conditions and manner of collecting information, the main point is that it would be considered sufficient to trigger CIA and would require special forms, methods, means to be verified, while a violation of the procedure for gathering information to be verified by SO could entail admitting such information from OSA useless for achieving the goal and objectives of OSA.

Furthermore, certain differences in the causes of counter-intelligence activities exist. In addition to the ones mentioned in article 6 of the LoU on OSA, the cause for conducting CIA can also be: the fact that the units of internal security of the State Border Service of Ukraine perform tasks of ensuring safeguard (protection) of the State border of Ukraine; the performance by the State Protection Service Department of the tasks of protecting officials for whom State protection is provided; intelligence activities by the intelligence agencies on the basis of article 17 of the Law of Ukraine "On Intelligence" (Law of Ukraine on Intelligence, 2020); information of persons involved in confidential cooperation; materials of the SSU on organization, implementation, forms and methods of terrorism, intelligence and other activities to the detriment of State security in Ukraine.

With regard to CI(S)A, in accordance with the requirements of articles 214, 223 and 246 of the CPC of Ukraine, the ground for their conduct is a decision by the investigator, the prosecutor or the investigating judge, at the request of the investigator, with the consent of the prosecutor, made in criminal proceedings in cases where the information on a criminal offence and the offender cannot be collected otherwise. According to articles 260-264 (in so far as conduct on the ground of a decision of the investigating judge), 267, 269, 269, 269-1, 270, 271, 272 and 274 of the CC of Ukraine, CI(S)A are conducted exclusively in criminal proceedings in connection with grave and exceptionally grave crimes.

Therefore, according to legislation, a ground for conducting CI(S)A is a set of requirements, such as: a registered criminal proceeding; the investigation of a criminal offence, which meets certain requirements of gravity, depending on the type of CI(S)A; the adoption (issuance) of a procedural decision by an authorized entity; the impossibility of collecting otherwise information on the criminal offence and the offender.

The cause for conducting CI(S)A is information collected during the pre-trial investigation on the facts of the criminal offence, the offender(s) and the impossibility to collect otherwise the necessary information. Such information may be contained in procedural instruments, such as investigation reports, media, documents and the like.

4. *With regard to the actors of the conduct*. In accordance with article 5 of the LoU on OSA, the actor of operative-search activities is operational units: the National Police, the State Bureau of Investigation, the Security Service of Ukraine, the Foreign Intelligence Service, the State Border Service of Ukraine, the State Protection Department, the Tax Police, penal enforcement bodies and institutions; intelligence bodies of the Ministry of Defence, the National Anti-Corruption Bureau of Ukraine, while article 5 of the LoU on CA defines actors of counter-intelligence activities, such as: specially authorized operational units of the SSU, the SBSU, the SPD.

The actors of CI(S)A are the investigators and, at their request, operational units,

and of CI(S)A in the form of the withdrawal of information from the transport telecommunication networks are authorized units of the SSU, the NP, the NABU and the SBI.

5. *With regard to forms of control and supervision of compliance with the law in their implementation.* Operative-search activities are subject to departmental control. The Chief of the Operative unit is responsible for the legality of measures.

The supervision of OSA is exercised by the Prosecutor-General, his deputies, the heads of regional prosecutors, their first deputies and deputies, as well as by the relevant regional prosecutor's offices authorized by an order of the Prosecutor-General's Office and by an order of the Head of the Region Prosecutor's Office. The Head of the District Prosecutor's Office, as well as the prosecutors of the District Prosecutor's Office, authorized by his order, supervise the observance of the law in the course of operative-search activities in operative-search cases instituted by local operational units of law enforcement bodies under their supervision (Law of Ukraine On operative-search activity, 1992).

The above-mentioned requirements of LoU on OSA provide for the exercise of supervisory functions by prosecutors in a specific sector or in a specific operational unit and the ground for their execution is an order of the Head of the Prosecutor's Office, which authorizes the prosecutor to supervise not a specific operative-search case but operative-search activities in a certain operational unit(s). As a rule, individual orders are issued to supervise departments.

In criminal proceedings related to CI(S)A the functions of departmental supervision are exercised by the head of the pre-trial investigation body within the powers defined in article 39 of the CPC of Ukraine, as well as in so far the extension of CI(S)A, initiated by his or the investigator's decision, up to six months, approval of the use of previously identified (marked) or false (simulation) means, approval of the decision on disclosure, before the completion of the pre-trial investigation, the real information about specially formed business entities or about a person, acting without revealing his/her true identity.

In addition, it is provided that the departmental control can imply the right of the heads of autonomous structural units of authorized law enforcement bodies to decide on the extension of CI(S)A, initiated by the decision of the investigator, up to twelve months, and of the heads of departments, up to eighteen months.

With regard to the exercise of supervisory functions by prosecutors, the main powers are granted to prosecutors, as they are procedural controllers, who agree on the request of investigators or make decisions in cases prescribed by law on CI(S)A, organise them, give instructions, decide on the classification of secrecy, their removal, etc. in specific criminal proceedings, where they are determined as procedural controllers or included in the group of prosecutors of procedural controllers. The powers of the heads of the Public Prosecutor's Offices related to organisation and conduct of CI(S)A are limited to ensuring secrecy.

6. *With regard to enabling conditions for violation (restriction) of rights and freedoms of individual and legal entities.* According to part 5 of art. 9 LoU on OSA, an individual restriction of rights and freedoms in the course of operative-search activities is possible, provided: such violations are temporary and exceptional; they are applied by decision of a judge; the purpose of such restriction is to detect, prevent or cease a grave or exceptionally grave crime, to search for persons who evade serving a sentence or missing persons, and to protect life, health, housing and property of court and law enforcement personnel and persons participating in criminal proceedings, and to terminate intelligence and subversive activities against Ukraine; operational and technical means may be only applied to persons in respect of whom an operative-search case is initiated (registered); in other cases provided for by Ukrainian law, in order to protect the rights and freedoms of other persons and the security of society, a person whose rights have been violated during OSA, has the right to a written explanation of the restriction of his/her rights and freedoms and to an appeal.

4. Conclusions

The procedure for CI(S)A, in so far the restriction of human rights and freedoms in the conduct of criminal proceedings, provides for: CI(S)A in exceptional cases when information cannot be collected otherwise; application according to decision of the investigating judge; possibility of conduct in respect of not only grave and exceptionally grave crimes; CI(S)A not only in respect of the suspect, but in respect of any person; the exhaustive list of grounds for the restriction of constitutional human and civil rights in the CPC; no additional grounds for CI(S)A provided for by other laws and by-laws; notification of the person whose rights are to restricted.

However, counter-intelligence activities, as a form of operative-search activities, have their own characteristics and specificities that also influence the assessment of their use in criminal proceedings. These issues will be addressed in the second part of the article.

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ВІДМІННІСТЬ НЕГЛАСНИХ СЛІДЧИХ (РОЗШУКОВИХ) ДІЙ ВІД ОПЕРАТИВНО-ТЕХНІЧНИХ ТА ОПЕРАТИВНО-РОЗШУКОВИХ ЗАХОДІВ (ЧАСТИНА 1)

Анотація. ***Метою статті*** є аналіз та розмежування негласних слідчих (розшукових) дій та оперативно-розшукових, оперативно-технічних заходів, а також з'ясування їх ролі й значення у кримінальному провадженні.

Результати. Статтю присвячено загальнотеоретичним та проблемним питанням розмежування негласних слідчих (розшукових) дій та оперативно-розшукових, оперативно-технічних, розвідувальних і контррозвідувальних заходів. Досліджено генезис негласних слідчих (розшукових) дій, регламентацію форм негласного збирання інформації, можливості її використання у кримінальному судочинстві. Проаналізовано спільні риси та відмінності щодо порядку одержання й використання у кримінальному провадженні інформації, одержаної за наслідками проведення негласних заходів. Сформульовано висновки щодо сфери застосування оперативно-розшукових заходів (оперативно-технічних заходів), яка є ширшою та не обмежується кримінальними провадженнями, хоча результати таких заходів можуть використовуватися у кримінальному судочинстві. Акцентовано на тому, що завданням оперативно-розшукових заходів є пошук інформації про протиправну діяльність, виявлення кримінальних правопорушень, тоді як завданням негласних слідчих (розшукових) дій є збирання доказів і їх перевірка в конкретному кримінальному провадженні за конкретним фактом вчинення злочину, замаху на нього чи готування. Проаналізовано завдання контррозвідувальної діяльності як різновиду оперативно-розшукової діяльності відповідно до ч. 2 ст. 2 Закону України «Про контррозвідувальну діяльність», якими є добування, аналітична обробка та використання інформації; протидія розвідувальній, терористичній та іншій діяльності спеціальних служб іноземних держав, а також організацій, окремих груп та осіб на шкоду державній безпеці України; розроблення й реалізація заходів щодо запобігання, усунення та нейтралізації загроз інтересам держави, суспільства і правам громадян. Окремо приділено увагу оцінці результатів такої діяльності стосовно допустимості доказів.

Висновки. Визначено основні критерії розмежування негласних слідчих (розшукових) дій та оперативно-розшукових, оперативно-технічних заходів за завданням, метою, правовими підставами, суб'єктами проведення, формами контролю й нагляду за додержанням законодавства під час їх проведення, умовами, за яких допускається порушення (обмеження) прав і свобод людини та юридичних осіб. Окремо зосереджено увагу на необхідності дотримання основоположних прав і свобод людини та громадянина під час негласного збирання інформації та втручання у приватне спілкування.

Ключові слова: негласні слідчі (розшукові) дії, оперативно-розшукова діяльність, оперативно-технічні заходи, документи у кримінальному провадженні, докази, допустимість доказів, слідчі дії.

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TYPES AND SPECIFITIES OF ELECTRONIC DOCUMENTS AND ELECTRONIC PRESENTATIONS AS SOURCES OF EVIDENCE

Abstract. ***Purpose.*** The aim of the article is to cover the legal nature of the sources of evidentiary information, i.e., electronic evidence, and their place in the system of evidence.

Research methods. Research methods are chosen on the basis of the specific objectives, tasks, object and subject matter of the study. These include a dialectic method for elucidating some aspects of electronic documents and presentations as sources of evidentiary information in criminal proceedings; the technical legal method is used to study the law provisions and specificities of legal technology; hermeneutic one makes it possible to reveal the legal content of provisions of the CPC and legislative proposals and to identify flaws in the regulatory mechanism.

Results. The current legislation, legislative proposals aimed at expanding sources of evidentiary information are analysed. The need for electronic documents and presentations as the sources of evidentiary information is emphasised. Understandably, tangible medium can be referred to "tangible objects," that is, related to physical evidence, since the latter may indeed contain information relevant to criminal proceedings. For example, appropriate skills, techniques and other cognitive tools, enabling to properly fix and interpret the crime pattern, are required to perceive any traces. In practice, "electronic media" can be examined both as parts of the physical world and as means of reading, recording and reproduction of computer hardware. In such case, it can be stated that "electronic documents" are really a criminal procedural category indeed closely connected with electronic information media.

Conclusions. The article analyses the concepts of "electronic evidence," "electronic documents" and "electronic presentations"; determines their legal nature and further ways of developing the concept of "electronic evidence" in criminal procedure. It is proposed to increase the list of procedural sources of evidence by supplementing "electronic presentations."

Key words: sources of evidence, electronic evidence, electronic documents, electronic information medium, electronic presentations, pretrial investigation.

1. Introduction

The creation and use of the Internet, new technologies and new ways of communication have caused the changes in law. New ways of committing crimes emerged, crime became more experienced and inventive. The national legislator has faced with the need both to introduce legal provisions for regulating relations that arise and to adapt existing legislative provisions to new realities. The aim of the article is to elucidate the legal nature of the sources of evidentiary information, namely electronic evidence, and their place in the system of evidence.

Rapid development of science and technology provides new opportunities for the progress of mankind. Evidence in electronic form, seen as admissible in courts before, is already an element of the evidence base. In practice, there are many questions about the possibility of using information from the Internet as evidence or stored in electronic media. Due to the increasing relevancy of the issue, both legislative proposals and some scientific perspectives on the issue occur.

2. Review of regulations on electronic documents and electronic presentations

One of the first legal regulations, which provided for the use of electronic means of information fixation was the Law of Ukraine on Information as of 02 October 1992, in which part 1 of article 1 has defined the term "information" as "*any intelligence and/or data that may be stored in tangible media or presented electronically*"

(Law of Ukraine On Information, 1992). The lawmaker immediately separated information in tangible media from electronically stored information. In turn, the lawmaker gave a separate definition of the term "document": "*tangible medium, which stores information, main functions thereof are its storage and transmission in time and space*" (Law of Ukraine On Information, 1992). Therefore, it can be argued that the term "information" which is intelligence or data is important in proving only when it is in the medium. That is, with regard to the material world it is intangible. Therefore, specificities enable to understand that "electronic form (mode)" is an intangible form of fixation for intangible by its essence information. This is the way to interpret the "electronic form" of fixation in accordance with the provisions of the law being investigated. Consequently, it is not clear that it is an "electronic mode," because the phenomenon is only a form of information presentation and has an indirect relation to the document, since the document, according to the law, is a material medium.

Provisions of the Law of Ukraine on electronic documents and electronic document flow of confuses even more defining the term "electronic document" as "*a document that fixes information in the form of electronic data, including mandatory particulars of the document"* (Art. 5 of the Law) (Law of Ukraine On Electronic Documents and Electronic Document Flow, 2003). In this case, obviously the legislator interprets a tangible medium (the object of the material world), as information (non-material category) fixed in electronic data, including the mandatory particulars of the document. According to part 1 of article 8 of this Law, electronic documents have the legal status, according to which "*the legal force and admissibility of the electronic document cannot be denied solely because it has an electronic form*" (Shepitko, 2010). Therefore, "electronic documents" for the first time came in legal force equal to physical ones. According to the above theoretical provisions on the web portal of the State Archival Service of Ukraine, the content of the "electronic document" can be considered as "*text and graphic parts that make up the document. The context of the electronic document is information about the relationship of documented information with natural or legal persons and other documents"* (Website of the State Archival Service of Ukraine, n.d.). Thus, it is possible to agree that the components of the "electronic document" can be grouped into structural elements such as content and context. However, in turn, the "electronic document," according to the above theoretical provisions, is divided into the internal *"this is the structure of the content part of the document;"* (Website of the State Archival Service of Ukraine, n.d) and the external "*this is the structure of the environment in which an electronic document exists (information medium, file format, etc.)*" (Website of the State Archival Service of Ukraine, n.d.). Such interpretation of "electronic documents" by their structure has been since the entry into force of the Law of Ukraine on electronic documents and electronic document flow".

However, it should be noted that finally the lawmaker has not revealed the meaning of "electronic data," which is in an intangible form of fixation and fixes intangible, abstract intelligence in the tangible medium. The document of a tangible nature is now both tangible and intangible. Intelligence in the form of electronic data cannot be read (perceived) without tangible media. A.S. Bilousov, argued that this is the obvious dichotomy. The latter for the first time introduced the term "computer objects," stressing the mutual dependence of "electronic information" on its medium (Bilousov, 2008) and referring them to the category of physical evidence.

3. Scientific perspectives on using electronic evidence

V.Yu. Shepitko in his study on the role of electronic information means has defined potential advantages of information technologies. He argues that they can be used during criminal proceedings and forensic examinations "*"information technologies enables to gather, compare and analyse information from different sources (messages, search operation results, interrogations, address database, etc.), to establish a chronological sequence of events over time and correspondence of individual facts, to make plans and patterns of the scene, model of the crime event using computer equipment, etc.*" (Shepitko, 2010, pp. 196-197). In other words, the role of electronic information technologies has been clearly and theoretically reasoned not only as a subject matter of proof but also as a means of perception through which the work of law enforcement bodies can be technically improved.

A.V. Kovalenko in his work has come even closer to understanding the legislative regulation of the problem of "electronic evidence". Thus, he analyses: current provisions of the Civil Procedure Code of Ukraine, the Economic Procedure Code of Ukraine, the Code of Administrative Justice of Ukraine, the concept of electronic evidence, different scientific concepts concerning the definition of the investigated problem and finally determines the urgent need to formulate the doctrinal and legal definitions of the concept of "electronic evidence" in the criminal procedure and in the scientific development of the basic

approaches to gathering, examining and using electronic evidence with further consolidation of such approaches in the CPC of Ukraine (Kovalenko, 2018, pp. 237-233).

Therefore, over recent, the importance of "electronic evidence" and/or "electronic documents" has been increasing years in the science of law, for example, in their study, O. Kravchenko and K. Makarchuk underlined the adoption of Draft Law No. 6232 as of June 20, 2017, providing for amendments to the following procedure codes: the EPC (the Economic Procedure Code of Ukraine), the Civil PC (the Civil Procedure Code of Ukraine, the CAJ (the Code of Administrative Justice of Ukraine). In this regard, the corresponding Law of Ukraine 2147-VIII was adopted later and introduced a new term "electronic proof". Furthermore, in the course of this study, scientists state the problems of determining electronic evidence and their sources in the CPC of Ukraine, such as "*the criteria for establishing one or another electronic proof either as an original or as a copy "* (Kravchenko, & Makarchuk, 2019).

For example according to amendments to Art. 94 of the EPC of Ukraine, Art. 100 of the Civil PC of Ukraine, Art. 99 of the CAJ of Ukraine, "electronic evidence" is: "*... information in electronic (digital) form that contains data on circumstances relevant to the case, in particular, electronic documents (including text documents, graphic images, plans, photos, video and audio recordings, etc.), web sites (pages), text, multimedia and voice messages, metadata, databases and other data in electronic form. Such data can be stored in portable devices (memory cards, mobile phones, etc.), servers, backup systems, other electronic storage locations (including the Internet)"* (Law of Ukraine On Amendments to the Commercial Procedural Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Administrative Procedure of Ukraine and Other Legislative Acts, 2017). According to the provisions of the above definition, "electronic evidence" is recognized as "*information in electronic (digital) form, which contains data on circumstances which are relevant for the case"* and these data should be stored in the appropriate media.

A.V. Stolitnii and I.V. Kalancha argue that*: "Sources of evidence available in the criminal procedure of Ukraine ... do not allow to declare separate electronic evidence as an individual source, however, their electronic fixation is stated. Thus, ... the term "electronic evidence" should have only theoretical recognition, while the artificial concept of "electronic evidence" should not replace the electronic form of their fixation. Of course, ...there is the prospect of such format of electronic information... that will require the expansion of sources of evidence by electronic ones. In this case, the criminal procedure law will require amendments in terms of how it is received, fixed, stored and used. Therefore, first of all, it is necessary to clearly delimit the electronic source of evidence and to fix the evidence in electronic format, ...*" (Stolitnii, & Kalancha, 2019, pp. 188). Therefore, the latter review of "electronic evidence" in the context of Bilousov and Shepitko's ideas has been continued. Consequently, the ideas of double criminalistic perception of "electronic sources" have been further studied and placed among other scientific and theoretical ideas of the mentioned topic. However, the main difference stated by researchers is that electronic information/intelligence in the tangible media in this case is considered separately as an "electronic source" and as a separate form of protocol fixation. In this case, scientists unintentionally delimitate "electronic sources of evidence" from "electronic documents," which directly contradicts the CPC provisions of Ukraine.

The provisions of the CPC of Ukraine, which require all participants to comply with the principles of publicity, "electronic evidence" is considered in the context of documents (as a type of physical evidence). According to para. 1 of part 2 of Art. 99 CPC of Ukraine "*documents, provided the availability of information in them, ... may include: footage, sound recording, video recording and other media (including electronic)*" (Criminal Procedure Code of Ukraine, 2012). In this case, the legal concept of physical evidence as "material objects" (Art. 98 CPC of Ukraine) is the same as the notion of "electronic documents/evidence". According to a teaching manual by M.V. Hutsaliuk, O.V. Korneiko and V.H. Khakhanovskyi, the list provided by para. 1 of part 2 of article 99 of the CPC of Ukraine should be expanded by "*... Information media that fix the procedural actions by the technical means. In some cases, namely, when the document is unchanged, it can have both signs of the document and a physical evidence"* (Hutsaliuk, Korneiko, & Khakhanovskyi, 2019, p. 5). Accordingly, the authors of the textbook once again argue that the "electronic evidence" is the same as a physical evidence, assuming the permanence of the medium of the latter. In our opinion, the permanence can be applied both to the tangible media and to the intelligence in it in electronic form. Nevertheless, as is known, according to part 1 of the Article 94 of the CPC of Ukraine, during the evaluation of evidence (electronic documents, electronic presentations) must comply with the following requirements: appropriateness, admissibility, sufficiency and reliability (Bandurka, 2013, p. 281).

According to M.A. Pohoretskyi and M.Ye. Shumylo, investigative (search) actions and covert investigative (search) actions are the most important for proving among methods of collecting evidence (Bandurka, 2013, p. 277). For example, nowadays procedurally, according to articles 93, Section 20 of the CPC, "electronic presentations" can be detected by officers of law enforcement bodies during searches (Art. 234), examination (Art. 237), as well as during temporary access to things and documents as an action of criminal proceedings (Art. 159) (Criminal Procedure Code of Ukraine, 2012). In addition, "electronic presentations" can be obtained during the conduct of covert investigative (search) actions, provided for by Articles 260, 263, 269, 269, 270 and Art. 271 of the CPC of Ukraine. In this case, they are drawn up as an appendix to the protocol of the relevant investigative (search) action (Criminal Procedure Code of Ukraine, 2012).

Understandably, regardless of the branch of law where the concept of "electronic evidence" is applied, the "electronic evidence/document" is inseparable from its information medium.

According to the content of the website of the Ukrainian Library Encyclopaedia, "*electronic medium is a tangible medium, which is used for recording, storing and reproduction of information processed by means of computer technics. Electronic media include hard drives, flash memory, CD, DVD, Blue-ray, discs, diskettes, tapes, etc."* (Barkova, Zemtseva, & Sanchenko, 2014). Understandably, tangible medium can be referred to "tangible objects," that is, related to physical evidence (according to provisions of the CPC of Ukraine), since the latter may indeed contain information relevant to criminal proceedings. For example, appropriate skills, techniques and other cognitive tools, enabling to properly fix and interpret the crime pattern, are required to perceive any traces. In practice, "electronic media" can be examined both as parts of the physical world and as means of reading, recording and reproduction of computer hardware. In such case, it can be stated that "electronic documents" are really a criminal procedural category indeed closely connected with electronic information media.

S. S. Chernyavskyi and Yu.Yu. Orlov advocate the relationship between "electronic evidence/document" and the information medium in their research, substituting the term of "electronic documents" with the term "electronic images," as a separate independent type of evidence: "*Electronic documents" as a source of evidence in criminal proceedings, in our opinion, are not traditional documents. Because of this, and in order to avoid terminological confusion, the author proposes to mark them with a special term "electronic presentation" and to consider it as an independent source of evidence in criminal proceedings and a separate type of evidence"* (Orlov, & Cherniavskyi, 2017, p. 116-117).

It should be noted that among other researchers of the legal nature of "electronic evidence" M.I. Demura, D.I. Klepka and I.O. Krytska should be noted because in their studies they reveal different scientific approaches to the modern attitude to the concept of "electronic evidence". For example, the following scientific perspectives on the nature of "electronic evidence" can be underlined: "*1) the possibility of referring this category of objects to documents (denying the need to allocate them as an independent procedural source, emphasizing the priority of information fixed in the medium for proving); 2) the possibility of referring this category of objects to physical evidence (computer objects are one of the varieties of a separate group of physical evidence, in connection with a special field of use); the possibility of referring this category of objects to both documents and to physical evidence (digital evidence can be recognized both as physical evidence and documents); 4) the need to separate digital sources of evidentiary information as an independent procedural source (digital information is determined by unique characteristics different from other procedural sources of evidence)"* (Demura, Klepka, & Krytska, 2020, p. 40).

4. Promising vectors for the development of legislation on the use of electronic evidence

Therefore, in our opinion, it would be appropriate to consider in the context of understanding the nature of "electronic evidence" the provisions of the Draft Law of Ukraine On Amendments to the Criminal Procedure Code of Ukraine to Increase the Effectiveness of the Fight against Cybercrime and the Use of Electronic Evidence, according to the proposals of which, it is necessary to complete Chapter 4 "Evidence and Proving" of Section 4 "General Provisions" with paragraph 4-1 "Electronic evidence," according to which: "*1. Electronic evidence is information in electronic (digital) form with intelligence that may be used as evidence of fact or circumstances established during criminal proceedings.*" From now on, any information in electronic (digital) form constitutes evidence. *"2. Electronic evidence may include: 1) electronic documents (including text documents, graphic images, plans, photos, video and sound recordings, etc.); virtual assets; 3) web sites, web pages; text, multimedia and voice messages; metadata; databases; 7) other information in electronic (digital) form"* (Draft Law of Ukraine On Amendments to the Criminal Procedure Code of Ukraine to Increase the Effectiveness of the Fight

against Cybercrime and the Use of Electronic Evidence, 2020). Thus, the "electronic document," according to the Law of Ukraine "On electronic documents and electronic document flow", is an intangible presentation, which has legal force, and now it is proposed to include "electronic documents" in the list of evidence, though we know, the provisions of the current CPC of Ukraine, provide for only "electronic documents". Such change of legislative priorities (from intelligence/information stored in a tangible medium to information exclusively in an electronic form) is a reflection of trends of social relations development, including scientific and technological progress. However, the lawmaker does not answer the question what exactly is the "electronic form of presentation/fixation". All that we know today is that the information is stored electronically in tangible media. How does it occur, what types of traces can be identified and what types of means of fixing the mentioned traces should be used in the course of the pre-trial investigation – the response we are not given.

The next part of the article empowers the bodies of pre-trial investigation, the prosecutor's office to use information as evidence in criminal proceedings: "*Copies of information contained in information (automated) systems, telecommunication systems, information and telecommunication systems, their integral parts, made by the investigator, the prosecutor with the involvement of a specialist, are found by the court an electronic evidence";* and other participants of the criminal procedure: "*3. The parties to the criminal proceedings, the victim, the representative of the legal entity, in respect of which the proceedings are conducted, are obliged to provide the court with an electronic proof in the original or in electronic copy without any infringement of its integrity and authenticity; 6. The copy of electronic evidence, made by the investigator, prosecutor with the involvement of a specialist, and is found by the court the original of electronic evidence"* (Draft Law of Ukraine On Amendments to the Criminal Procedure Code of Ukraine to Increase the Effectiveness of the Fight against Cybercrime and the Use of Electronic Evidence, 2020). Moreover, the focus should be on the innovation such as "original of electronic evidence": "*4. The original electronic evidence is its presentation, which is as substantial as the procedural source of evidence".* It is quite difficult to state the urgent need to introduce the term "original electronic evidence" because, in our opinion, this definition, which gives priority to one or another information in a particular criminal proceeding, can only confuse its participants, because, according to a technical logic method, when it comes to the original, there is a question of whether a copy is available and whether the copy of "electronic evidence" constitutes evidence equal to the original. In this case, the term "unique electronic evidence" would be more appropriate in our opinion. In turn, the term "copy of electronic evidence," used in the Draft Law, should be mentioned "*7. A party to a criminal proceeding that submits a copy of electronic evidence must indicate that he or she has the original of electronic evidence. If a copy of electronic evidence is submitted, the court may, upon request of the party to the criminal proceedings or on its own initiative, request the original of electronic evidence to be submitted to the person concerned"* (Draft Law of Ukraine On Amendments to the Criminal Procedure Code of Ukraine to Increase the Effectiveness of the Fight against Cybercrime and the Use of Electronic Evidence, 2020). Obviously, quite different attitudes concerning definition of terms "original of electronic evidence" and "copy of electronic evidence" are provided for by law. As the original, according to the proposals in para. 4 of article automatically gives the "original of electronic evidence" the status of the source of evidence, the "copy of electronic evidence" is only a subjective attitude of the party to criminal proceedings directly to "electronic evidence" provided in the course of criminal proceedings. The actual difference between the original and the copy can only be established during the course of expert examinations. This is not mentioned in the Draft Law. Thus, information relating to the commission of an offense in electronic form, which is stored in the tangible medium again turns into intangible information, dependent on the judicial body's decision exclusively whether it constitutes evidence or not, moreover the court will have the right to appoint expert examinations concerning the reasonable confirmation of the originality of one or another "electronic evidence". This, in our opinion, can serve as a lever for manipulation during the establishment of objective truth in the case.

Furthermore, in accordance with the provisions of the paragraph, we see a well-established idea about the relationship of "electronic evidence" with the medium: "*5. The parties to criminal proceedings submit electronic evidence in the tangible medium"* (Draft Law of Ukraine On Amendments to the Criminal Procedure Code of Ukraine to Increase the Effectiveness of the Fight against Cybercrime and the Use of Electronic Evidence, 2020). Therefore, the Draft Law being studied enables to conclude that its authors advocate the approach that "electronic evidence" is a separate type of sources of evidence.

At the present stage, "electronic presentations" are differentiated by specialists in

the field of library science and information and communication technologies as separate types of electronic resources or electronic documents (Karpiuk, 2014).

Evidence in electronic form, such as images and videos, is fast becoming a recognized group of forensic artifacts and is most commonly found on social networking sites and platforms. Large amounts of images, audio and video are created, transmitted, stored and forged on a daily basis, and they are posted on public internet platforms, which are again potential sources of evidence in criminal proceedings. However, with the proliferation of digital images and public tools enabling to edit digital photos, the accuracy and authenticity of the photo, for example, may become questionable. Therefore, it is important to authenticate photographs and other images properly before presenting them as potential evidence (Kravchenko, & Makarchuk, 2019, p. 364). Therefore, it would be more appropriate to use the term "electronic presentations," because this definition of the phenomenon being studied fully reflects the truth of its use in practice. Because with regard to electronic evidence, or electronic documents, it is primarily a presentation of the objects of the material world, i.e. electronic technology.

5. Conclusions

Therefore, not only a lack of unanimous interpretation and understanding of the term "electronic evidence," but also differences in the representation of scientists and legislators on their legal nature and affiliation should be noted. In most cases, both scholars and law-makers agree on the intrinsic relationship of electronic information/intelligence with the medium (media) and therefore the unique source of evidence under investigation is accepted. Nevertheless, it can be argued that electronic images should be an independent source of evidence in criminal proceedings.

The term "electronic document," enshrined in the provisions of the CPC of Ukraine derives from the provisions of the adopted Law of Ukraine "On electronic documents and electronic document flow," which in turn is related to the term "information," introduced by the Law of Ukraine on Information, which has caused a number of conflicts and contradictions, due to a lack of full knowledge of "electronic form of presentation" and "electronic document." These issues should be further regulated.

Unfortunately, the term "electronic presentation" has not been legally established yet, but scientists have already identified electronic reflection as a source of evidence in electronic form. In Part 3 of Art. 99 of the CPC of Ukraine the legislator applies the term "electronic document," obviously referring to it. However, it should be admitted that there is no full procedure for the recognition, storage of "electronic presentation," its admission as evidence in criminal proceedings and the understanding of the procedural admissibility of copies of electronic images and original electronic images.

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ВИДИ Й ОСОБЛИВОСТІ ЕЛЕКТРОННИХ ДОКУМЕНТІВ ТА ЕЛЕКТРОННИХ ВІДОБРАЖЕНЬ ЯК ДЖЕРЕЛ ДОКАЗІВ

Анотація. ***Метою статті*** є розкриття правової природи джерел доказової інформації, а саме електронних доказів, та їх місця в системі доказів.

Методи дослідження обрані з урахуванням специфіки цілей, завдань, об'єкта та предмета дослідження. Серед них – діалектичний метод, який дав змогу розкрити окремі аспекти електронних документів і відображень як джерел доказової інформації у кримінальному провадженні; формально-юридичний (юридико-технічний) метод, що був використаний для вивчення норм права, дослідження особливостей юридичної техніки; герменевтичний метод, за допомогою якого з'ясовано правовий зміст норм Кримінального процесуального кодексу України та законодавчих пропозицій, виявлені дефекти нормативного регулювання.

Результати. Проведено аналіз чинного законодавства та законодавчих пропозицій, спрямованих на розширення джерел доказової інформації. Підкреслено необхідність використання електронних документів і відображень як джерел доказової інформації. Встановлено, що матеріальний носій можна віднести до «матеріальних об'єктів», тобто таких, що належать до речових доказів, оскільки на останніх можуть міститися відомості, які мають значення для кримінального провадження. Так, для сприйняття будь-яких слідів необхідне застосування відповідних умінь, навичок, техніки та інших інструментів пізнання і сприйняття, що дають змогу здійснювати належним чином фіксацію та інтерпретацію слідової картини злочину. У практичній діяльності електронні носії можна досліджувати і як частини матеріального світу, і як засоби зчитування, запису й відтворення комп'ютерної техніки. У такому разі можна визнати, що електронні документи як кримінальна процесуальна категорія справді тісно пов'язані з електронними носіями інформації.

Висновки. У статті проаналізовано поняття «електронні докази», «електронні документи» та «електронні відображення», встановлено їхню правову природу та подальші шляхи розвитку інституту електронних доказів у кримінальному процесі. Запропоновано збільшити перелік процесуальних джерел доказів шляхом доповнення їх електронними відображеннями.

Ключові слова: джерела доказів, електронні докази, електронні документи, електронний носій інформації, електронні відображення, досудове розслідування.

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